

8 April 2020

Hamish Cardwell
Reporter
Radio New Zealand
Hamish.Cardwell@rnz.co.nz

REF: OIA-6461

Dear Hamish

Request made under the Official Information Act 1982

Thank you for your email of 26 February 2020 requesting the following information under the Official Information Act 1982 (the Act):

Can I have the minutes of the audit and risk committee (or any other body) meeting where the decision was made to settle with joint venture builder CPB HEB JV in exchange for \$190.6m of financial relief.

Can I have all documents, emails and attachments, advice, briefings, reports and memos from senior officials (equivalent to Tier 1-3) that informed the audit and risk committee's decision to settle with CPB HEB JV.

I can advise the decision to settle with CPB HEB Joint Venture (the Joint Venture) was made by Waka Kotahi NZ Transport Agency Board. As the minutes of all Board meetings are available on the Waka Kotahi website, the first part of your request has been declined under section 18(d) of the Act as the information requested is, or will soon be, publicly available. This decision was communicated to you on 24 March 2020.

The second part of your request seeks documents supplied to the Board by senior officials (equivalent of Tier 1 – 3) which informed the Board's decision to settle with the Joint Venture. The only documents which inform the Board's decisions are Board papers. Waka Kotahi located a number of Board papers on Transmission Gully prior to the settlement being made. However, only two documents were in relation to the proposed settlement and therefore, informed the Board's decision.

I am withholding these documents in their entirety under section 9(2)(h) of the Act. This section allows for the withholding of information where it is necessary to maintain legal professional privilege. The purpose of these two documents was to provide legal advice as to the benefits/risks of settlement and seeking instructions as to settlement from the Board. Legal professional privilege has not been waived.

Waka Kotahi acknowledges the public interest in accountability of Waka Kotahi's decision-making and its efficient use of public money. In this instance however, it is Waka Kotahi's view that the greater public interest is in ensuring that it continues to be able to seek and receive confidential legal advice. It

is also concerned that release of the advice could prejudice its ability to undertake similar commercial negotiations in the future.

The construction of Transmission Gully has been impacted by challenging site conditions, impact from several storm events and the Kaikoura Earthquake. The financial settlement of \$190.6 million has been reached in recognition that such issues were outside the control of the Joint Venture. This will ensure Transmission Gully is completed to a high standard, meets the needs of customers and still achieves good value for money for New Zealanders

Under section 28 of the Act, you have the right to ask the Ombudsman to review my decision to withhold this information. The contact details for the Ombudsman can be located at www.ombudsman.parliament.nz.

If you would like to discuss this reply with Waka Kotahi, please contact Andrew Knackstedt, Senior Manager Media, by email to andrew.knackstedt@nzta.govt.nz, or by phone on 021 276 3222.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Fisher', enclosed in a simple oval shape.

Tony Fisher
Acting Senior Manager Project Delivery