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KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA  
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 2800

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IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

the inquiry into remaining historical claims:  
Southern North Island and South Island  
claims

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MEMORANDUM OF COUNSEL FOR THE CROWN RESPONDING TO  
1 OCTOBER 2018 DIRECTIONS OF THE PRESIDING OFFICER

21 December 2018

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<b>RECEIVED</b> Waitangi Tribunal
<b>21 Dec 2018</b>
Ministry of Justice WELLINGTON

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**MAY IT PLEASE THE TRIBUNAL:**

1. This memorandum is filed in response to the 1 October 2018 memorandum-directions of Chief Judge Isaac, in which he called for submissions by 28 December 2018 on the preliminary list of claims the Tribunal has assessed as possibly eligible to participate in the Wai 2800 inquiry (the **preliminary Wai 2800 claims list**) and the preliminary list of claims in the South-Western North Island, South Island and Chatham Islands the Tribunal has assessed as not eligible to participate in the Wai 2800 inquiry.<sup>1</sup>

**Summary**

2. The Crown has considered the claims on the preliminary Wai 2800 list and sorted them into six categories:
  - 2.1 claims that are fully settled;
  - 2.2 claims that appear fully settled but where further clarification may be required from the claimants;
  - 2.3 claims that will be covered by settlements in progress and should therefore be excluded from Wai 2800;
  - 2.4 claims the Crown considers are unsettled but that would be best considered in the context of live district inquiries;
  - 2.5 post-allocation SILNA land Wai claims:
    - 2.5.1 elements of which may be eligible for inclusion on the back of the preservation of Wai 158 in the Ngāi Tahu settlement;
    - 2.5.2 elements of which we submit would be best dealt with through the future Economic Development kaupapa inquiry;
    - 2.5.3 one of which is settled as a non-Ngāi Tahu claim; and
  - 2.6 claims that are raised through whakapapa to a group who did not exercise customary rights at 1840.
3. These assessments are set out in this memorandum.

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<sup>1</sup> Wai 2800, #2.5.2.

4. Attached as Appendix 1 to this memorandum is an overview of the relevant settlements by inquiry district.

#### CLAIMS THAT ARE FULLY SETTLED

5. The historical elements (pre-21 September 1992) of the Wai claims in the table below are fully settled. Although some of the Wai numbers are not specifically listed in their respective settlement legislation, information in the statements of claim indicates they are historical claims on behalf of settled groups. They are not eligible for inclusion in the Wai 2800 inquiry.

Wai no	Name of claim	Settled by
56	Nelson Lands and Fisheries Claim	Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014
859	Waimate Plain Block (South Taranaki) Claim	Ngati Ruanui Claims Settlement Act 2003
2188	Kanihi Me Etahi Lands (Noble and Others) Claim	Ngāruahine Claims Settlement Act 2016
2321	Ngarauru and Ngāti Ruanui Mana Wāhine (Maruera and Packer) Claim	Ngati Ruanui Claims Settlement Act 2003 Ngaa Rauru Kūtahi Claims Settlement Act 2005
2324	Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim	Taranaki Iwi Claims Settlement Act 2016
2430	Wills and Probate Laws Claim	Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (as to Te Ātiawa)

#### Further comment on the Wai 56: Nelson Lands and Fisheries Claim

6. For clarity, we make some further observations in relation to Wai 56. Wai 56 is ineligible for inclusion in Wai 2800 because:

6.1 the Tribunal has heard the historical claims and issued recommendations;

6.2 the Wai 56 claims relating to the perpetual leasing regimes and rental losses prior to 1 January 1998 were settled through agreements made with Wakatu Incorporation in 2002 and the Ngati Rarua-Atiawa Iwi Trust in 2010;

- 6.3 the historical claims have been settled with iwi:
- 6.3.1 The mahinga kai claims of Wai 56 were addressed through the 1992 Fisheries Settlement and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
- 6.3.2 Remaining historical aspects of Wai 56 were settled in full through the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, giving effect to settlements with all four relevant iwi. The Crown's understanding is that the Wai 56 claim does not arise out of whakapapa to any other iwi/large natural groupings beyond the four affected by that Act;
- 6.4 though the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 expressly preserved the live 'Wakatū proceedings' (defined as those proceedings filed in the High Court as CIV-2010-442-181), that preservation did not preserve the jurisdiction of the Tribunal and did not preserve the historical claims within Wai 56;
- 6.5 the Tribunal declined an application for urgency made by Wai 56 relating to the Crown's policy of settling at the large natural grouping level and the intention to provide redress to parties representing the claimants by iwi.<sup>2</sup> The Tribunal may inquire into those claims at some point in the future, but they would be exclusively contemporary claims and therefore ineligible for inclusion in the Wai 2800 inquiry.

#### **CLAIMS THAT APPEAR FULLY SETTLED BUT WHERE FURTHER CLARIFICATION MAY BE REQUIRED FROM THE CLAIMANTS**

7. The Wai claims in the table below are claims that the Crown considers are most likely settled, but where a lack of information in the statement of claim raises some ambiguity. These claims do not give an iwi or hapū affiliation or they name an ancestor or hapū that is unknown to the Crown. Historians from the Treaty Settlements Roopū – Te Arawhiti have analysed the claims

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<sup>2</sup> Wai 56, #1.1(b).

and made an informed guess as to the status of these claims, but a more definitive answer would require further information from the claimants themselves. Further information about these claims is set out below.

8. The Crown respectfully suggests that the Tribunal seek further information from the claimants in order to make an effective assessment of whether it has jurisdiction to inquire into these claims.

Wai no	Name of claim	Most likely settled by	Other settlements potentially relevant
552	Ahitahi/Araukuku Hapū Claim	Ngāti Ruanui Claims Settlement Act 2003, and Ngāruahine Claims Settlement Act 2016	
644	Kapuni to Otakeho Lands Claim	Ngāruahine Claims Settlement Act 2016	Any of other settlement acts relating to Taranaki groups
742	Stirling Point (Bluff) Claim	Ngāi Tahu Claims Settlement Act 1998	
1468	Hutt Valley and Miramar Peninsular Lands Claim	Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017	Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua (deed of settlement initialled March 2018)
1924	Waitara West Kairau Lands Claim	Te Ātiawa Claims Settlement Act 2016	Any of other settlement acts relating to Taranaki groups
2159	Ngā Ariki Hapū (Moffitt) Claim	Ngāa Rauru Kītahi Claims Settlement Act 2005 Ngāti Ruanui Claims Settlement Act 2003	Any of the other settlement acts relating to Taranaki groups, Ngāti Maru (AIP signed December 2017)
2176	Descendants of Aperahama Hutoitōi (Heaslip) Claim	Ngāi Tahu Claims Settlement Act 1998	
2236	Descendants of Priscilla Muriwai Dennison Claim	Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 (as to Rangitāne)	See the discussion about SILNA land claims below.
2517	Durville Island Conservation and Public Works Claim	A Te Tau Ihu settlement act (see below)	

### **Further comment on the Wai 552: Ahitahi/Araukuku Hapū Claim**

9. The Wai 552 claim was inquired into as part of the Taranaki Inquiry. To the extent that it relates to whakapapa to Ngāti Ruanui and Ngāruahine ancestors, the combined effect of the Ngāti Ruanui and Ngāruahine settlements has been to settle Wai 552.<sup>3</sup>
10. However, Wai 552 relates not only to Araukuku, but also to Ngāti Turi. Ngāti Turi was added to the claim when it was amended in 1997, after the Taranaki Inquiry. The claimants have not provided any information about the whakapapa of Ngāti Turi, making it hard to determine the relationship between Ngāti Turi and the Taranaki groups with whom the Crown has either settled or reached an Agreement in Principle.
11. The Crown submits that the Tribunal may wish to seek clarification from the Wai 552 claimants as to the whakapapa of Ngāti Turi.

### **Further comment on the Wai 2517: Durville Island Conservation and Public Works Claim**

12. This claim relates to Durville Island. The claimants have indicated this is in the Mahurangi and Gulf Islands district. That would put it outside the districts identified for inclusion in this inquiry. Should it relate to D'Urville Island in the Marlborough Sounds it is likely to have been settled by a Te Tau Ihu settlement act.<sup>4</sup>
13. The Crown submits that the Tribunal may wish to seek clarification from the Wai 2517 claimants as to the place they are referring to and their whakapapa.

### **SETTLEMENTS IN PROGRESS**

14. The Crown considers that the claims in the table below will be settled through settlements currently under negotiation. The Crown had not previously identified these claims but now that it is aware of them it intends to inform the claimants their claim is subject to an existing mandate. These claims will be listed in agreements in principle and/or deeds of settlement as those

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<sup>3</sup> The Crown and Wai 552 claimants have previously agreed that 'the combined effect of the Ngāti Ruanui and Ngāruahine settlements will be to settle, for all practical purposes, the historical claims of Araukuku': Office of Treaty Settlements to Māori Affairs Committee, 'Supplementary information: Ngāruahine Claims Settlement Bill Departmental Report', 5 February 2016 at 9.

<sup>4</sup> Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 and/or Ngāti Toa Rangatira Claims Settlement Act 2014.

milestones are reached and the claims will be settled through current settlement negotiations.

15. The Tribunal's criteria excludes claims that "are included in the mandates of groups that have agreed or subsequently agree terms of negotiation with the Crown for the settlement of their historical Treaty claims, *by listing in the mandate of the claim or the iwi or hapū on whose behalf the claim is brought*".<sup>5</sup> However, though deeds of mandate list all related claims the Crown and iwi are aware of at the relevant time, the test of whether a claim will be settled is whether it relates to the settling group, not whether it is listed in the relevant deed of mandate.
16. The Crown notes that it has since included Wai 1614 in the Te Korowai o Wainuiārua Agreement in Principle signed on 23 November 2018.
17. The Crown therefore submits the following claims should be ineligible for inclusion in the Wai 2800 inquiry:

Wai no	Name of claim	Within scope of
1614	Waimarino 4A1A, 4B Part 2, 4A and 4A5 Blocks (Waikune Trust) Claim	Te Korowai o Wainuiārua – since the preliminary Wai 2800 claims list was distributed this claim has been included in the Te Korowai o Wainuiārua AIP, signed 23 November 2018.
1637	Te Atihau a Paparangi (Taiaroa and Mair) Claim	Has been included in the Ngāti Rangī settlement (the Ngāti Rangī Claims Settlement Bill was introduced in June 2018) and will be included in Ngāti Hāua, Te Korowai o Wainuiārua and the Whanganui Land settlements
1933	Makara Blocks Claim	Ngāti Hāua (Terms of Negotiation signed July 2017)
1934	Descendants of Ngakete Parehounuku Claim	This will be settled by at least one of the Whanganui groups, although which is currently unclear.
2317	Te Puranga (Rata Pue) Crown Minerals Claim	Claim relates to all Taranaki Māori living in the Pacific. Most Taranaki groups are settled already; the unsettled aspects of this claim relate to Ngāti Maru and Ngāti Mutunga (Chatham) and settlements for both these groups are underway. It has not been included in deeds of mandate for these groups but will be added to the definition of historical claims before their next milestones.

<sup>5</sup> Wai 2800, #2.5.1 at [16](c). Emphasis added.

## UNSETTLED CLAIMS

18. The Crown agrees that the following claims are unsettled; both relating to groups that have not yet entered negotiations with the Crown.

Wai no	Name of claim	Within scope of
1423	Rasmus Nielson Whānau Claim	A mandate has not yet been conferred on an entity to negotiate a settlement of this Ngāti Raukawa ki te Tonga claim.
1623	Ngāti Rangatahi kei Rangitikei Claim	A mandate has not yet been conferred on an entity to negotiate a settlement of this claim.

19. The Crown submits that Wai 1623 has been aggregated in the Porirua ki Manawatu inquiry for the purposes of the claim relating to that inquiry district. It has also been included in the Military Veterans kaupapa inquiry.
20. The Crown notes there is a claim within Wai 1623 that falls outside of the Porirua ki Manawatu inquiry district. This relates to the expulsion of Ngāti Rangatahi from the Hutt Valley. The *Te Whanganui a Tara me ona Takiwa Report* addressed the claims by Ngāti Rangatahi of expulsion from the Hutt Valley.<sup>6</sup> Although Wai 1623 was not filed until August 2008, five years after the Wai 145 report was released, there should be no need for the Tribunal to reconsider this issue. Any historical claims in Wai 1623 that have not already been aggregated into the Porirua ki Manawatu inquiry that have not already been inquired into by the Wai 145 Tribunal (if any) should be also dealt with in the Porirua ki Manawatu inquiry.
21. The portion of the Porirua ki Manawatu inquiry dedicated to the hearing of Ngāti Raukawa claims has yet to be heard. Wai 1423 has not been aggregated into the Porirua ki Manawatu inquiry, but the Crown considers it should be, in its entirety.
22. For those reasons, the Crown considers the Wai 1423 and Wai 1623 claims should not be included in the Wai 2800 inquiry.

<sup>6</sup> Waitangi Tribunal *Te Whanganui a Tara me ona Takiwa Report* (Wai 145, 2003) at, for example, 222-223. The claim considered in that inquiry was Wai 366: "The claimants' grievances concern the Crown's alleged failure to recognise and protect Ngāti Rangatahi's rights, the expulsion of Ngāti Rangatahi from the Hutt Valley, and the failure to compensate Ngāti Rangatahi for the loss of their lands and cultivations" - at 10.



## POST-ALLOCATION SILNA LAND CLAIMS

### Overview

23. The preliminary Wai 2800 claims list includes Wai 158, which was explicitly preserved in part by s 10(1)(e) of the Ngāi Tahu Claims Settlement Act 1998. The list also includes six other Wai claims that appear to relate, or at least include elements which relate, to land transferred under the South Island Landless Natives Act 1906 (SILNA) scheme. The Crown presumes that these six Wai claims are included in the preliminary Wai 2800 claims list on the back of the preservation of Wai 158.
24. The Crown also observes there are three further SILNA land claims that are comparable to Wai 158 that are not on the preliminary Wai 2800 claims list. Those three claims (Wai 783, Wai 994 and Wai 1090 (**the three Wai 1090 urgency claims**)) were identified by the Tribunal in the *Waimumu Trust (SILNA) Report*.<sup>7</sup>
25. The seven claims included on the preliminary Wai 2800 claims list are:
- 25.1 Wai 158 - Southland Forests Claim;
  - 25.2 Wai 680 - Block 62 Sec 923 Hokonui, Crown Proclamation Claim;
  - 25.3 Wai 685 - Block X Section 3C Trust (Southland) Claim;
  - 25.4 Wai 709 - Section 3A Block XIV Tautuku Survey District (Chaslands Mistake) Claim;
  - 25.5 Wai 738 - Arahura and Other Blocks Claim (as to Bruce Bay);
  - 25.6 Wai 2138 - SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim; and
  - 25.7 Wai 2236 - Descendants of Priscilla Muriwai Dennison Claim.
26. For ease of reference we refer to the seven SILNA land claims that are on the preliminary Wai 2800 claims list and the three Wai 1090 urgency claims collectively as “**the ten SILNA land Wai claims**”.

<sup>7</sup> Waitangi Tribunal *The Waimumu Trust (SILNA) Report* (Wai 1090, 2005).

27. The Crown respectfully submits that:
- 27.1 six of the ten SILNA land Wai claims (that the Crown is aware of) raise forestry policy claims, which may be best considered in the context of the future Economic Development kaupapa inquiry;
  - 27.2 six of the ten SILNA land Wai claims raise historical Ngāi Tahu claims related to SILNA land and transactional matters occurring post-allocation of SILNA land but before 21 September 1992, and may be eligible for inclusion in the Wai 2800 inquiry; and
  - 27.3 one of the ten SILNA land Wai claims is made by settled Te Tau Ihu iwi and therefore is not eligible for inclusion in Wai 2800.

**The ten SILNA land Wai claims**

28. But for the preservation of Wai 158, in part, in the Ngāi Tahu Claims Settlement Act, none of the SILNA land claims would be eligible for inclusion in Wai 2800.

***Wai 158: Southland Forests Claim***

29. Wai 158 is a Ngāi Tahu claim that was originally filed on behalf of all SILNA forest landowners. However, individuals who whakapapa to other iwi were also beneficiaries to land under the SILNA scheme.
30. In the statement of claim, the claimant explains that Wai 158 is distinct from the Ngāi Tahu Trust Board claim (Wai 27), in that Wai 27 was about the adequacy of the SILNA allocations, whereas Wai 158 is a claim in relation to the Crown's actions towards the lands subsequent to transfer: "Adequate or not, the claimants in this claim own land and it is as owners that they assert breaches of the Treaty by the Crown".<sup>8</sup> These alleged breaches relate to the Crown's policy on indigenous forests and the taking of land by the Crown after 1906.
31. The Ngāi Tahu Claims Settlement Act expressly excludes Wai 158 from the settlement provisions on the following terms:<sup>9</sup>

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<sup>8</sup> Wai 158, #1.1.

<sup>9</sup> Ngāi Tahu Claims Settlement Act 1998, s 10(1)(e).

(1) In this Act, **Ngāi Tahu claims**—

(a) means all claims made at any time by any Ngāi Tahu claimant [related to the Treaty of Waitangi and historic acts or omissions of the Crown] and—

(b) includes all of the claims made by Ngāi Tahu against the Crown arising from those historical grievances of Ngāi Tahu which are referred to in the ... Ngāi Tahu Wai 27 claims to the Waitangi Tribunal ... ; and

...

(e) excludes the claim to the Waitangi Tribunal designated Wai 158, but such exclusion does not apply to any part of Wai 158 that might relate to the original allocation of land under the South Island Landless Natives Act 1906, being a matter dealt with in the Wai 27 claims referred to in paragraph (b).

32. Section 10(1)(e) makes clear that claims about the original SILNA grants — their size, location and quality, or whether they were an adequate response to the grievances they purported to address — are no longer within the Tribunal’s jurisdiction. However, the Crown’s view is that s 10 indicates there may be historical elements of the Wai 158 claim that remain unsettled. The Crown recorded in the Ngāi Tahu Deed of Settlement that it regards the Wai 158 claim as partly relating to the Crown’s indigenous forest policy, initially given expression through the imposition of the wood-chip export ban made in July 1990 under the Customs Act.<sup>10</sup>

*The seven SILNA land claims included in the preliminary Wai 2800 claims list*

33. Of the seven SILNA land claims that are on the preliminary Wai 2800 claims list:

33.1 five Wai claims (Wai 158, Wai 680, Wai 685, Wai 709 and Wai 2183) include allegations about Crown actions that occurred after the allocation of SILNA land and prior to the 1992 historical-contemporary cut-off, meaning that, to the extent they are not settled through the Ngāi Tahu settlement, they would be within the scope of Wai 2800;

33.2 one Wai claim (Wai 738) is a Ngāi Tahu claim relating to succession to a number of land blocks, many of which appear to have transferred

<sup>10</sup> Deed of Settlement: Te Rūnanga o Ngāi Tahu and Her Majesty the Queen (1997) at [1.2.4].

under SILNA. However, the statement of claim is not clear about when any relevant acts/omissions occurred; and

33.3 one Wai claim (Wai 2236) is not a Ngāi Tahu claim. Although it relates to SILNA land, it would not be preserved by the Wai 158 carve out as it is a Rangitāne claim and would have been settled through the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014.

*The three Wai 1090 urgency claims*

34. The three Wai 1090 urgency claims - Wai 783, Wai 994 and Wai 1090 - have not been included in the preliminary Wai 2800 claims list.
35. These three claims were filed after the enactment of the Ngāi Tahu Claims Settlement Act in 1998 in relation to SILNA lands. They make claims similar to those made in Wai 158. Although all claims relating to the *allocation* of SILNA lands (including Wai 27) have been settled, the Crown considers that s 10(1)(e) of the Ngāi Tahu Claims Settlement Act clearly intends to retain the subject of indigenous forestry policy within the Tribunal's jurisdiction. It does not matter that these claims are pursued under a different Wai number.
36. In 2004 the Waitangi Tribunal conducted an urgent inquiry into the impact of the Crown's indigenous forestry policy on the owners of the Waimumu Trust land transferred to them through SILNA (Wai 1090). The Tribunal focused its inquiry primarily on the specific, mostly contemporary, issues of Wai 1090. The Tribunal did express its view that “the appropriate course, in our view, is for the completion of a general inquiry by the Tribunal into all SILNA-related claims not affected by the Ngai Tahu Claims Settlement Act 1998”.<sup>11</sup> It lists Wai 709, Wai 783 and Wai 994 as other SILNA claims that could possibly be considered by a future Tribunal.<sup>12</sup>
37. The Tribunal may have excluded the three Wai 1090 urgency claims from the preliminary Wai 2800 claims list on the basis it viewed them as raising contemporary issues, with no unsettled historical elements. The Crown observes that they appear to be predominantly contemporary. The Crown also

<sup>11</sup> Waitangi Tribunal *The Waimumu Trust (SILNA) Report* (Wai 1090, 2005) at 77.

<sup>12</sup> At 102.

observes that in contrast, Wai 709 has been included on the preliminary Wai 2800 claims list.

38. The Crown does not yet know whether historical elements of the three Wai 1090 urgency claims were heard as part of the Wai 27 (Ngāi Tahu) inquiry.

### Forestry policy

39. A key aspect of some of the ten SILNA land Wai claims is Crown forestry policy. The Crown's submission is that those SILNA land claims that relate to contemporary forestry policy would be most appropriately explored in the future Economic Development kaupapa inquiry.
40. The six Wai claims that could be included in the Economic Development kaupapa inquiry are mostly contemporary, but potentially have some historical elements. Inclusion in the kaupapa inquiry would allow these matters to be dealt with by a panel with expertise on economic development and alongside other forestry issues.
41. The Crown considers a claim consists of an allegation of a particular Crown act or omission that has caused prejudice, not the totality of acts or omissions that are associated with a Wai number. The Crown considers that Wai 158, Wai 709 and Wai 2163 have some elements best suited to be heard in the Economic Development kaupapa inquiry and some elements that may be eligible for inclusion in the Wai 2800 inquiry. This is indicated in the below table of claims:

Wai no	Name of claim	Inc in preliminary Wai 2800 claims list?
158 (claims that are related to forestry policy)	Southland Forests Claim	Yes
709 (claims that are related to forestry policy)	Section 3A Block XIV Tautuku Survey District (Chaslands Mistake) Claim	Yes
2163 (claims that are related to forestry policy)	SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim	Yes
783	Tautuku and Waikawa Lands (Resource Management)	No

994	Pohio Newton Rickus Trust SILNA claim	No
1090	Waimumu Trust Claim	No

#### Non-forestry post-allocation historical SILNA land claims

42. The following Wai numbers include Ngāi Tahu claims in relation to SILNA lands about historical actions not related to forestry policy (for example Crown transactions and succession orders), which may, on the back of the preservation of Wai 158, be eligible for inclusion in a Wai 2800 inquiry.
43. As noted above, the Crown considers a claim consists of an allegation of a particular Crown act or omission that has caused prejudice, not the totality of acts or omissions that are associated with a Wai number. The Crown considers that Wai 158, Wai 709 and Wai 2163 have some elements best suited to be heard in the Economic Development kaupapa inquiry and some elements that may be eligible for inclusion in the Wai 2800 inquiry. This is indicated in the below table of claims:

Wai no	Name of claim
158 (claims that are not related to forestry policy)	Southland Forests Claim
680	Block 62 Sec 923 Hokonui, Crown Proclamation Claim
685	Block X Section 3C Trust (Southland) Claim
709 (claims that are not related to forestry policy)	Section 3A Block XIV Tautuku Survey District (Chaslands Mistake) Claim
738	Arahura and Other Blocks Claim
2163 (claims that are not related to forestry policy)	SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim

#### CLAIMS THAT ARE RAISED THROUGH WHAKAPAPA TO A GROUP WHO DID NOT EXERCISE CUSTOMARY RIGHTS AT 1840

44. Wai 1432 (Ngāi Tamatakokoi Lands Claim) and Wai 2543 (Ngāti Tumatakokiri Maruia Claim) relate to Ngāti Tumatakokiri, a group that previously resided in Te Tau Ihu and possibly Te Tai Potini (the top of the South Island and the West Coast). Ngāti Tumatakokiri is generally considered to have been

displaced by incoming migrations of iwi in the 18th and 19th centuries, and integrated into those groups, prior to the signing of the Treaty.

45. It is unclear whether the Wai 1432 and Wai 2543 claimants have distinct whakapapa from the nine South Island groups with whom the Crown has settled, in particular Ngāi Tahu and Ngāti Apa ki te Rā Tō. These settlements, as is standard, do not settle any claims that a member of the settling group may have that is, or is founded on, a right arising by virtue of being descended from an ancestor other than that of the settling group.<sup>13</sup>
46. The Waitangi Tribunal has briefly considered the position of Ngāti Tumatakokiri in the 1991 Ngai Tahu Report, the 2007 Preliminary Report into the Customary Interests in the Northern South Island and Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa and the 2008 Te Tau Ihu o Te Waka a Maui Report. None of these reports suggest that at 1840 Ngāti Tumatakokiri exercised customary rights distinct from, or independently of, other large natural groupings in the South Island.
47. For these reasons, the Crown submits that these claims should not be included in the Wai 2800 inquiry.

#### **SUMMARY OF THE CROWN'S SUBMISSIONS ON THE PRELIMINARY WAI 2800 CLAIMS LIST**

48. The Crown considers that the following Wai claims (or parts of those Wai claims) may be eligible to be inquired into in Wai 2800:

<b>Wai no</b>	<b>Name of claim</b>
158 (claims that are not related to forestry policy)	Southland Forests Claim
680	Block 62 Sec 923 Hokonui, Crown Proclamation Claim
685	Block X Section 3C Trust (Southland) Claim
709 (claims that are not related to forestry policy)	Section 3A Block XIV Tautuku Survey District (Chaslans Mistake) Claim
738	Arahura and Other Blocks Claim

<sup>13</sup> Ngāti Kōata, Ngāti Rarua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, s 24(7).

2163 (claims that are not related to forestry policy)	SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim
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49. The Crown considers that the following Wai claims appear fully settled but further clarification may be required from the claimants:

Wai no	Name of claim
552	Ahitahi/Araukuku Hapū Claim
644	Kapuni to Otakeho Lands Claim
742	Stirling Point (Bluff) Claim
1468	Hutt Valley and Miramar Peninsular Lands Claim
1924	Waitara West Kairau Lands Claim
2159	Ngā Ariki Hapū (Moffitt) Claim
2176	Descendants of Aperahama Hutoitoi (Heaslip) Claim
2517	Durville Island Conservation and Public Works Claim

50. The Crown considers that the following claims are either not eligible to participate in the Wai 2800 inquiry or best addressed in other inquiries:

Wai no	Name of claim	Reason
56	Nelson Lands and Fisheries Claim	Historical claims are settled
158 (claims that are related to forestry policy)	Southland Forests Claim	Best considered in the Economic Development kaupapa inquiry
709 (claims that are related to forestry policy)	Section 3A Block XIV Tautuku Survey District (Chaslands Mistake) Claim	Best considered in the Economic Development kaupapa inquiry
859	Waimate Plain Block (South Taranaki) Claim	Historical claims are settled
1423	Rasmus Nielson Whānau Claim	Should be included in the Porirua ki Manawatu inquiry as Ngāti Raukawa claims are yet to be heard
1432	Ngāi Tamatakokoi Lands Claim	Claims are raised through whakapapa to a group who did



		not exercise customary rights at 1840
1614	Waimarino 4A1A, 4B Part 2, 4A and 4A5 Blocks (Waikune Trust) Claim	Within scope of the Te Korowai o Wainuiārua settlement
1623	Ngāti Rangatahi kei Rangitikei Claim	Included in the Porirua ki Manawatu inquiry and the Military Veterans kaupapa inquiry. Claims related to the expulsion of Ngāti Rangatahi from the Hutt Valley were heard and reported on in <i>Te Whanganui a Tara me ona Takiwa Report</i>
1637	Te Atihau a Paparangi (Taiaroa and Mair) Claim	Within scope of the Ngāti Rangī Claims Settlement Bill
1933	Makara Blocks Claim	Within scope of the Ngāti Hāua Terms of Negotiations
1934	Descendants of Ngakete Parehounuku Claim	Within scope of Whanganui settlements under negotiation
2163 (claims that are related to forestry policy)	SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim	Best considered in the Economic Development kaupapa inquiry
2188	Kanihi Me Etahi Lands (Noble and Others) Claim	Historical claims are settled
2236	Descendants of Priscilla Muriwai Dennison Claim	Historical claims are settled
2317	Te Puranga (Rata Pue) Crown Minerals Claim	Within scope of settlements with Taranaki groups
2321	Ngarauru and Ngāti Ruanui Mana Wāhine (Maruera and Packer) Claim	Historical claims are settled
2324	Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim	Historical claims are settled
2430	Wills and Probate Laws Claim	Historical claims are settled
2543	Ngāti Tumatakokiri Maruia Claim	Claims are raised through whakapapa to a group who did not exercise customary rights at 1840

**NEXT STEPS**

51. The Crown suggests that it may be helpful for the Tribunal to arrange a judicial conference in the New Year in order to address issues raised by the Crown's and other parties' submissions on the inclusion or exclusion of claims from the preliminary Wai 2800 claims list.

21 December 2018



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J R Gough / T L Hocking  
Counsel for the Crown

**TO:** The Registrar, Waitangi Tribunal  
**AND TO:** Claimant Counsel