

TOI RĀWHITI SUBMISSION

Ōpōtiki District Council Representation Review 2024

5 September 2024

Ōpōtiki District Council

To the Mayor and elected members,

1. Toi Rāwhiti formally provide this submission to the Ōpōtiki District Council as part of the Representation Review currently being undertaken.

- 1.1. Toi Rāwhiti is a collective of the three iwi, Whakatōhea, Ngāi Tai and Te Whānau a Apanui that have gathered together as representatives of collective rights holders fully possessed of their rangatiratanga to exercise their mana whenua within the greater Toi Rāwhiti region.
- 1.2. Toi Rāwhiti is focused on the purposeful transformation of the region, in order to realise Toi Ora - the absolute wellbeing of our people, and every person resident within the bounds of Toi Rāwhiti.
- 1.3. The name Toi Rāwhiti was gifted by the respected iwi leader, Rikirangi Gage. Toi Rāwhiti connects Whakatōhea, Ngāi Tai and Te Whānau a Apanui, through our shared ancestral connections to Toi te Huatahi, from which the wider Te Moana a Toi, the Bay of Plenty region is named, and ancestral connections to Te Tairāwhiti are acknowledged and strengthened. The concept of Toi Rāwhiti is not new, it is an assertion of our collective rangatiratanga, our right to self-determination - and in turn, our right to name our collective sovereign representation as mana whenua in Toi Rāwhiti.
- 1.4. Whakatōhea, Ngāi Tai and Te Whānau-ā-Apanui officially came together in 2022 as a locality, focused on determining, designing and delivering health services from the ground up. This partnership birthed Toi Rāwhiti, an innovative response developed from a rangatiratanga position that aspires to address the absolute wellbeing of our people and agency over our own population, territories and resources, laws, institutions, traditions, customs and land tenure systems, including those which were traditionally owned or otherwise occupied or used.
- 1.5. Toi Rāwhiti is an exemplar of mana motuhake in action. It acknowledges that by partnering together to lead as iwi, as mana whenua in Toi Rāwhiti, we will protect and uphold the honourable implementation of Te Tiriti o Waitangi and our rights as indigenous peoples.

2. Toi Rāwhiti find the proposals presented in the Representation Review flawed and note that none of them achieves the honourable implementation of Te Tiriti o Waitangi nor supports the standards set out in the United Nations Declaration on the Rights of Indigenous Peoples.
3. As mana whenua within this region, the iwi affiliated with Toi Rawhiti are entitled to fair and equitable representation as a matter of law. That is not something that is discretionary or subject to opinion polls or popularity. It is not, despite the political positioning recently, subject to referenda. These are inherent rights that exist whether or not central or local government like them.
4. As Council are likely aware, both central and local government have a history of blatantly breaching those rights; but we as mana whenua can not proceed to endorse proposals that are in clear breach of our own collective rights. To ask us to comment on a spectrum of options that all breach our rights and entitlements is patently unfair, and skews already the scope of the discussion.
5. We do not want the discussion framed by options that further entrench breaches of Te Tiriti o Waitangi and international law. We are entitled not to be subject to this constant limiting of the space in which our rights can be realised. That is a key part of maintaining the power and decision making imbalance that has delivered a prolonged period of inequity for our people; resulting in all the social imbalances we now face, and that Toi Rāwhiti was established to address.
6. Instead, we are entitled to ask what type of representation would reflect the honourable implementation of our Tiriti arrangement, and what representation models would best give life to our internationally recognised rights. The realisation of these rights creates the practical space for addressing the impacts of generations worth of colonial and systemic violence upon our iwi populations.
7. Accordingly, Toi Rāwhiti urge the Council to avail themselves of available resources to better inform the modelling proposed in the Representation Review. In doing so Toi Rāwhiti urge the Council to -
 - 7.1. Read Te Tiriti o Waitangi
 - 7.2. Avail themselves of the multitude of resources developed to advance Tiriti literacy (the Waitangi Tribunal has these electronically accessible in their digital portal);
 - 7.3. Read the Waitangi Tribunal reports (including the expert evidence/historical reports on which the Tribunal bases its findings) in relation to Te Whakatōhea.
 - 7.4. Read the Statements of Claim, expert evidence and the initialled Te Whānau a Apanui Deed of Settlement for Historical Treaty Breaches by the Crown against them;
 - 7.5. Read the Statements of Claim and expert evidence of Ngāi Tai in relation to their Tiriti rights.
8. Meet with the mana whenua to specifically understand their expectations in regards to honourable Tiriti implementation and their legal positioning in relation to their enduring indigenous rights;

9. Tidy up language around Te Tiriti o Waitangi, especially where it is inadvertently being used (or interpreted by the public at large) to carry colonial legal fictions that are not sustainable in law or in fact;
10. Understand the constitutional context for establishing local government (historically) and how this has created a system that is inconsistent with the Crowns' Tiriti obligations, and unable to be 'shoehorned' into current day local governmental arrangements that have derived from that problematic start. Toi Rāwhiti recommends the significant body of scholarship developed for the Waitangi Tribunal in the Eastern Bay of Plenty inquiry, the expert evidence presented to the Tribunal by the iwi themselves, the legal opinions that underpin the assertions of the iwi, the cross-applicable expert evidence in other Waitangi Tribunal inquiries of relevance; importantly the research conducted as part of the Rangahaua Whānui reports, the work of historian Jane Luiten as insightful in regards to Local Government in Te Tairāwhiti, which unpacks the origin of local government in Aotearoa/NZ.
11. Additionally the now extensive body of historical work completed for the Waitangi Tribunal Eastern Bay of Plenty inquiry contains analysis from senior indigenous jurists as well as leading academic historians that the Council ought to avail themselves of.
12. We note also the thematic reports of the Waitangi Tribunal in relation to the Māori Electoral Option, Māori Culture and Identity (Wai 262), Mana Motuhake, Health Services and Outcomes (Stage 1), Oranga Tamariki, Housing and more recently the Tribunals interim report on the Principles of the Treaty of Waitangi (2024).
13. We urge the Council to increase their Tiriti literacy and rights awareness to improve the basis upon which we can enter meaningful discussions with the Council regarding ongoing representation or structural issues; these repositories of knowledge are all freely and publicly available, and are informative regarding the rights and obligations of the parties. We think this is vitally important to establish a new baseline for engaging with each other so that Council are accessing and understanding:
 - 13.1. the knowledge equivalent of the most senior jurists and historians, and;
 - 13.2. the knowledge the mana whenua already possess when engaging with Council (which accounts, in some measure, for the frustration felt when Council does not meet with mana whenua on equal footing in terms of power, but is consistently ill equipped in regards to its knowledge of how that power was acquired, or the drivers behind indigenous positioning).
14. We then further implore the Council to analyse its proposed models based on 'an honorable Tiriti implementation' benchmark, and work its way through those proposals to understand what is actually being proposed in 'the preferred model' and the feedback options provided.
15. Toi Rāwhiti are at pains to ensure the Council understand that mana whenua can never be complicit in their own subjugation. Whilst that is asked for on a regular basis by central and local

government, including in this proposal, it is not a position that is tenable to Toi Rāwhiti iwi given their mana, tapu and their internationally recognised rights. Toi Rāwhiti urges the Council to better understand the nature and extent of inherent collective rights, as recognised by law, before proceeding to crystallise this representation proposal.

16. Toi Rāwhiti iwi welcomed the NZ Governments endorsement of the United Nations Declaration of the Rights of Indigenous Peoples in 2010. While that was some time after the majority of nations had endorsed it in 2007, it was heartening that the (then) National-led government committed, in front of a global audience, to the Declaration. The Declaration is a now globally recognised standard that articulates clearly that the rights recognition within it constitutes “the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world”. That the Toi Rāwhiti iwi are indigenous peoples is a matter of fact.
17. Toi Rāwhiti note the following provisions of the United Nations Declaration of the Rights of Indigenous Peoples, and make our constitutional submissions into the Representation Review alongside these provisions as an international law benchmark that NZ has already committed to:

Article 1

- 17.1. Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all 7 human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Accordingly, Toi Rawhiti expect in a Representation Review that their entitlement to the full enjoyment of their human rights and fundamental freedoms will be acknowledged and provided for.

Article 2

- 17.2. Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Accordingly, Toi Rawhiti expect in a Representation Review that equity and freedom from illegitimate discrimination be entrenched into any proposals being.

Article 3

- 17.3. Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Accordingly, Toi Rawhiti expect in a Representation Review that the collectively held right to self-determination for each of the iwi that have mana whenua within the region be acknowledged, respected and provided for. We note of particular importance the expert finding of the Waitangi Tribunal in Te Paparahi o Te Raki that sovereignty was never ceded on

[the signing of the Te Tiriti o Waitangi](#). That is a point the Crown vigorously contested and lost on the evidence. This finding is consistent with what iwi Māori have been saying for generations, including those iwi affiliated within Toi Rāwhiti. The non-cession of sovereignty to the Crown quite clearly recognises in law that the mana whenua, iwi are still possessed of their own sovereignty, or rangatiratanga/mana motuhake as it is better known in our language. The three iwi of Toi Rāwhiti – Te Whakatohea, Ngāi Tai and Te Whānau a Apanui steadfastly assert our existing rangatiratanga, our right to self-determination and have done so consistently throughout history including in previous representations to Council. This is not new, just newly recognised by the colonial system.

Article 4

- 17.4. Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

[As above in para 17.3; noting additionally that the burden is on local government, as an instrument of the Crown, to work with tribal governmental agencies within your region to establish relationships that properly reflect the exercise of our right to self-determination.](#)

Article 5

- 17.5. Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

[Accordingly, Toi Rāwhiti expect that in a Representation Review that their distinct political, legal, economic, social and cultural institutions be respected and provided for within the wider scope of the review; they are not discretionary, nor do they yield in law depending on the politics of the day.](#)

Article 18

- 17.6. Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

[Accordingly, Toi Rāwhiti expect that in a Representation Review that their distinct right to participate in decision-making in matters affecting us is properly provided for. Additionally we expect that our representatives can be chosen by us, not determined unilaterally by institutions of the colonial state.](#)

Article 19

- 17.7. States shall consult and co-operate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Accordingly, Toi Rāwhiti expect that in a Representation Review that local and central government consult and cooperate with us in good faith, and that our tribal governmental agencies are able to provide free, prior and informed consent to any proposals before adopting and implementing legislative or administrative measures that will affect us. The Representation Review is clearly one of those instances. Our free, prior and informed consent should have been sought after a period of authentic engagement and cooperation between us to develop the proposals. We invite the Council to review their process and have the courage to recommence from a rights based starting point.

Article 20

- 17.8. (1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
- (2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Accordingly Toi Rāwhiti expect that nothing in the Representation Review will negatively impact on the rights articulated in Article 20 of UNDRIP, and invite the Council to review their proposals from a rights based starting point and amend them where they would negatively impact on our existing legal right to maintain and develop our own economic and social systems, and to ensure our tribal populations are not deprived, in whole or in part, from our means of subsistence and development.

Article 21

- 17.9. (1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
- 17.10. (2) States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Accordingly Toi Rāwhiti expect that the Representation Review will take an honest and critical look at how present and proposed representative mechanisms negatively impact upon, contribute to or further exacerbate existing inequities built on the back of colonial breach, interference and systemic violence against our people.

Article 23

- 17.11. Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Accordingly, Toi Rāwhiti expect, notwithstanding representation around a colonially empowered table, that they will continue to have the right to develop and implement their own strategies to exercise our existing right to development, including determining our health, housing, economic and social priorities.

Article 24

- 17.12. (1) Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
- 17.13. (2) Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Accordingly Toi Rāwhiti expect that nothing arising from the Representation Review, including the constitution of Council, will negatively impact on our right to access, without discrimination, social and health services. We expect the Council, notwithstanding the Representation Review, to be an honourable junior partner to iwi in progressively achieving the full realisation of this right for the iwi populations with the area.

Article 27

- 17.14. States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Accordingly Toi Rāwhiti expect any Representation Review to be honest about the fact that representation impacts on our ongoing ability to advance our traditional relationship with territory because it further entrenches a system that was, from its very origin, designed to speed European settlement and dispossess us of our lands, territories, resources and agency over our own populations. This is now an accepted historical fact and we urge the Council to understand its own problematic origins to understand how, in 2024, it is impossible to retrofit honour into structural systems that were designed to dispossess, erase and assimilate our people.

Article 32

- 17.15. (1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
- 17.16. (2) States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- 17.17. (3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

As above re Article 27; additionally Toi Rāwhiti urge the Council to consider how they have (or have not) engaged with our representative institutions to obtain our free, prior and informed consent to the Representation Review proposals. They will, ipso facto, impact on the strategies for the development and use of OUR lands, territories and resources because they will empower a set of decision makers that have been appointed via flawed processes and without consideration of our right to be represented and have our right to collective self-determination respected within Council procedures.

Article 33

- 17.18. (1) Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
- 17.19. (2) Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Accordingly, Toi Rāwhiti remind the Council that our tribal citizens are entitled to have equitable representation within the colonial system without forfeiting their right to their own tribal citizenship.

Article 37

17.20. (1) Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

17.21. (2) Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Accordingly, Toi Rāwhiti urge the Council to understand their obligations pursuant to Te Tiriti o Waitangi, noting that the Council is a creature of the colonial system empowered by the Treaty, and would have no legitimacy to exist without it. It is important that the Representation Review proposals be understood in this context because the iwi of Toi Rāwhiti have an existing recognised legal right to have our Treaty recognised, observed and enforced notwithstanding the political positioning of the Crown at any point in time. We assert that right continuously, and do so within this feedback to put it beyond doubt that we expect our Tiriti protected rights and entitlements to be respected by Council, not just in its decision-making, but in its policies and procedures, including its representation arrangements.

Concluding statements on the position of Toi Rāwhiti

18. Toi Rāwhiti remains steadfastly committed to the honourable implementation of our Tiriti o Waitangi relationship. The Council is an instrument of the Crown, and therefore bound by the Crown's ongoing obligations under Te Tiriti o Waitangi. The Council therefore needs to understand these obligations fully, including the latest jurisprudence regarding Te Tiriti o Waitangi implementation, in order for it to discharge its duties legitimately.

19. Toi Rāwhiti seeks the honourable implementation of the minimum standards for indigenous rights set out in the United Nations Declaration of the Rights of Indigenous Peoples, which NZ has endorsed.

20. Toi Rāwhiti reiterates these foundational commitments because it is important to note that **none of the options put forth in the Representation Review comply with either the implementation of Te Tiriti o Waitangi, or the standards in the UN Declaration.** The Council, through this submission, is now on notice of that fact, although it should have been clear during the Council's own due diligence that these proposals fall well short of acceptable standards for mana whenua representation. It is not enough for the Council to say that the legislation is compelling the shortfall, when it is clear that the Council will advocate for legislative exemptions on some matters where it is self-motivated to do so. Toi Rāwhiti would prefer the Council clearly state to central government that they do not want to be compelled by law to act in a way that breaches the Crown's Tiriti obligations or international law. That the Council is being compelled by central government as an instrument to operationalise those breaches is erroneous, and Toi Rāwhiti would support the Council taking the strongest legal position possible to push back on this compulsion.

21. Where the Council seeks to proceed with the proposals tabled in the Representation Review, Toi Rāwhiti require Māori representation to be equitable; the only proposal that enables that is one that **increases the Council to 8 members; 4 for Māori wards and 4 for general wards**. Toi Rāwhiti assert that leaves room for each of the tribal regions to be represented around the Council table; with the proposal that 1 Councillor be drawn from the Te Whānau a Apanui iwi catchment, 1 from the Ngāi Tai iwi catchment, and 2 from the Te Whakatōhea iwi catchment. This would then enable the general wards to be split into 2 Councillors for the urban wards and 2 for the rural wards.
22. Toi Rāwhiti further propose that the **Coast Community Board membership be increased to 4 members to ensure representation from Te Whānau a Apanui (2), Ngāi Tai (1) and Te Whakatōhea (1)** to nominally reflect the corresponding coastal territories of each iwi.
23. Toi Rāwhiti note that the proposals in paras 21 and 22 above reflect a ‘fall back’ position that is far short of the ideal equitable and rights based representation that should be reflected if both Te Tiriti and the Declaration were given proper effect in this region. We invite the Council to further consider that it could establish itself as a national and international leader in this space, by unpacking the obligations it has under domestic and international law to better honour indigenous rights holders in this region. That may well be a longer strategic undertaking, but Toi Rāwhiti welcomes the ability to work with Council to design a strategic trajectory that better fits its legal obligations to hapū and iwi in this region to honour the implementation of Te Tiriti o Waitangi, and to meet, if not exceed the standards set out in the United Nations Declaration on the Rights of Indigenous Peoples.
24. Toi Rāwhiti and our iwi Whakatōhea, Ngāi Tai and Te Whānau a Apanui are steadfastly committed to ensuring the absolute wellbeing of our people, territories and resources, laws, institutions, traditions, customs and land tenure systems, including those which were traditionally owned or otherwise occupied or used. We encourage the Council to join with Toi Rāwhiti, and together create a strong future, and a strong community for all residing in our region.

Toi Rāwhiti Iwi Leadership



Rikirangi Gage
Te Whānau a Apanui

Chief Executive
Te Rūnanga o Te Whānau



Lisa Kelly
Ngāi Tai

Trustee
Ngāitai Iwi Authority



Dickie Farrar
Whakatōhea

Chief Executive Officer
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