



3 December 2021

Hearing Panel - Proposed East Coast Beach Vehicle Bylaw  
Marlborough District Council  
PO Box 443  
Blenheim 7240

Tēnā koutou

## **Response to Procedural Minutes 1 & 3 on Proposed East Coast Beach Vehicle Bylaw**

### **Introduction**

1. Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura (as the administrative council of Ngāti Kuri) have read Procedural Minutes 1 and 3 from the Hearing Panel and the response from Te Rūnanga a Rangitāne o Wairau Trust (22 November 2021).
2. The purpose of this letter is to:
  - a) reiterate the purpose of our initial letter<sup>1</sup> to Marlborough District Council (MDC) to address a procedural concern; and
  - b) clarify that whakapapa does not raise a conflict of interest.

### **Purpose of Initial Letter**

3. Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura intentionally did not seek leave to file a late submission as to the substance of the proposed East Coast Beach Vehicle Bylaw. Rather, we became aware of the procedural concerns raised in the submission of Rangitāne o Wairau and sought to remind the Council of its ability to consult with others in in preparing the bylaw (under the special consultative procedure), as a submitter had raised an issue of paramount importance. We wanted to ensure the Hearing Panel had the correct information available regarding the proposed Bylaw being within the statutorily recognised takiwā of Ngāi Tahu Whānui and the status of Te Rūnanga o Ngāi Tahu as the iwi authority with the Ngāi Tahu takiwā.
4. Section 83(3) of the Local Government Act 2002 allows a local authority using the special consultative procedure to request or consider, before making a decision, comment or advice from an officer of the local authority or any other person in respect of the proposal or any views on the proposal, or both.

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<sup>1</sup> Dated 12 October 2021.



5. Given Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura did not wish to be involved in the content of the proposed Bylaw, nor is this a matter that relates to substance, the appropriate mechanism to address this issue was to prepare a letter which is able to be considered by the Hearing Panel under section 83(3), rather than a late submission.

### **Whakapapa does not raise a Conflict of Interest**

6. The November letter from Rangitāne o Wairau suggests that a Commissioner's whakapapa to Ngāi Tahu creates a conflict of interest:<sup>2</sup>

*The error has been compounded by Council... 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.*

7. The Hearing Panel's Procedural Minute 3 states:<sup>3</sup>

*Commissioner Ma-rea Clayton has whakapapa to Ngāi Tahu, Ngāti Rarua, Rangitāne o Wairau, Ngāti Toa, Te Atiawa. Commissioner Enright's spouse and children whakapapa to Ngāi Tahu (Otago).*

8. While we note Commissioner Ma-rea Clayton has whakapapa to *both* Ngāi Tahu and Rangitāne o Wairau, whakapapa links alone do not establish a conflict of interest. In *New Zealand Māori Council v Foulkes* Kos J stated:<sup>4</sup>

*... a connection based purely on whakapapa is not of itself a conflict. Simply belonging to an iwi or having a genealogical connection... does not necessarily mean a conflict exists. At most it may prefigure a potential conflict. Whether it is a conflict in fact will depend on further evaluation.*

9. In these circumstances, further evaluation would conclude there is no conflict. Our understanding is that Commissioner Clayton does not have any financial interests, role-base interests (such as any governance or employee roles within Te Rūnanga o Ngāi Tahu or Te Rūnanga o Kaikōura), personal interests (such as property interests, hobbies, family or close personal relationships), nor any strongly held beliefs and opinions, that would lead to a risk of predetermination. Accordingly, Commissioner Clayton's culture and descent is no more relevant than any Pākehā Commissioner.

### **Conclusion**

10. Issues regarding rangatiratanga and the status of Te Rūnanga o Ngāi Tahu as the iwi authority within the takiwā are of paramount importance. MDC, as an agent of the Crown,

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<sup>2</sup> Paragraph 10, Memorandum on Behalf of Te Rūnanga a Rangitāne o Wairau in Response To Procedural Minute 1, 22 November 2021.

<sup>3</sup> Paragraph 3(b), Procedural Minute 3, 22 November 2021.

<sup>4</sup> *New Zealand Māori Council v Foulkes* [2014] NZHC 1777 at [199].





cannot neatly opt out of these issues. In our view, the proposed Bylaw as notified correctly identifies that the Bylaw area is within the statutorily recognised takiwā of Ngāi Tahu Whānui and the status of Te Rūnanga o Ngāi Tahu as the iwi authority with the Ngāi Tahu takiwā.

Nāhaku noa nā

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

**Rākihia Tau**  
**Group Head Strategic Relations**  
**Te Rūnanga o Ngāi Tahu**

