

IN THE MATTER OF the Proposed East Coast Beach
Vehicle Bylaw

**MEMORANDUM ON BEHALF OF
TE RŪNANGA A RANGITĀNE O WAIRAU
IN RESPONSE TO PROCEDURAL MINUTE 1**

1. This Memorandum responds on behalf of Te Rūnanga a Rangitāne o Wairau Trust (**RoW**) to Procedural Minute 1 in the matter of a Proposed Bylaw using a Special Consultative Procedure.
2. RoW has read and considered the letter provided by Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura (**Ngāi Tahu Parties**) dated 12 October 2021. RoW has, with urgency over this weekend, given consideration as to an appropriate response to the Ngāi Tahu Parties' letter. It is unclear to RoW why this letter has not been disclosed to it by Council earlier, given its obvious implications for RoW and for RoW's position in relation to the Bylaw.
3. As RoW understands it, the Commissioners are proposing to exclude as irrelevant and to make no determinations in relation to "the competing claims to strength of relationship between the relevant Iwi Authorities and their hapū" in the East Coast area the subject of the Bylaw (**Subject Area**). The Commissioners have indicated that they are "not bound by background statements" in the Technical Report.
4. The problems with the Commissioners' proposal include:
 - (a) Council (which for purposes of this process includes the Commissioners) has already made those determinations.
 - (b) The determinations which have been made have informed the section of the Technical Report which identifies the relevant cultural values in the Subject Area.
 - (c) The "sites of significance" to Iwi in the Technical Report are only those which are significant to the Ngāi Tahu Parties and no input has been sought from RoW as to their sites of significance, historical association and ongoing connections within the Subject Area.
 - (d) Consultation has been undertaken by Council on the basis that the Ngāi Tahu Parties alone, and not RoW, have mana whenua, mana moana and tangata whenua status in the Subject Area.
5. RoW has consistently objected to Council's approach in terms of 4(a) – (d) above and has raised issues with the content of the Technical Report. Almost two years ago, on 5 December 2019, RoW wrote to Council, noting that the Technical Report did not take into

account the relationship RoW has with the East Coast area “which is within our rohe.” Council has consistently and repeatedly responded to this position by stating to RoW that the Ngāi Tahu Parties and not RoW have mana whenua, mana moana and tangata whenua status in the subject area.

6. That Rangitāne o Wairau also has mana whenua, mana moana and tangata whenua status in the Subject Area, as well as, and not instead of Ngāi Tahu, is a matter of established fact, law and tikanga. Throughout these bylaw processes, Rangitāne o Wairau has endeavoured to engage with Council and to alert Council to its errors. Council has refused to meaningfully engage and has instead maintained the position that Rangitāne o Wairau’s status in the Subject Area is significantly subsidiary to the Ngāi Tahu Parties.
7. For Rangitāne o Wairau to be in the position, in 2021, of needing to persuade Council that it has mana whenua, mana moana and tangata whenua status in the Subject Area represents a very low moment in the relationship between Rangitāne o Wairau and the Marlborough District Council. Having to take this position, when it need not have had to be taken, will inevitably bring strain into the wholesome whakapapa-based and whānau-led relationships which exist between RoW and the Ngāi Tahu Parties.
8. It is easy but, respectfully, wrong for the Commissioners to say that none of this is relevant. It is relevant in at least the following ways:
 - (a) First, s82(1)(a) of the Local Government Act 2002 (**LGA**) requires Councils, in undertaking consultation, to identify the persons who may be affected by or have an interest in the decision.
 - (b) Second, s82(4) of the LGA requires a Council to consider the likely impact on the affected person of the decision in determining the nature and extent of consultation required.
9. In making all these decisions, Marlborough District Council has made mistakes about the nature and extent of RoW’s interests in the Subject Area and those mistakes have led to further mistakes about the likely impact on RoW of the Bylaw. The errors made by Council have caused the consultation process which has been undertaken to misfire to a material extent and one which is not able to be remediated by the Commissioners’ proposal to

disregard the issue. For example, RoW's submission that the Bylaw will adversely affect its ability to exercise customary rights in the Subject Area cannot fairly be considered when Council's position is that RoW has no customary rights in the Subject Area.

10. The error has been compounded by Council, despite being aware of RoW's concerns and the nature of its submission, delegating decision making functions in relation to the Bylaw to a committee which includes a member of Ngāi Tahu. It is entirely unfair to Ms Clayton to be put in the position of having to be a Judge in her own cause. Ms Clayton cannot fairly be asked to decide whether the Bylaw will adversely affect the exercise by RoW of its customary rights in the Subject Area when Ngāi Tahu and Marlborough District Council consider that RoW has no such rights for purposes of this Bylaw. RoW acknowledges that it was given an opportunity to nominate a RoW representative for consideration by Council as a Commissioner. This offer was, however, conditional on RoW withdrawing its submission and accepting the proposition that it had no relevant interests in the Subject Area. In view of the condition attached by Council to the offer, RoW declined to accept it.
11. The mistakes made to date by Marlborough District Council are such that the process needs to start again. If Council continues to push on with this flawed process, RoW reserves its rights to the fullest extent. RoW would appreciate early advice on whether the Commissioners' views continue to be that the issue of RoW's status in the Subject Area is irrelevant to its decision making functions. If that continues to be the position, RoW's submission for Tuesday will be materially different than the submission RoW is currently intending to make. The late notification of the existence of the letter and minute of the Commissioners has significantly prejudiced RoW's ability to address the Commissioners as part of its verbal submission.
12. For completeness, RoW is grateful for the opportunity to review the High Court decision in *Ngāti Maru v Ngāti Whātua Ōrākei*. This case is not relevant to the points RoW is making, those being that:
 - (a) A mistake about whether a person has an interest in a matter the subject of a decision by a local authority will result in a failure to consult for purposes of the LGA.

- (b) A mistake by a local authority as to the nature and extent to which a person may be affected by a decision proposed to be made by a local authority will result in a failure to consult for purposes of the LGA.
- (c) Failures to consult of the kind set out in (a) and (b) above will affect the substance of the decision proposed to be made by a local authority.
- (d) A delegation by a Council of its decision making powers under the LGA to a party with an interest in the decision proposed to be made will materially and adversely affect the validity of that decision.

Dated this 22nd day of November 2021



M J Radich
Counsel for Rangitāne o Wairau