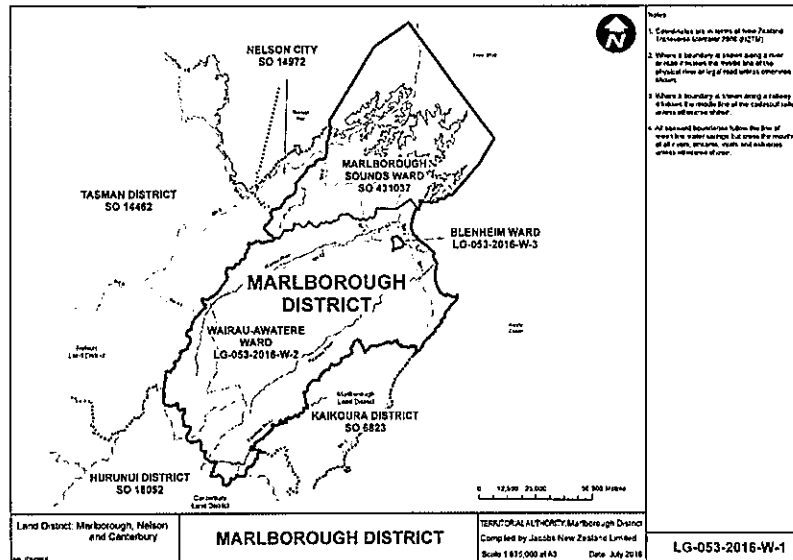


IN THE MATTER OF the Proposed East Coast Beach
Vehicle Bylaw

SUBMISSIONS OF TE RŪNANGA A RANGITĀNE O WAIRAU

1. Rangitāne o Wairau is one of eight iwi which Marlborough District Council acknowledges as having tangata whenua status in the Marlborough region.¹ The Marlborough region, for purposes of Council's jurisdiction, is shown in graphic form below. Self-evidently, it includes the East Coast area the subject of the proposed by-law (**Subject Area**).



2. When this Bylaw was being developed by Council in 2018 and 2019 and work was being undertaken in terms of Council's obligations under the relevant legislation (including the Local Government Act 2002 (LGA) and the Land Transport Act 1998) RoW was not consulted. The Technical Report which contained the information and analysis considered relevant to the substance of the Bylaw was at Version 3 by the time RoW became aware of its existence and had been reviewed and considered twice by Council's Environment Committee, once by Council's Planning Finance Community Committee meeting and twice by the full Council.²
3. By this time, being late November 2019, the existence of the Technical Report and Council's intention to promulgate the Bylaw was information which was in the public domain. On Friday 29 November 2019, RoW made the following enquiry by email:

Morena Sarah

From reading Stuff I understand there has been some movement on the vehicle access problems on the east coast beaches.

Could I please be provided with a copy of the discussion paper and recommendations as this will potentially affect access to customary fishing grounds of our iwi.

Nga mihi
Sally³

¹ Council's identification of the various iwi which are tangata whenua within Marlborough is contained in various statutory documents, one such document being Marlborough's original Regional Policy Statement at 3.2 (page 17) which became operative on 28 August 1995.

² See Document Control attached to the Technical Report dated July 2021.

³ Email from Team Taio (Sally Neal) to Sarah Edmonds, Marlborough District Council, dated 29 November 2019.

4. The Technical Report and some additional information which was sent to RoW contained erroneous statements about RoW's interests in the Subject Area relative to Ngāi Tahu's and failed to identify RoW as having any interests in the Subject Area beyond "historical interests." In fact, RoW has ongoing, established customary rights in the Subject Area which co-exist with Ngāi Tahu's interests in the Subject Area and have subsisted for centuries.
5. Upon discovery of the report, RoW responded to Council and recorded its concerns. These concerns were provided in an email which refers to a phone call having preceded it. Obviously the absence of any reference to RoW's status as tangata whenua in the Subject Area and consequential effects on the consideration of RoW's customary rights caused immediate alarm within RoW, which was communicated to Council.
6. On 5 December 2019, RoW corresponded with Council's Planning, Finance and Community Committee and recorded concerns about the discussions which had been had at the Committee's meeting on 28 November 2019. Those discussions were to the effect that RoW had no relevant interests in the Subject Area beyond historical interests, which is of course not the case. At that meeting Version 3 of the Technical Report was adopted, which contained the incorrect statements about the nature and extent of RoW's interests relative to Ngāi Tahu's.
7. RoW set out its concerns as they then were by letter. The letter recorded that the Technical Report dated 1 November 2019 did not take into the account the continuing relationship and interests RoW has, as tangata whenua, with the East Coast area and records that the Subject Area is within RoW's rohe. RoW recorded its position then in the following terms:

Rangitane o Wairau object to the proposed closure of the east coast area to vehicles in its entirety until a consultation process has been undertaken.
8. In the year that followed Council continued to work on the Bylaw and the Technical Report remained unchanged. RoW's interests continued to be expressed as being no more than historical and the position remained as far as Council was concerned that Ngāi Tahu (alone) had mana whenua, mana moana and tangata whenua status in the Subject Area. RoW and its representatives engaged with Council staff during this period but were told that Council had no obligations under the Treaty of Waitangi (as the Crown is party to the Treaty, not the Council), that Council was not a Crown agent for purposes of this delegated legislative process and that Council staff remained firm in their views that the Technical Report was correct as to the nature and extent of RoW's interests.
9. On 24 June 2021, Council met and approved the Statement of Proposal and associated materials required to be prepared to meet Council's obligations under the LGA's Special Consultative Procedure. The Statement of Proposal and the associated documents continued to contain statements that Ngāi Tahu was *the* tangata whenua of the Subject

Area and held mana whenua and mana moana status. RoW's interests were recorded as being merely "historical."

10. RoW received the materials on 23 June 2021 (the day prior to Council meeting to consider the Statement of Proposal and associated materials). RoW (through its General Manager) urgently corresponded with Council's Mayor and Chief Executive on the following terms:

Tēnā korua Mark raua ko John

We note that the Proposed East Coast Beach Vehicle Bylaw will be discussed by Council tomorrow.

We reject many of the references used in the material within Council's agenda pack, including:

1. Summary Factsheet

"Ngāti Kurī, hapū of Ngāi Tahu, are tangata whenua, while Rangitāne, Ngāti Toa and Ngāti Rārua have long-standing connections with the area"

Rangitāne are tangata whenua in the area and have continuing interests in the area. This statement is misleading and ignores Rangitāne in our position as tangata whenua in the area. It diminishes our standing within our tribal rohe and

2. Statement of Proposal

"Ngāti Kurī are the tangata whenua who have manawhenua and manamoana in the area covered by the draft East Coast Beach Vehicle Bylaw"

Again, Council have ignored and failed to acknowledge Rangitāne as tangata whenua in the area. We reject inaccuracies in this statement and those that follow.

3. Technical Report

Cultural Values

Again, Council have ignored and failed to acknowledge Rangitāne as tangata whenua in the area. We are alarmed that Council have solely and exclusively allowed Te Rūnanga o Kaikōura to develop/provide the cultural values information.

4. Covering Paper

Te Rūnanga a Rangitāne o Wairau, Te Rūnanga o Toa Rangitira and Te Rūnanga o Ngāti Rārua have historic interests in the area.

This statement is incorrect. Rangitāne have ongoing interests in the area, as tangata whenua. This, again, implies that the interests of Ngāti Kurī are greater than our own.

We have serious concerns that you are placing a greater emphasis on one of your Treaty Partners, at our expense. Rangitāne are being unfairly disadvantaged by the content within these reports. They do not accurately reflect our tangata whenua status within the area.

11. On 30 June 2021, Council issued a press release indicating that the Special Consultative Procedure in relation to the Bylaw was delayed for "procedural reasons". The press release did not indicate what those procedural reasons were. On 8 July 2021, an extraordinary Council meeting was held. What were described as "minor" changes were proposed by Council staff and adopted by Council. Those "minor" changes included the removal of the references to the relative interests of Ngāi Tahu and RoW in the Statement of Proposal. Essentially, the offending words were deleted but the substance of the issues which existed were not.

12. Against that background, RoW is in the position of having to submit that the consultation process undertaken in relation to the Bylaw has misfired in material respects such that any decision which is made on the basis of this flawed process will be unlawful.
13. For consultation to be correctly and properly undertaken in terms of the LGA and the Special Consultative Procedure in s83 of the LGA, Council must correctly identify the persons with interests in the outcome of the decision and identify the nature and extent of those interests. This is recorded among the Principles of Consultation expressed in s82(1)(a) and s82(4). Councils have particular obligations to understand the nature and extent of iwi interests where, as here, a decision is proposed to be made which is a “significant decision” in relation to land or a body of way. This obligation arises under s77(1)(c). The undertaking of these obligations carries with it “an implicit obligation to take such views as are communicated into account.”
14. For almost two years now, RoW has been endeavouring to engage with Council and to alert it to what is a matter of established fact, law and tikanga: that RoW has tangata whenua status, mana whenua status and mana moana in the Subject Area, with and not instead of Ngāi Tahu. The nature and extent of RoW’s interests in the Subject Area is such that adopting the Bylaw, on the terms proposed, will significantly and materially affect RoW’s ability to exercise the customary rights which it has in the Subject Area and which have subsisted for centuries. There can be no proper engagement with the content of this submission because Council has, for purposes of these processes, taken the position that RoW has nothing more than “historical interests” and in all respects its interests are subsidiary to Ngāi Tahu’s. It is particularly galling to RoW that there are exemptions to the Bylaw for commercial entities but not for Iwi.
15. For RoW to be in the position, in 2021, of needing to demonstrate to Council that it has tangata whenua status, mana whenua status and mana moana status in the Subject Area represents a very low moment in the relationship between RoW and the Marlborough District Council.
16. As RoW has consistently stated, this process needs to start again and consultation needs to be undertaken on a proper basis. Alternatively, Council can exclude RoW whānau and whānui from the operation of the Bylaw so that RoW’s customary interests will not be affected. That is the only way that some small steps can be taken to repair the harm which has been caused by Council by its failures to properly understand significant issues affecting RoW and which failures have caused significant harm to a relationship which was previously in good heart.



**M J Radich for
Te Rūnanga a Rangitāne o Wairau**