

Canterbury Regional Council (Environment Canterbury)

Proposed Plan Change 5 (Nutrient Management and Waitaki Sub-region)

to the

Canterbury Land and Water Regional Plan

MINUTE OF HEARING COMMISSIONERS

on Ngai Tahu application for protection of evidence

[Minute 2]

INTRODUCTION

1. By Minute 1 we directed that all evidence-in-chief was to be lodged with the Council by 22 July 2016. It would then be posted on the public website for any submitter to lodge rebuttal evidence by 5 August 2016.
2. On 22 July 2016 Ngai Tahu lodged a statement of evidence by David Higgins, to which four appendixes were attached.
3. With the evidence, counsel for Ngai Tahu lodged an application for an order that the appendixes are protected under section 42(1)(a) of the Resource Management Act, and are not to be published or communicated other than to ourselves and our administrative staff. The application contained the assertion that the appendixes “contain sensitive information that the applicant considers falls within section 42(1)(a).”

CONSIDERATION

4. At this stage we have not had opportunity to read Mr Higgins’s evidence statement, nor have we read the appendixes attached to it. We have not formed any opinion about whether or not the application should be granted.
5. It seems to us that the Ngai Tahu assertion that the contents of the appendixes contain sensitive information to which section 42(1)(a) applies raises a question of fact on which we would need to make a finding before we could consider granting the application.
6. Because the order sought would be exceptional to the general principle that local authorities’ proceedings on submissions on plan changes should be in public, we consider that we should not make such a finding on the Ngai Tahu assertion without having evidence of it. It would not be just for us to deprive other submitters of opportunity to know the evidence on which we may decide whether or not the appendixes qualify for the statutory exception.

EVIDENCE REQUIRED

7. Therefore we invite Ngai Tahu to provide, by affidavit or statutory declaration, evidence of a person who is qualified to give it and tending to show, separately in respect of the content of each of the appendixes, how the proposed protection order is necessary to avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu.
8. On lodging of the evidence in support of the Ngai Tahu application, the application and the affidavit or statutory declaration evidence would be published by posting on the website.

RESERVING LEAVE

9. As the Ngai Tahu application has been made at the time when other submitters would be entitled to see the four appendixes attached to Mr Higgins's evidence, so there has been no opportunity for any of them to oppose the application, we consider that if we grant the application and make the order sought, it should be subject to our reserving leave for any submitter to ask for leave to read the appendixes, on giving the conventional undertakings of non-disclosure or making use of the contents other than strictly for presenting a case in support of or in opposition to any submission on Plan Change 5.
10. If Ngai Tahu wish to present submissions on the possibility of our reserving leave for that purpose, counsel may present written submissions.



David F Sheppard for and on behalf of the Hearing Commissioners

David Sheppard (Chairman)

Edward Ellison

Rob van Voorthuysen

25 July 2016