# Submission

**Date:** 8 September 2021

**From:** Te Rūnanga a Rangitāne o Wairau Trust

**To:** Marlborough District Council

**Subject:** **Submission on the Proposed East Coast Beach Vehicle Bylaw**

## ESSENTIAL CONCERNS

Rangitāne o Wairau has two essential points concerning the proposed Bylaw.

The first is a concern about a **serious procedural misstep** in the process of developing the Bylaw and the second relates to **matters of substance**.

The concerns of Rangitāne o Wairau about the procedural misstep have been highlighted by Council's actions after the issue was raised – deleting the offending text from the final version of the proposed Bylaw, following an extraordinary meeting of Council, but not addressing the underlying mistaken views which were reflected in the previous version. Rangitāne o Wairau will address the procedural concerns first and then identify issues of substance.

## PROCEDURAL CONCERNS

The version of the Bylaw which was, Rangitāne o Wairau understands, adopted by Council contained statements which were legally and factually wrong about the status of Rangitāne o Wairau's interest in the area the subject of the Bylaw relative to the status of Ngāti Kurī. Those statements included:

a) *Ngāti Kurī, hapū of Ngāi Tahu, are tangata whenua, while Rangitāne, Ngāti Toa and Ngāti Rārua have long standing connections with the area.*

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

c) *Te Rūnanga Rangitāne o Wairau . . . [has] historic interests in the area.*

It is deeply concerning to Rangitāne o Wairau that Marlborough District Council has adopted this inaccurate and legally and factually incorrect position throughout the process of developing the Bylaw. Rangitāne o Wairau considered the Council to be aware of Rangitāne o Wairau's areas of interest, as those were defined throughout Waitangi Tribunal and other legal processes. It is a matter of settled fact and law that Rangitāne o Wairau has manawhenua and manamoana status in the subject area and this ought to have been known by the Council and reflected in the processes which led to the Bylaw being developed. Council has, wrongly, considered Ngāti Kurī as having superior legal and other interests in the subject area throughout the process and has engaged with Ngāti Kurī differently throughout the process than it has with Rangitāne o Wairau. This has led to mistakes being made by Council and has led to the process and content of the Bylaw being flawed.

It was not until 21 June 2021 that Rangitāne o Wairau became aware of Council's mistaken and deeply hurtful positions regarding Rangitāne o Wairau's relativity to Ngāti Kurī in the subject area. At that stage, Rangitāne o Wairau was asked by Council to provide any comments at or before the Council meeting to settle the terms of the final version of the proposed Bylaw which was scheduled for 24 June 2021. Despite the very tight time frame, Rangitāne o Wairau articulated its concerns about the proposed Bylaw. As we understand it, at a later meeting a decision was made to delete the parts of the Bylaw about which Rangitāne o Wairau was concerned.

Deleting the text without addressing the broader consequences of these mistaken views being held by Council throughout the Bylaw process does not remedy any of the problems with the Bylaw. In some senses, it makes the problems worse. It appears as if Council is endeavouring to remove from the record evidence of its mistakes without accepting any responsibility or showing any interest in how these mistakes were made or the effects those mistakes may have had on the process and outcome of developing the proposed Bylaw.

In Rangitāne o Wairau's view, the fact of these serious mistakes having been made affects the quality of the decision making process to date to such an extent that the process should start again. Consultation should begin, again, on the basis that Council has an obligation to correctly identify and engage with all iwi with interests in the area on a correct legal and factual basis and not on the mistaken basis that Ngāti Kurī's interests are superior to Rangitāne o Wairau's.

## OUR TAKIWĀ (AREA OF INTEREST)

The Rangitāne o Wairau Area of Interest (defined in our Deed of Settlement and legislation) covers a territory stretching from the Waiau-toa (Clarence) River in the south to the Wairau River (Marlborough), including the Nelson Lakes, and north to Kaituna and the Marlborough Sounds and west into the Whakatu (Nelson) area. Included in this area is the coastal area subject to the proposed bylaw and beyond.

Rangitāne o Wairau have overlapping interests within the statutory takiwā of Ngāi Tahu. These interests have been the subject of various disputes and Court proceedings, which confirm that the interests of Rangitāne o Wairau and other Te Tauihu iwi are not affected by the Te Rūnanga o Ngāi Tahu Settlement Act.

By way of example, in 1999, Ngāti Apa brought legal proceedings regarding the effect and operation of the Ngāi Tahu Settlement on other Te Tauihu Iwi. The proceedings made their way to the Court of Appeal where they were resolved on the basis that the Ngāi Tahu Settlement Act was only operative between the Crown and Ngāi Tahu. The essential findings of that case were that:

- The statutory recognition of the takiwā of Ngāi Tahu was for the purposes of the Te Rūnanga o Ngāi Tahu Act 1996 only. It prevents anyone representing Ngāi Tahu within its takiwā other than Te Rūnanga o Ngāi Tahu, but it does not prevent any other tribe from asserting interests in land within the Ngāi Tahu takiwā.

- The "Ngāi Tahu Claims Settlement Act" is an Act that settles the Ngāi Tahu claims. It does not in its terms purport to affect or settle the claims of any other tribal groups.

- The acknowledgement by the Crown that it recognised Ngāi Tahu as holding rangatiratanga within the takiwā defined by s5 of Te Rūnanga o Ngāi Tahu Act 1996 is not expressed to exclude the claim of any other tribal grouping outside Ngāi Tahu to mana or rangatiratanga in relation to lands within the takiwā, if not inconsistent with the recognition accorded to Ngāi Tahu. Given the concession of counsel for Ngāi Tahu that it is theoretically possible for two tribal groups to have rangatiratanga in respect of the same district, there is no necessary implication of exclusivity.

The Court of Appeal's determination was that the Settlement Act did not have any effect on the claims of other iwi within the takiwā and that if the Crown sought to assert that it was required to deal exclusively with Ngāi Tahu in the takiwā it would likely give rise to a claim against the Crown by affected Te Tauihu iwi for a contemporary breach of the Treaty.

The WAI785 hearings took place against this background. One of the central issues for the Waitangi Tribunal was the effect and operation of the takiwā. It is sufficient to note that the Tribunal agreed with the Court of Appeal about the effect and operation of the takiwā, i.e., that the Tribunal was able to consider the claims of Te Tauihu iwi (including Rangitāne o Wairau) in the takiwā. In its final report, the Tribunal concluded that the Rangitāne o Wairau area of interest extended through most of the Eastern South Island as far South as Waiau-toa (Clarence River).

The legal position is quite simple. Rangitāne o Wairau has rights in the Ngāi Tahu takiwā and those rights need

to be recognised as being at least equal to those of Ngāi Tahu and its hapu. The area comprising the Ngāi Tahu takiwā is not exclusive to Ngāi Tahu.

In relation to the area covered by the proposed Bylaw, Rangitāne o Wairau has manawhenua and manamoana in these areas and the Council's position that it does not (and that Ngāti Kuri does) is completely wrong.

It is the duty of the Marlborough District Council, as a delegate of the Crown in terms of the Bylaw process, to consult with Rangitāne o Wairau on a legally and factually correct basis. Council also has obligations under the Local Government legislation. In developing a bylaw on the basis of a mistaken view of one iwi's rights relative to another in the key area, Council has not met its procedural and substantive obligations. There have been many attempts on our part to engage with Council over this matter and express our concerns, but Council failed to apprehend the concerns of Rangitāne o Wairau until the very last minute. This has resulted in briefing documentation attached to the draft bylaw which provides a cultural narrative provided solely from Te Rūnanga o Kaikoura's perspective and fails to acknowledge the long history of occupation and reliance on this stretch of coastline as a resource and mahinga kai by Rangitāne people.

## OUR ASSOCIATION WITH THE EAST COAST

Rangitāne o Wairau have a long cultural association with the greater East Coast area. Our association dates back some 800 years to the earliest inhabitants in Aotearoa. The initial occupation area has been identified as Te Pokohiwi o Kupe (Wairau Bar), before migrating further South to Kāpara-te-hau (Lake Grassmere), Te Karaka (Mussel Point and Cape Campbell), Oruamoa, Waiharekeke (Flaxbourne), Waimā and beyond to Matariki at the Waiau Toa river.

The shoreline within the bylaw area was dotted with pā sites, kāinga, cultivations, Tauranga waka and fishing stations, as illustrated by the vast number of archeological finds, alongside the oral and customary practices of Rangitāne o Wairau. Customary fishing and kaimoana formed the core of the traditional Te Tauihu economy, and the East Coast played an important role in sustaining our people. To this day, our people maintain a strong connection and affinity with the East Coast, where we continue to exercise our customary fishing rights.

The Historical and Archaeological significance and magnitude of the East Coast is described briefly below. These sites range in age, scale and significance. The current relative ease of access to these sites has resulted in many of them being damaged and fossicked resulting in many artefacts being removed.

## HISTORICAL/ARCHAEOLOGICAL SIGNIFICANCE OF THE AREA

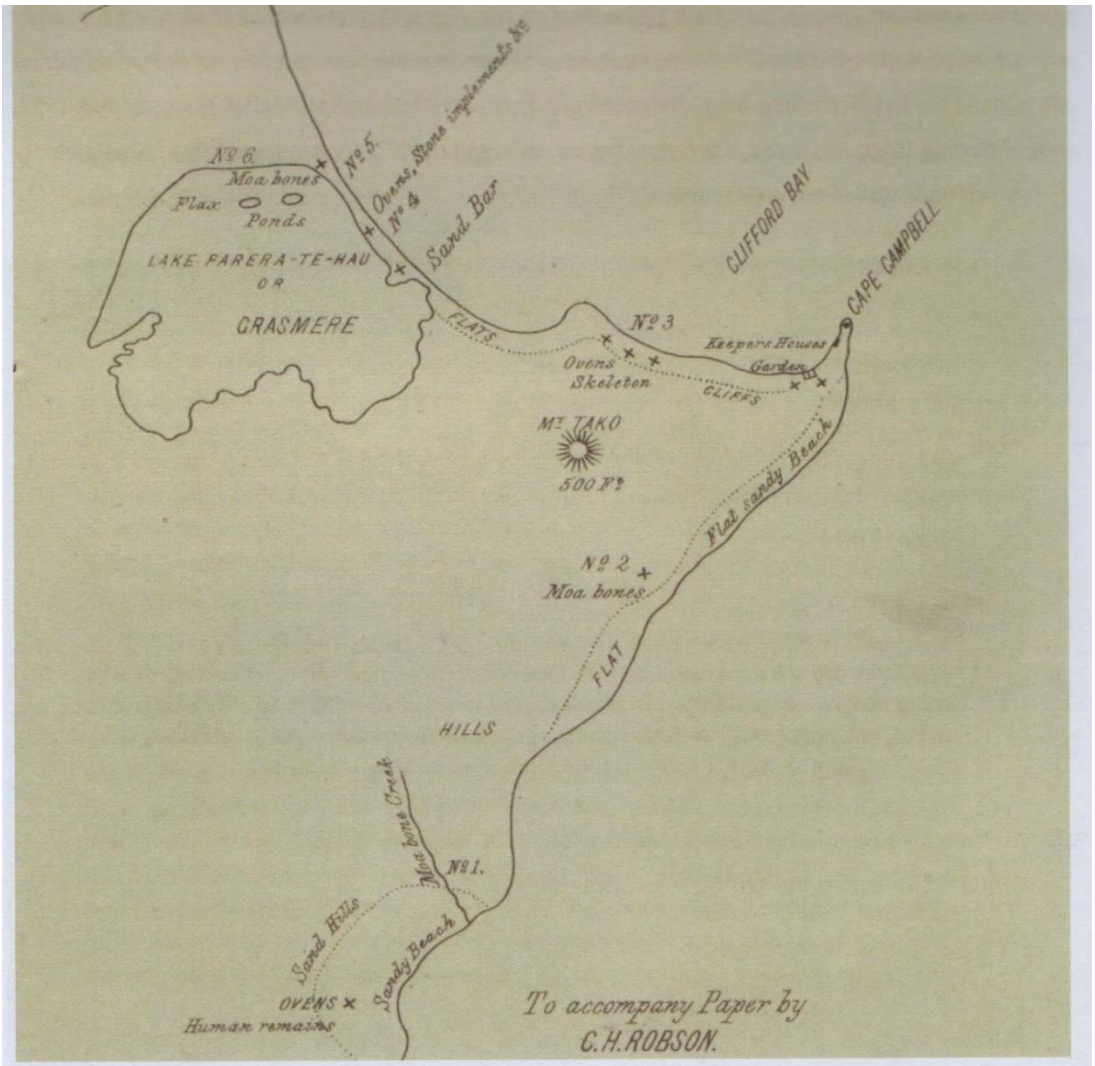
### AWATERE TO GRASSMERE

A series of pits and terraces are located at the mouth of the Awatere River. The presence of oven stones and "firestarter" trees (such as the Kaikomako) in the Blind River area denotes that this area supported a resident population at some stage.

Lake Grasmere/Kāpara-te-hau (the gardens of Te Hau) is named after the legendary Kurahaupō tūpuna, Te Hau, who settled in the region. He established gardens, which were later inundated and became Lake Grassmere when, according to oral tradition, his foe, Kupe, through karakia, caused the sea to flood the area. Boulders were also placed in the sea by Te Hau and his people to create beds for kutae, paua and tiotio. The area includes pā sites, wāhi tapu, urupā, cultivations, and is an important source of birds, eels, kaimoana, raupō and harakeke (flax).

A signficant pā was located at Paruparu, on the northern side of the lake outlet to the sea. The pā was attacked by Taranaki/Kawhia iwi. During these troubled times a number of Kurahaupō wāhine, hiding in the reeds, smothered their own babies whose crying threatened to give away the location of the fugitives. This pā and its environs were still occupied by Kurahaupō people as late as 1850, even though they had suffered heavy casualties at the hands of the Taranaki/Kawhia invaders. The area remains of great significance. There are a number of unrecorded urupā within the area.

## GRASSMERE, MUSSEL POINT, CAPE CAMPBELL




*From C. H. Robson, 'Notes on Moa Remains in the Vicinity of Cape Campbell', Transactions and Proceedings of the New Zealand Institute, Vol. VIII, 1875.*

Marfells Beach was an area of occupation and cultivation. Shell middens, terraces, large pits and ovenstones have all been found there, along with many finds of adze and other tools. Many of these finds have gone unrecorded, but the kōrero among locals suggest that the area was well fossicked.

A kāinga was situated at Mussel Point and was a significant population. Pits ovenstones, middens, burial artefacts (including fishing equipment, such as fish hooks and lures) and kōiwi have all been uncovered as a result of fossickers and erosion in recent times. This is an important area to Rangitāne whānau and is an area frequented by our people. We regularly return to the area, as evidenced by recent plantings which have been undertaken in the area of Te Karaka trees.

There is further evidence of settlements at Cape Campbell/Te Karaka and further south at Orumoa (Long Point), demonstrating that Te Karaka was an occupied area. An extensive grove of Karaka trees once grew here giving the place its name. Regrettably, this grove was burnt and destroyed by Ngāti Toa in the 1830s, however, the stumps were still visible in 1910. Middens, ovens and artefacts have been discovered at Long Point. These midden contained pāua and cockle shells, barracouta and whalebone. It is disappointing to note that a collection of artefacts from this site were sold on TradeMe in 2009.

## FLAXBOURNE SOUTH TO THE WAIMA

Ward Beach and the Flaxbourne River Mouth is another area of occupation and battle sites. The area is known as "Waiharekeke" which denotes the important flax resource in the area. Further south there is evidence of occupation at Needles Point and Mirza Creek.

Rangitāne o Wairau chief Te Huataki established pā at Matariki (on the north side of the Waiau-toa River) and the mouth of the Waiharakeke (Flaxbourne) River at Ward Beach.

## HISTORICAL MAPPING AND ACTIONS

It should also be noted that Ihaia Kaikoura's map of the Rangitāne rohe, copied by Ligar in 1843, named places along the coast at least as far as the Waiau-toa River. Rangitāne claims to land as far south as the Waiau-toa are also disclosed in a September 1868 letter from Ihaia Kaikoura and a number of other chiefs representing '*the people of Rangitāne residing at the Wairau*' to Native Land Court Chief Judge F. D. Fenton. The chiefs described their land claims, which included the east coast starting at the Waiau-toa River, moving north to include Cape Campbell, extending inland to the Richmond Ranges (Paepaetangata) and on to Port Underwood (Rahotia) and northwards (an area named as Pareraho). The letter also specified the areas in which each chief had a particular interest. The writers concluded by stating 'the rights to those regions belong to the people' (Rangitane) who are 'the rightful owners of these lands'.


*Ihaia Kaikoura's map (copied by Ligar) of the Rangitāne rohe*

## ACCESS TO AREAS OF CULTURAL AND CUSTOMARY IMPORTANCE

The proposed bylaw will directly impact Rangitāne by preventing vehicular access to the coastal areas of Kāpara-te-hau, Mussel Point, Te Karaka, Oruamoa, Waiharakeke and further south to the Waima River. The sites situated along the coast from Marfells Beach to Ward Beach and further South to the Waima river are landlocked and as such access to the area for cultural or customary fishery purposes would be entirely at the discretion of the adjoining landowners.

Of great concern to Rangitāne is the potential of exclusion from an important and long-standing cultural harvest area along the East Coast. It is unreasonable to expect whānau (many of whom have physical limitations) to safely and comfortably access the area, which would require them to walk along the beach to access Te Karaka and beyond to undertake customary practices, including cultural harvesting. Furthermore, the provision for boat launching requires access to suitable watercraft and weather, further limiting the accessibility of the area. The proposed areas set aside for launching are not new, as they have existed for many years and therefore do not mitigate the potential loss of the customary beach access, which Rangitane has maintained since its occupation

of the area.

Today, this area remains an important mahinga kai for Rangitāne – an area where land-based fishing can be undertaken and kaimoana can be gathered off the rocks at Mussel Point, Cape Campbell and Ward Beach, just as it has been done for many hundreds of years. The Proposed Bylaw would inhibit this from occurring at all these locations, with public access limited to the "road ends" at Blind River, Marfells Beach and Ward Beach as the remaining stretch of coastline from Mussel Point to Ward Beach and Ward Beach to Waima River has no direct road access, without landowner permission. The area has a very long history of cultural harvest and association along this stretch of the East Coast, with the majority of the coastal access being landlocked by private ownership, making it difficult for whānau to access these areas.

The concept that tangata whenua be excluded from being able to visit and gather kai, as they have done for many hundreds of years, is outrageous and is unlawful. Council cannot, by Bylaw, remove customary rights which are enshrined in law and which have been exercised by the Rangitāne people for centuries. The law about the relativity of customary rights to other legal processes is set out in a long series of judicial decisions including significant decisions to which Marlborough District Council was a party. It is perhaps time for Council to revisit some of those cases it was previously involved with and to refresh its understanding of positions which it previously took. Suffice to say, for present purposes, the proposition that Council can, by Bylaw, prevent tangata whenua from exercising customary rights is unlawful.

## RELIEF SOUGHT

Rangitāne o Wairau considers the Bylaw and the process which had led to its content as being both fundamentally flawed. The process should start again and Council should recognise, own and make amends for its mistakes. The cultural narrative cannot stand and is wrong, and these mistakes have done disservice to Council.

As well as the problems with the cultural narrative, Rangitāne o Wairau's view is that, to the extent the Bylaw would preclude tangata whenua from exercising their customary fishing rights, it is unlawful.

There should have been an exemption for tangata whenua. Council has recognised that the Bylaw should yield to commercial interests (such as those of Dominion Salt) and similar exemptions should be incorporated to reflect the lawful rights of tangata whenua.

In addition, any new Bylaw should consider:

- Physical barriers preventing vehicles larger than a quad bike to access the area. Essentially returning the available access to pre-earthquake status by preventing large vehicles from accessing the area and preventing only smaller vehicles to access at low tide.

**or**

- The enabling of vehicles smaller than 4x4 utilities and cars to access the area. i.e. a bylaw prohibiting vehicles larger than 1000cc and/or legally requiring a Warrant of Fitness to be driven on a legal road from accessing the areas as specified in the notified bylaw.

This relief removes the current vehicle pressure on the sensitive areas by restricting the size and therefore the number of vehicles able to access the area, whilst maintaining access to the area which is of great significance to tangata whenua. Further restrictions to access only in the hours of daylight and/or blanket closures during bird nesting periods could also be imposed but, to our knowledge, have not been explored by Council.

## HEARING

Rangitāne o Wairau wish to speak to our submission at the hearing.

## ADDRESS FOR SERVICE

Our Address for Service in relation to this submission on the Proposed East Coast Beach Vehicle Bylaw is as follows:


| | |
|---|---|
| **Organisation**: | Te Rūnanga a Rangitāne o Wairau Trust |
| **Contact Person**: | Corey Hebberd<br>Kaiwhakahaere Matua (General Manager) |
| **Postal Address**: | Te Rūnanga a Rangitāne o Wairau Trust<br>PO Box 883<br>Blenheim 7240 |
| **Phone**: | (03) 578 6180 |
| **Email**: | manager@rangitane.org.nz and taiao@rangitane.org.nz<br><br>We agree that the above email address can be used as our service address for this submission |