IN THE MATTER of

the Resource Management Act 1991

AND

IN THE MATTER of

Hearing of submissions and further submissions on the Proposed Te Tai O Poutini Plan

MINUTE 24 – Sites of Significance to Māori, Section 42 requests

INTRODUCTION

1. The Hearings Panel is in receipt of an application filed on behalf of Ridgeline 3 Investments Ltd seeking a confidentiality arrangement in relation to their submission on the Sites of Significance to Māori (SASM).

2. The Hearing Panel also has before it the evidence of Mr Paul Madgwick on behalf of Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu which indicates that if the Hearing Panel requires further information on particular sites containing silent files, he requests the ability to provide that information in public excluded.

SECTION 42

3. Section 42 of the RMA addresses circumstances for the protection of sensitive information in relation to restricting who can attend a hearing, or the restriction of the publication of information. Under clause (1) it states:

> *A local authority may, on its own motion or on the application of any party to any proceedings or class of proceedings, make an order described in subsection (2) where it is satisfied that the order is necessary—*
>
> *(a) to avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu; or*
>
> *(b) to avoid the disclosure of a trade secret or unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information,—*
>
> *and, in the circumstances of the particular case, the importance of avoiding such offence, disclosure, or prejudice outweighs the public interest in making that information available.*

4. The circumstances under which an application can be made and be accepted are therefore quite specific. As we understand it, a common theme of the case law is that section 42 requires a balancing of the avoidance of the potential impacts identified in subsection (1) against the public interest in making the information available.[1]

5. Under clause (2):

> *A local authority may make an order for the purpose of subsection (1)—*
>
> *(a) that the whole or part of any hearing or class of hearing at which the information is likely to be referred to, shall be held with the public excluded (which order shall, for the purposes of subsections (3) to (5) of section 48 of the Local Government Official Information and Meetings Act 1987, be deemed to be a resolution passed under that section):*
>
> *(b) prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings, whether or not the information may be material to any*

[1] See for example *Radco Trading Limited v Auckland City Council* EnvC A23/04, 18 February 2004 at [24].

proposal, application, or requirement.

6. It is also noted under Clause (3) an order under subsection (1)(a) may have effect from the commencement of any proceedings to which it relates and for an indefinite period or until such date as the local authority considers appropriate in the circumstances, while an order under subsection (1)(b) may have effect from the commencement of any proceedings to which it relates but shall cease to have any effect at the conclusion of those proceedings and upon the date that such order ceases to have effect, the provisions of the Local Government Official Information and Meetings Act 1987 shall apply in respect of any information that was the subject of the order.

Ridgeline 3 Investments Ltd

7. Ridgeline 3 Investments Ltd (Ridgeline) has made an application for the protection of sensitive information under Sections 42(1)(a) to avoid serious offence to tikanga Māori and 42(1)(b) to avoid the disclosure of unreasonable prejudice to their commercial position in relation to land situated in the upper Arahura Valley.

8. The Hearings Panel have addressed these as follows:

    i. Serious offence to tikanga Māori

9. In terms of whether there are grounds for confidentiality on the basis of serious offence to tikanga Māori, we do not consider this has been established by the Ridgeline application. We note that existing cases where this ground has been established have been where there is an issue of mana whenua not wanting to disclose information in order to protect tikanga.[2] We find it difficult to see how anyone other than mana whenua could establish or allege that there would be serious offence to tikanga Māori, and we consider that this is an issue that only mana whenua can properly speak to.

    ii. Unreasonable prejudice to the commercial position

10. In terms of the commercial sensitivity aspect, we find it unclear how the information Ridgeline seeks to provide to the Hearings Panel would unreasonably prejudice a commercial position. A mere assertion of prejudice is not sufficient, and it needs to be demonstrated what that commercial position is and how the release of that information would likely unreasonably prejudice that position.

11. In this case, it appears to us at the moment that the allegation of commercial prejudice relates to ongoing negotiations with the Crown as to potential property rights. We note that the SASM rules are addressing cultural effects, which are separate from the property rights that may attach to a piece of land.

12. Beyond the allegation of commercial prejudice, Ridgeline has provided no further information explaining the commercial position, or how it will be unreasonably prejudiced. On the information provided we do not consider this ground is made out, although further context may be able to be provided by Ridgeline. We therefore invite Ridgeline to further clarify the information it wishes to provide, and how this could potentially prejudice the submitter. Ridgeline may also wish to clarify over who it seeks the information to be confidential between – for example, if it was simply seeking that the information was confidential to the general public but could still be viewed / addressed by any relevant submitters / further submitters, particularly Te Rūnanga o

[2] For example, *Te Ruunanga A Iwi O Ngati Tamatera (Inc) v Thames-Coromandel District Council* EnvC (2000) 7 ELRNZ 27

Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu. In order to make a timely decision the Hearings Panel will need any further information by 5pm on Tuesday the 30th of April.

13. Finally, the Hearings Panel notes Clause (3) above which effectively limits the protection of the information following the conclusion of the proceedings.

Evidence of Paul Madgwick for Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu

14. The evidence of Mr Madgwick refers to five SASM sites recorded as 'silent files' upon which submissions have been made. The Hearings Panel acknowledges that there are sensitivities around these sites and while it does not have any questions as to the specifics of individual sites it does have more generic questions.

15. We consider given there are submissions on these 'silent file' sites it is important that the Hearings Panel are able to test the evidence as part of the hearing process in order to inform its findings.

16. We request at the hearing that Mr Madgwick and/or Legal Counsel be able to assist us by explaining, while respecting the relevant sensitivities, the process of 'silent files', why a 'silent file' approach is needed and/or justified, why are they important and generically what they might cover. Given we are involved in a public participatory process it is our preference, if possible, to have such an exchange in an open forum. Also, such an exchange of information could assist those who have submitted on these 'silent file' sites.

17. However, if Mr Madgwick or Legal Counsel, consider these types of explanations are not appropriate in an open forum an application under s42 will need to be made by 5pm on the 29th of April.

Dean Chrystal

Independent Commissioner – Chair - on behalf of the Hearing Panel members

28 April 2024