WAI 2800

INQUIRY INTO REMAINING HISTORICAL CLAIMS:

SOUTHERN NORTH ISLAND AND SOUTH ISLAND CLAIMS (REGION 1)

Claim assessment for the Standing Panel:

The Southland Forests Claim (Wai 158)

Research Services Team

Waitangi Tribunal Unit

July 2022

1 Introduction

This claim assessment provides summary and background information on the Southland Forests Claim (Wai 158) for the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800) (the standing panel). The Southland Forests Claim (Wai 158) is one of five remaining historical claims that the Chairperson, Chief Judge Wilson Isaac, has determined as eligible for inquiry in Region 1 (pictured below).[1] Region 1 comprises:

- Taranaki;
- Whanganui;
- Te Whanganui a Tara/Wellington;
- Te Tau Ihu/Northern South Island;
- Southern South Island; and
- Rekohu/Chatham Islands.[2]

Map of the included inquiry districts[3]

[1] Chief Judge W W Isaac, memorandum-directions of Chief Judge W W Isaac concerning eligibility of claims, 11 December 2019 (Wai 2800, #2.5.5), p 6.

[2] Chief Judge W W Isaac, memorandum of the Chairperson appointing a standing panel to inquire into remaining historical claims in the south-western North Island, the South Island and the Chatham Islands, 6 September 2018 (Wai 2800, #2.5.1), p 4.

[3] Chief Judge W W Isaac, Appendix A: Map of the included inquiry districts, 6 September 2018 (Wai 2800, #2.5.1(a)).

This document has been prepared by the research services team of the Waitangi Tribunal Unit to provide advice to the standing panel. It is an assessment of existing secondary sources relating to the claim issues raised in the statement of claim for the Southland Forests Claim (Wai 158). Primary research has not been undertaken in the preparation of this assessment. Where possible, reference to primary sources that appear most relevant to the claim has been included, should further evidence be required. These are listed in the attached Appendix.

The Southland Forests Claim (Wai 158) is one of two claims in the Inquiry that concern land granted under the South Island Landless Natives Act 1906 (referred to throughout this paper as the SILNA). The other claim is the SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim (Wai 2163). The claim assessments for these two claims have many similarities and should be read together.

This claim assessment comprises:

- A claim summary, including information on the claimants, the claim allegations, and claim amendments;
- Early negotiations, Waitangi Tribunal inquiries, and Treaty settlements relevant to the Claim;
- The Claim and the current Tribunal inquiry; and
- Existing relevant research sources and the identification of potential gaps in evidential coverage.

Methodology:

This claim assessment provides an overview of existing secondary sources that are relevant to the Claim. The Southland Forests Claim (Wai 158) statement of claim provides some brief detail of the claim issues and secondary sources have been relied on to provide further relevant details where necessary. Some additional primary sources have been used to provide contextual information on relevant events leading up to the current Inquiry, including correspondence to the Waitangi Tribunal, Māori Land Court minutes, Waitangi Tribunal file notes, published government policy documents, and one non-published document provided by the Crown Law Office. Further potentially relevant sources, including primary research sources, are listed in Section 5 should more information be required.

The various allegations raised in the Wai 158 statement of claim have been organised into three key claim topics for the purpose of assessing the existing evidential coverage of the claim issues. This was done by analysing allegations using information in the statement of claim and further research when needed for context and/or clarification of the issues. The three claim topics are:

- Topic One: Historical background to the SILNA and SILNA forests from their allocation and after the land was allocated;
- Topic Two: Alleged takings of SILNA land after 1906 without consent or proper compensation; and
- Topic Three: Crown indigenous forestry policy relating to SILNA land from 1990 and the economic consequences for SILNA owners.

The three topics are not fully exclusive and there are some links between them. Clarification from the claimant during the inquiry process should help to further determine the existing evidential coverage of the claim particulars. The topics are the same ones used for assessment of the SILNA Estate and

Crown Forests Amendment Act 1992 (Te Aika) Claim (Wai 2163), which also includes an additional, fourth topic.

Given there have already been three Tribunal inquiries inquiring into SILNA-related issues, there was much information available in Tribunal reports, relevant evidence filed for the inquiries (such as research reports), and inquiry process documents (such as memorandum-directions and submissions) on which to develop relevant background information on the claim issues.

The three SILNA-related Tribunal inquiries that have already concluded are:

- The Ngai Tahu Lands and Fisheries Inquiry (Wai 27);
- The Waimumu Trust (SILNA) Inquiry (Wai 1090); and
- The Northern South Island/Te Tau Ihu o Te Waka a Maui Inquiry (Wai 785).[4]

The Record of Inquiries for these three inquiries contain hundreds of documents and not all were examined for this paper. The documents that appeared most relevant by their titles have been considered (see a full list of Record of Inquiry documents considered in the bibliography under 'Reports filed in evidence for Waitangi Tribunal inquiries'). There are likely to be other relevant documents on the Record of Inquiry. Some of these have been identified in section 5.

Where gaps in the coverage of claim issues are identified, this paper provides some suggested sources for addressing them should more information be required. This includes a list of relevant archival materials held at Archives New Zealand. A keyword search of the Archives New Zealand catalogue (Archway) has produced over 90 results that appear relevant for more in-depth consideration of this claim if required. These files are predominantly from the following departments (including their predecessor departments): Land Information New Zealand; Te Puni Kōkiri; Department of Conservation; and Ministry for Primary Industries. A full list of Archives New Zealand files that appear relevant is provided in the Appendix. It is not an exhaustive list of all files that may be relevant to this claim (Wai158).

2 The Southland Forests Claim (Wai 158)

The Southland Forests Claim (Wai 158), dated 23 July 1990, was registered by the Waitangi Tribunal on 27 August 1990.[5] The claim was subsequently amended on 6 June 1997.[6] There have been a number of related legislative settlements that appear to have both preserved and possibly narrowed the claim's scope for inquiry. These will be outlined later in the paper in section 3. On 11 December 2019, Chief Judge Isaac confirmed that the claim would be included in the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800).[7]

[4] A keyword search of the Waitangi Tribunal reports index shows that these three inquiries are the main inquiries that cover SILNA-related issues.

[5] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1); Chief Judge E T J Durie, memorandum-directions of Tribunal directing Registrar to register and defer claim, 27 August 1990 (Wai 158, #2.1).

[6] Robert Kenneth McAnergney, amended statement of claim, 6 June 1997 (Wai 158, #1.1(a)).

[7] Chief Judge W W Isaac, memorandum-directions, 11 December 2019 (Wai 2800, #2.5.5), p 6.

This section provides background information on the Southland Forests Claim (Wai 158), including the claimants, the claim allegations, and claim amendments, and concludes with a summary of the main claim issues following several settlement and legislative developments.

2.1 The claimants

The named claimant is Robert Kenneth McAnergney. In the original claim filed in 1990, Mr McAnergney described himself as of Ngāti Kahungunu descent and a member of the Murihiku negotiating team. He described the claim as made:

> … on behalf of the owners of lands in Southland arising from the provisions of the South Island Landless Natives Act 1906 including:
>
> The Waitutu Incorporation
> The Rowallen Alton Incorporation
> The Waimumu Trust
> Tautuku/Waikawa Trust
> Rakiura Maori Land (Inc)
> Maronuku
> West Rowallen
> Rowallen/Alton[8]

The Waitutu Incorporation, the Rowallen Alton Incorporation, the Waimumu Trust, the Tautuku Waikawa Lands Trust, and the Rakiura Maori Lands Trust all administer land originally granted to individuals under the South Island Landless Natives Act 1906.[9] Minutes of a meeting of SILNA owners in Southland dated 21 April 1990 suggest that at this time there were also trusts that administered SILNA land in Maranuku (Kaka Point) and Rowallan/Alton, but not in West Rowallan.[10] Various correspondence to the Tribunal suggests there were an estimated 10,000 owners of 70 sections of SILNA forest in Southland in 1990, with roughly 100 owners in each section.[11] Claimants may be able to provide information on who the current owners and/or administering trusts are if this is required.

2.2 Claim allegations

The Southland Forests Claim (Wai 158) alleges that the claimants have been prejudiced by:

- The Crown's national policy on indigenous forests; and

[8] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1), p 2.

[9] Citizens Advice Bureau, 'Waitutu Incorporation Management Committee', Citizens Advice Bureau website, https://www.cab.org.nz/service-provider/KB00024551, last modified 7 May 2019; Department of Conservation, 'Southland rainforest permanently protected', Department of Conservation, Te Papa Atawhai, media release, 10 October 2019, https://www.doc.govt.nz/news/media-releases/2019/southland-rainforest-permanently-protected/; Waitangi Tribunal, Waimumu Trust (SILNA) Report 2005 (Wellington: Legislation Direct, 2005); Rakiura Maori Lands Trust, 'Lords River Management Plan', Rakiura Maori Lands Trust website, https://www.rmlt.co.nz/index.php?page=1615, accessed 1 February 2021; Maori Owners of Indigenous Forests meeting minutes, 21 April 1990, Ascot Park Motor Hotel, Invercargill.

[10] Maori Owners of Indigenous Forests meeting minutes, 21 April 1990, Ascot Park Motor Hotel, Invercargill, pp 5-7.

[11] Maori Owners of Indigenous Forests meeting minutes, 21 April 1990, Ascot Park Motor Hotel, Invercargill, p 3; R. K. McAnergney, Murihiku Maori Land Owners Negotiation Group to Mr Parou Tupangaia, Maori Land Information Office, Department of Justice, 16 August 1990; Unsigned 'Revised Framework Agreement on Southland Indigenous Forest Allocated to Maori Landowners under 1906 Legislation', September 1990 [no further information given].

- The Crown, from 1906, taking parts of the claimants' land without consent or adequate compensation.

Although it is not expressly stated in the statement of claim, research undertaken for this scoping paper strongly suggests that the stated indigenous forestry policy refers to a policy announcement beginning with an export ban for indigenous forest produce (timber, logs, or woodchips) that was not certified as sustainable, implemented through regulations under the Customs Act 1966 in July 1990.[12] Further clarification from the claimants is needed to determine what the second part of the claim regarding land takings refers to.

The claimants allege the Crown's forestry policy has deprived them of an economic base. They also allege that the Crown's actions constituted 'a degradation from and an affront to [SILNA landowners'] Rangatiratanga' and a breach of Article Two of the Treaty of Waitangi.[13]

The claimants seek the following relief:

a. Compensation in money for the lost opportunity to fell and sell the timber growing on our lands.
b. Compensation by the allocation of other lands to us.
c. Compensation by allocation of State Forest land to us.
d. Such other relief as may seem just to the Tribunal.[14]

In a foreword to the statement of claim, Mr McAnergney clarified that this claim differs from the Ngai Tahu Lands and Fisheries Claim (Wai 27) because, while the Ngai Tahu Lands and Fisheries Claim (Wai 27) included issues of inadequate allocation of land under the South Island Landless Natives Act 1906, the Southland Forests Claim (Wai 158) concerns Crown policies and practices relating to the land *after* it was allocated.[15]

2.3 Further claim amendments

One amendment to the Southland Forests Claim (Wai 158) dated 6 June 1997 has been registered and filed. In the amendment, Mr McAnergney corrected his residential address and the spelling of Rowallan (from Rowallen), and elaborated on his iwi affiliation to also include Waitaha South Island. He included a mihi that he describes as 'a fuller description of the entitlement of the applicant to promulgate this claim to completion'.[16] He also set out his ancestry in more detail to support his Waitaha affiliation.[17]

A further attempt to amend the Southland Forests Claim (Wai 158) was received by the Tribunal on 3 October 1997 from a trustee of the Block X Section 3C Trust, E J Palmer, on behalf of the trustees. Mr Palmer stated that Block X Section 3C 'was originally part of the Tautuku Waikawa Lands Trust when [the claim] was lodged with the Waitangi Tribunal'.[18] Mr Palmer sought to amend the claim to include the Resource Management Act 1991 and the Clutha District Council District Plan notified on 14 January

[12] See, for example, Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 31.
[13] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1).
[14] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1), p 3.
[15] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1).
[16] Robert Kenneth McAnergney, amended statement of claim, 6 June 1997 (Wai 158, #1.1(a)), p 1.
[17] Robert Kenneth McAnergney, amended statement of claim, 6 June 1997 (Wai 158, #1.1(a)), p 2.
[18] E J Palmer to the Registrar, Waitangi Tribunal, 23 September 1997, 'Waitangi Tribunal Claim Wai 158', para 1.

1995, which he alleged contained 'provisions which restrict [the Trust's] ability to manage, develop and utilise [their] lands and forests which is contrary to Article II of the Treaty of Waitangi'.[19]

The Assistant Registrar of the Tribunal advised Mr Palmer: 'Any amendment or addition of the Wai 158 claim should be made in writing by the named claimants, that is, Robert Kenneth McAnergney and other owners/trustees in the claimant group'.[20] Tribunal records show that Mr Palmer intended to contact Mr McAnergney regarding submitting an amended statement of claim.[21] However, no record has been found of any further Tribunal correspondence or efforts to amend the claim.

In a Joint Memorandum of Counsel dated 10 July 2019, claimant counsel for the Southland Forests Claim (Wai 158) and the SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim (Wai 2163) elaborated further on the specifics of the two related claims, stating:

> The acts and omissions of the Crown within Wai 158 [the Southland Forests Claim] and Wai 2163 [the SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim] cause interwoven prejudice across matters ranging from pre-existing aboriginal authority, rights and interests and insubstantial economic base, inappropriate legal structures and decision making to inadequate Māori health and housing over generations and a deliberate educational policy of preparing Maori for low-paying jobs.[22]

There are also several Tribunal inquiries and Treaty settlements that may have narrowed the scope of what can be inquired into, including who remain as claimants and issues not settled and remaining for inquiry. This will be discussed in more detail in the next section but, in summary, it appears from information in the Southland Forests Claim (Wai 158) statement of claim and subsequent developments that the issues remaining open for inquiry by the Tribunal include all issues not previously inquired into by the Tribunal or settled by Treaty settlement legislation that relate to:

- Indigenous forestry policy relating to SILNA land and its economic consequences (specifically, the export ban on indigenous woodchips); and
- The Crown taking parts of SILNA land without consent or adequate compensation from 1906.

3 Waitangi Tribunal inquiries, Treaty settlements, and other developments relevant to the claim, 1990-2005

The Southland Forests Claim (Wai 158) was filed in the context of Treaty settlement negotiations between various SILNA landowners (and their representatives) and the Crown. The Waitangi Tribunal initially deferred inquiry into the claim when it was filed in 1990 because negotiations between the Crown and SILNA landowners and the Ngai Tahu Inquiry (Wai 27) were both underway.[23] During this time, owners sought the assistance of the Māori Land Court in creating owner trusts for managing

[19] E J Palmer to the Registrar, Waitangi Tribunal, 23 September 1997, 'Waitangi Tribunal Claim Wai 158', para 3.
[20] Kim Skelton, Assistant Registrar, Waitangi Tribunal to Mr E J Palmer, 4 December 1997, 'Claims to the Waitangi Tribunal concerning lands in Southland', para 2.
[21] Waitangi Tribunal file note, 30 October 1997.
[22] Dr B D Gilling, G M Davidson, and R L Brown, Counsel for Claimants, Joint memorandum of Counsel on behalf of Wai 158 and Wai 2163 responding to the Tribunal direction of 12 June 2019 and the Crown memorandum of 21 December 2018, 10 July 2019 (Wai 2800, #3.1.14), p 4.
[23] Chief Judge E T J Durie, memorandum-directions, 27 August 1990 (Wai 158, #2.1), p 2.

SILNA forest lands and conducting further negotiations with the Crown. These developments provide context to the initial submission of the claim and also help to show what issues and groups of claimants appear to remain for the Southland Forests Claim (Wai 158). Following the Ngai Tahu Inquiry (Wai 27), other Tribunal inquiries and Treaty settlements appear to have further limited the scope of what remains to be inquired into. These are detailed below.

3.1 Initial negotiations between the Crown and SILNA indigenous forest owners concerning the Government's forestry policy

In March 1990, the Government announced a policy to ban the export of indigenous forest produce (timber, logs, or woodchips) that was not certified as sustainable.[24] The policy intended to protect the remaining indigenous forest on both private and public land.[25] It was implemented in July 1990 through regulations under the Customs Act 1966 that prohibited the export of indigenous woodchips.

In March and April 1990, the Government held discussions with SILNA indigenous forest owners, through the Cabinet Committee on Treaty of Waitangi Issues, about possible compensation for opportunity losses. In August that year, the Crown and SILNA indigenous forest owners reached what is known as 'the framework agreement'. The agreement outlined the special circumstances of the South Island Landless Natives Act 1906 and, according to the Crown Law Office, 'advanced the solutions of' awarding various forms of compensation for commercial opportunity loss.[26] Following this, the Crown negotiated with claimants of the Southland Forests Claim (Wai 158) 'on the basis of providing monetary compensation of up to $14 million for the loss of commercial enterprise opportunity'.[27]

During this time, SILNA landowners in Southland established Rau Murihiku Whenua Maori in opposition to the new policy.[28] Tribunal records show that Māori indigenous forest owners met on 21 April 1990 to elect a negotiating team, although it is unclear if this became Rau Murihiku Whenua Maori. The negotiating team was to represent Māori owners of indigenous forests in negotiations with the Crown Task Force on Treaty of Waitangi Issues.[29] Mr McAnergney and 20 others appear to have been nominated for the 'Negotiating Team' at a meeting of Southland indigenous forest owners on 21 April 1990.[30] Information provided to the owners at the meeting shows that the Crown Task Force was a group of government Ministers who would speak directly with the 'Negotiating Team' and report back to Cabinet.[31] Rex Austin, who was nominated as part of the negotiating team, said to

[24] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*; Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', April 2001 [provided by Crown Law].
[25] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', April 2001 [provided by the Crown Law Office], p 4.
[26] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', April 2001 [provided by the Crown Law Office], p 4; Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 31-32.
[27] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 33.
[28] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 31.
[29] Maori Owners of Indigenous Forests meeting minutes, 21 April 1990, Ascot Park Motor Hotel, Invercargill. The minutes of this meeting record that some owners wished to negotiate independently.
[30] Maori Owners of Indigenous Forests meeting minutes, 21 April 1990, Ascot Park Motor Hotel, Invercargill, p 8. The minutes of this meeting record that some owners wished to negotiate independently.
[31] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1), p 2.

owners that the Government had agreed in principle to compensate Māori landowners for the opportunity loss resulting from its new indigenous forestry policy.[32]

The Tribunal has recorded that Rau Murihiku Whenua Maori filed the Southland Forests Claim (Wai 158) in July 1990 (although Rau Murihiku Whenua Maori is not mentioned in Mr McAnergney's statement of claim).[33]

As noted earlier, Mr McAnergney referred to himself in his 1990 statement of claim as a member of 'the Murihiku negotiating team' that was 'in negotiations with the Task Force on Treaty of Waitangi Issues on loss of opportunities'.[34] Authors of other documents held by the Tribunal (correspondence and meeting minutes), including Mr McAnergney, also refer to the 'Murihiku Maori Land Owners Negotiation Group', the 'Murihiku Land Owners Negotiating Team', the 'Rau Murihiku Whenua Maori Negotiating Team', and the 'Negotiating Team'.[35] Although it is unclear, these may all be different names for the same group.

On deferring inquiry into the Southland Forests Claim (Wai 158) in August 1990, the Chairperson, Chief Judge E T J Durie, advised in 1990 that, unless there was a good case for urgency, inquiry into the claim 'should await the outcome of the present negotiations and the conclusion of the Ngai Tahu claim'. Chief Judge E T J Durie noted that the claimants had stated that they were 'in negotiations with the Crown on one aspect of the relief sought'.[36] Examination of the Southland Forests Claim (Wai 158) statement of claim and the Tribunal's later *Waimumu Trust (SILNA) Report 2005* suggests that the 'present negotiations' Chief Judge E T J Durie referred to concerned the economic opportunity loss alleged to have occurred as a result of the Government's then newly introduced indigenous forestry policy.[37]

It appears that progress with the negotiations continued after the Southland Forests Claim (Wai 158) was filed in July 1990. On 16 August 1990, Mr McAnergney (describing himself as writing 'on behalf of the Murihiku Maori Land Owners Negotiating Team') wrote to the Maori Land Information Office stating that the Government had recognised that its policy and 'impending legislation' would 'drastically affect [their] ability to use [their] land for development of an economic base' and that his negotiation team was working with the Treaty of Waitangi Task Force to quantify the opportunity loss that would result from new forestry policy.[38]

Mr McAnergney also stated that the Murihiku Land Owner Negotiating Team represented 'an estimated 10,000 descendants of land granted under the Landless Natives Act or 1906', and that Rex

[32] Maori Owners of Indigenous Forests meeting minutes, 21 April 1990, Ascot Park Motor Hotel, Invercargill, p 3.
[33] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 31.
[34] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1), p 2.
[35] R. K. McAnergney, Murihiku Maori Land Owners Negotiation Group to Mr Parou Tupangaia, Maori Land Information Office, Department of Justice, 16 August 1990; Alton/Rowallan meetings minutes, 30 August 1991, Arowhenua Marae, Temuka; John Delamare, Manager, Claims & Negotiations, Department of Justice to Deputy Chief Judge A G McHugh, Waitangi Tribunal, 3 February 1992; Maori Owners of Indigenous Forests meeting minutes, 21 April 1990, Ascot Park Motor Hotel, Invercargill.
[36] Chief Judge E T J Durie, memorandum-directions, 27 August 1990 (Wai 158, #2.1), pp 1-2.
[37] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1); Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*.
[38] R. K. McAnergney, Murihiku Maori Land Owners Negotiation Group to Mr Parou Tupangaia, Maori Land Information Office, Department of Justice, 16 August 1990, paras 1, 3, 4.

Austin was the Chairperson at the time.[39] Mr McAnergney set out that the Taskforce and his negotiation team had agreed 'an essential part of this negotiation process will be the compilation of a roll of current owners and their names and addresses', and he sought funding from the Maori Land Information Office to complete this process.[40] The Waitangi Tribunal Unit does not appear to have a record of whether this funding was granted or whether the process was completed.

On 30 August 1990, Rex Austin (on behalf of the Rau Murihiku Whenua Maori Negotiating Team) informed a meeting of Māori Alton/Rowallan landowners in Temuka (also attended by the Māori Trustee, the Trust Officer of the Māori Land Court, the Registrar of the Māori Land Court, and the Deputy Chief Judge of the Māori Land Court) that a forestry evaluation had 'been partly done by Janett and Associates (George Kuru)'.[41] Janett Associates are forester landscape architects.[42]

Correspondence to the Tribunal suggests that Janett Associates wrote a submission on behalf of Murihiku forest owners to Ministers of the Environment and Conservation on indigenous forest policy sometime around 1990.[43] The submission stated that:

> Murihiku forest owners wish to retain full and exclusive rights to their forest resources as guaranteed in Article Two of the Treaty of Waitangi, the South Island Landless Natives Act 1906 and other legislation.[44]

The Crown Law Office recorded that little progress was made in negotiations after 1990, noting this was possibly because parties were awaiting the outcome of the Tribunal's inquiry into the Ngāi Tahu ancillary claims.[45] In its *Ngai Tahu Ancillary Claims Report 1995*, the Tribunal recorded that negotiations were 'held in abeyance while the Government considered a proposal for the settlement of the claim made by a special negotiator appointed by the Minister of Conservation'.[46]

On 24 January 1992, owner Sydney Cormack expressed concern to the Tribunal about the Crown's methods for valuing the land and timber for the purpose of setting compensation.[47]

On 3 February 1992, John Delamere, then Manager, Claims & Negotiations at the Department of Justice, advised Deputy Judge A G McHugh that the Crown and Rau Murihiku Whenua Maori had agreed to a research programme to report on the forest resource in the Southland Forests Claim (Wai 158). He stated that the Crown had provided up to $300,000 of funding for the research, 'with the proviso that half of those funds be offset against any future compensation paid by the Crown to the

[39] R. K. McAnergney, Murihiku Maori Land Owners Negotiation Group to Mr Parou Tupangaia, Maori Land Information Office, Department of Justice, 16 August 1990, paras 1, 2.
[40] R. K. McAnergney, Murihiku Maori Land Owners Negotiation Group to Mr Parou Tupangaia, Maori Land Information Office, Department of Justice, 16 August 1990, para 5.
[41] Alton/Rowallan meetings minutes, 30 August 1991, p 5.
[42] Janett Associates, 'Submission to Ministers of the Environment and Conservation on Indigenous Forest Policy by Murihiku Forest Owners' [not dated].
[43] 'Submission to Ministers of the Environment and Conservation on Indigenous Forest Policy by Murihiku Forest Owners'. The Tribunal does not have a record of if or when this was submitted, but it was filed with other documents around this time.
[44] 'Submission to Ministers of the Environment and Conservation on Indigenous Forest Policy by Murihiku Forest Owners', p 1.
[45] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', April 2001 [provided by the Crown Law Office], p 5.
[46] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brookers, 1995), p 309.
[47] S Cormack to the Registrar, Department of Justice, 24 January 1992.

claimants'.[48] He estimated that the research would be completed in March 1992. No further record of the research Mr Delamare referred to has been found during research for this claim assessment.

John Delamare then stated that the next phase of negotiations would require an agreed methodology for valuing the economic loss resulting from the Government's indigenous forestry policy, but that 'it [was] not possible to undertake the next phase of negotiations until the Government announce[d] its indigenous forest policy which [wa]s the basis of the claimants' grievance'.[49]

On 21 February 1997, the Office of Treaty Settlements (the predecessor to Te Arawhiti – The Office for Māori Crown Relations) advised trustees of the Tautuku Block X Section 3C Trust that the Crown had agreed with Ngāi Tahu to negotiate settlements for claims relating to SILNA lands separately, 'once the wide range of beneficial owners of those blocks ha[d] been identified'.[50]

On 26 January 1997, the Chairman of the Rakiura Maori Land Trust, George Ryan, advised the Tribunal that Alan Groves, a trustee of the Rakiura Maori Land Trust, had 'been involved in negotiations with Government over the fate of millable native forest on RMLT [Rakiura Maori Land Trust] controlled land and, in consultation with RMLT, ha[d] been asked to facilitate and progress these negotiations when and wherever possible'.[51] The Rakiura Maori Land Trust is the largest private landowner on Rakiura/Stewart Island and was originally included in the list of organisations Mr McAnergney stated he was making the Southland Forests Claim (Wai 158) on behalf of.[52] On 2 May 1997, the Tribunal responded that it did not expect there would be much activity regarding the Southland Forests Claim (Wai 158) 'in the foreseeable future'.[53]

On 3 August 1997, the Tribunal replied to an inquiry from trustees of the Tautuku-Waikawa Lands Trust about the status of the Southland Forests Claim (Wai 158) by confirming that no research or inquiry had occurred yet for the claim and that the Tribunal was 'likely to await the outcome of the current negotiations between Ngāi Tahu and the Crown before deciding whether, and if so, how, Wai 158 should be advanced'.[54]

As noted above in section 2.3, Mr McAnergney amended his Southland Forests Claim (Wai 158) on 17 June 1997 with some additional corrections, presumably on the understanding that his claim was still awaiting inquiry and not yet settled.

In its *Waimumu Trust (SILNA) Report 2005,* the Tribunal recorded that SILNA land policy was 'extensively revised' after the change of government in 1999. This involved the Government replacing settlement negotiations for grants 'to develop sustainable development plans and streamline consent

[48] John Delamare, Manager, Claims & Negotiations, Department of Justice to Deputy Chief Judge A G McHugh, Waitangi Tribunal, 3 February 1992, para 5.
[49] John Delamare, Manager, Claims & Negotiations, Department of Justice to Deputy Chief Judge A G McHugh, Waitangi Tribunal, 3 February 1992.
[50] Brian Roche, Chief Negotiator, Ngai Tahu Claims, Office of Treaty Settlements to Mr E J Palmer, the Trustees of Tautuku Block X Section 3C Trust, 21 February 1997, para 3.
[51] George Ryan, Chairman, Rakiura Maori Land Trust to Waitangi Tribunal, 26 January 1997, para 3.
[52] George Ryan, Chairman, Rakiura Maori Land Trust to Waitangi Tribunal, 26 January 1997; Wai 158, #1.1.
[53] Geoff Melvin, Registrar (acting), Waitangi Tribunal to Alan Groves, 2 May 1997, 'Wai 158: Southland Indigenous Forests Claim', para 2.
[54] Geoff Melvin, Registrar, Waitangi Tribunal to David Parker, Anderson Lloyd, 3 August 1997, 'Wai 158: Southland Forests claim', para 5.

processes'.[55] The Crown replaced negotiations with opportunities for conservation covenants with the Nature Heritage Fund and implemented the Forests Amendment Act 2004, which removed entitlement to compensation for economic losses.[56] These issues are discussed in more detail in section 5.3.

3.2 Representation issues for the SILNA forest owners

Over the course of early negotiations between the Crown and SILNA owners, issues were raised about representation for SILNA owners and the extent of the negotiating team's mandate to negotiate on behalf of owners. Issues appear to have included whether the team's mandate was restricted to the issue of negotiating compensation for losses as a result of the government policy or also extended more widely to representing owners generally in matters concerning the future economic use of their SILNA forests. Some SILNA owners took action through the Māori Land Court to form trusts to allow them to negotiate more directly with the Crown over their forest lands. This is outlined below.

In June 1991, Timothy Te Aika (a SILNA landowner) raised the issue of landowner concerns with Deputy Chief Judge McHugh, stating that the Janett Associates report, written on behalf of the negotiating team, did not reflect the interests of owners in Rowallan and Alton.[57] Deputy Chief Judge McHugh responded that he was 'most concerned at the situation' that had developed. He referred to several meetings called by the Māori Land Court on the issue of owner support to form an entity to be called Murihiku Forests Ltd, which intended to establish exotic forests over SILNA land. Deputy Chief Judge McHugh stated that he understood this proposal was opposed by the Government, which favoured exchanging the land or providing compensation in order to protect the remaining forest. Deputy Chief Judge McHugh advised Timothy Te Aika that he intended to raise owner representation issues with the Treaty of Waitangi Policy Unit (the Crown negotiating unit that was a predecessor to Te Arawhiti – The Office for Māori Crown Relations).[58]

On 10 July 1991, the Deputy Registrar of the Māori Land Court, S J Hadfield, advised landowner Mr M Colgan: 'Our opinion is that the owners in Rowallan/Alton are largely unrepresented by the Negotiation Team (Rau Murihiku Whenua Maori)'.[59] S J Hadfield advised that a structure, such as a trust, would need to be established before the Crown could negotiate with landowners. Māori Land Court minutes record that in September 1991 Deputy Chief Judge McHugh made an order under section 438 of the Maori Affairs Act 1953 to vest 42 Rowallan and Alton blocks in trustees. The minutes note that the purpose of vesting the land in trustees was, in part, '[t]o deal with the Government policy on conservation of indigenous forests and related issues'.[60]

---

[55] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 39, 76.
[56] Forest Amendment Act 2004, s 19; Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005.*
[57] Timothy Te Aika to Judge McHugh, Deputy Chief Judge, Māori Land Court, 28 June 1991, para 3.
[58] A G Mcugh, Deputy Chief Judge, Māori Land Court to Timothy Te Aika, 9 July 1991. More information on Murihiku Forests Ltd is provided in the minutes to a meeting of Māori landowners in Alton/Rowallan, the Māori Trustee, and the Trust Officer, Registrar, and Deputy Chief Judge of the Māori Land Court dated 30 August 1991. See Alton/Rowallan meetings minutes, 30 August 1991.
[59] S J Hadfield, Deputy Registrar, Māori Land Court to Mr M Colgan, 10 July 1991, 'Indigenous Forest Policy – Rowallan Alton : File TEW 98/1/5', para 2.
[60] Māori Land Court minutes, 18 September 1991, 74 South Island MB 104-108, Invercargill; Māori Land Court minutes, 19 September 1991, 74 South Island MB 109-111, Invercargill.

Some SILNA landowners also disputed Mr McAnergney's authority to claim to the Tribunal on their behalf. On 27 November 1991, eight owners and trustees of SILNA land blocks in Alton and Rowallan wrote to the Registrar of the Tribunal disputing Mr McAnergney's authority to represent them.[61] The owners stated that the Southland Forests Claim (Wai 158) did not reflect a consensus of the owners because Mr McAnergney had not sufficiently consulted them, did not have authority over them, and did not have their support.[62] On 3 December 1991, a further five trustees of SILNA land blocks in Alton and Rowallan wrote to the Tribunal also disassociating themselves from the claim.[63]

As noted above, owner Sydney Cormack wrote to the Tribunal on 24 January 1992. In this letter he stated that those negotiating on behalf of Rowallan Alton owners did not have authority to do so, and that the Crown was aware of this.[64]

On 3 February 1992, John Delamere, then Manager of Claims & Negotiations at the Department of Justice, also appeared to acknowledge SILNA landowners' concerns about the makeup of the negotiating team. He wrote to the Chairperson of the Waitangi Tribunal, Deputy Chief Judge A G McHugh, that the Crown had 'been aware of conflict within the wider claimant group for several months' and that the Crown believed the Rau Murihiku Whenua Maori Negotiating Team had a 'limited mandate' because some owners were not present when the team was elected in 1990.[65] He also said the Crown believed 'the current Rau Murihiku Whenua Maori negotiating team [had] no mandate to negotiate on behalf of the claimants beyond the completion of the present research project' (referred to above).[66]

[61] The Waitangi Tribunal Memorandum stated there were eight signees (see Deputy Chief Judge A G McHugh, memorandum-directions of Tribunal concerning statements received from owners and trustees of Alton and Rowallan blocks, 14 January 1992 (Wai 158, #2.3)) but there appear to be 10 on the document (see Wai 158, #2.2). The signees were: M. R. McColgan; J. H. Howie; R. Te Maiharoa; J. F. Bain; T. P. Te Aika; I. Russell; W. R. Solomon; and M. W. Solomon; plus two other signees whose names are not legible. They are owners and/or trustees of the following blocks: Alton Block III, Section 2; Alton Block IV, Sections 6 and 9; Alton Block VII, Section 7; Alton Block VIII, Section 3 and possibly 4 and 5 [some of the writing is unclear]; Alton Block IX, Section 1; Rowallan Block II, Section 5; Rowallan Block III, Sections 6, 7, and 12; Rowallan Block IV, Sections 6 and 11; and Rowallan Block VIII, Sections 2 and 7.

[62] Owners and Trustees of Alton and Rowallan Blocks, letter concerning Wai 158 and authority of Robert Kenneth McAnergney, 27 November 1991 (Wai 158, #2.2).

[63] Martin R. McColgen to Tom Benion, Registrar, the Waitangi Tribunal, 3 December 1991. The Waitangi Tribunal Memorandum stated there were five signees (see Deputy Chief Judge A G McHugh, memorandum-directions, 14 January 1992 (Wai 158, #2.3)) but the document held by the Tribunal only records three. The signees were: S. Cormack; M. R. McColgan; and R. A. Whaitiri. They are trustees of the following blocks: Alton Block IV, Sections 1, 7, and 8; Alton Block VII, Sections 3 and 7; Alton Block VIII, Sections 8-11; Alton Block IX, Section 1; Rowallan Block II, Sections 6, 7, and 9; Rowallan Block IV, Section 9; Rowallan Block V, Section 2; Rowallan Block VIII, Section 5; and Rowallan Block XIV, Section 1.

[64] S Cormack to the Registrar, Department of Justice, 24 January 1992.

[65] John Delamare, Manager, Claims & Negotiations, Department of Justice to Deputy Chief Judge A G McHugh, Waitangi Tribunal, 3 February 1992, para 2.

[66] John Delamare, Manager, Claims & Negotiations, Department of Justice to Deputy Chief Judge A G McHugh, Waitangi Tribunal, 3 February 1992, paras 1, 7.

3.3 The Ngai Tahu Inquiry (Wai 27) and settlement

3.3.1 The Ngāi Tahu Claim

As previously noted, the Tribunal had decided not to pursue inquiring into the Southland Forests Claim (Wai 158) until settlement of the Ngai Tahu Lands and Fisheries Claim (Wai 27) had been reached.

The Ngai Tahu Lands and Fisheries Claim (Wai 27) included grievances concerning land allocated to Ngāi Tahu under the SILNA in Te Wai Pounamu/the South Island. The original claim was filed on 28 August 1986 by Henare Rakihia Tau and the Ngāi Tahu Māori Trust Board.[67] Over the following two years, seven amended statements of claim were filed, including one on 2 June 1987, which argued that lands allocated to Ngāi Tahu under the SILNA were inadequate and unfit for purpose.[68] Between 1987 and 1989, the Tribunal travelled around Te Wai Pounamu/the South Island and was notified of further grievances concerning SILNA land.[69]

3.3.2 The Waitangi Tribunal's Ngāi Tahu findings

These SILNA-related grievances were reported on in the *Ngai Tahu Report 1991* and the *Ngai Tahu Ancillary Claims Report 1995.* In its *Ngai Tahu Report 1991*, the Tribunal found that 'the Crown's policy and the legislative implementation of the policy in relation to landless Ngai Tahu to be a serious breach of the Treaty principle requiring it to act in good faith'.[70] The Tribunal also concluded that the landless natives grants were 'a cruel hoax' implemented by the Crown 'to appear to be doing something' and 'to appease its conscience'.[71]

In its *Ngai Tahu Ancillary Claims Report 1995*, the Tribunal reiterated its earlier finding that the SILNA scheme was 'a cruel hoax, enacted to appease [the Crown's] conscience'.[72] That report also made findings on several grievances concerning SILNA land in Murihiku/Southland that were alleged to have occurred *after* the original allocation of land. (These are sometimes referred to as 'post-allocation SILNA claims'.) Those claims were brought to the attention of the Tribunal during hearings for the earlier land and sea fisheries claims and so were not allocated separate Wai numbers. They are all considered Wai 27 claims and are referred to as claims 1 through to 117 in the report.[73]

Claim 61 alleged that the Crown acquired SILNA land in Waimumu for a television transmitter site in 1964 and the surplus area was not returned when it was not needed. The Tribunal found that the Crown's lack of notification in taking the land, its failure to return the surplus area, and the failure to compensate owners constituted a breach of Article Two of the Treaty in that it failed to act in good faith and protect the rangatiratanga of Ngāi Tahu.[74]

---

[67] Waitangi Tribunal, *Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 1, p 4.
[68] See Waitangi Tribunal, *Ngai Tahu Report 1991*, vol 1, Appendix 3.
[69] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*.
[70] Waitangi Tribunal, *Ngai Tahu Report 1991*, vol 3, p 1000.
[71] Waitangi Tribunal, *Ngai Tahu Report 1991*, vol 3, p 1000.
[72] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, pp xvi, 229.
[73] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, pp xiii, xvi, 229.
[74] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, pp 243-245, 389.

Claim 63 alleged that SILNA land with millable timber in Forest Hill (Waimumu) was sold in 1970 for an unfair price. The Tribunal did not uphold this claim because the Māori Land Court had investigated the purchase and found the price offered was adequate.[75]

Claim 89 alleged that government forestry policies had prevented the owners of SILNA land in Wairaurahiri (now administered by the Waitutu Incorporation) from generating income from the land, including policies that led to:

- The inability to log the forest for commercial gain;
- The inability to access the land, for example, due to difficulties gaining permission to build roads;
- The inability to export logs, for example, due to the Customs Act 1966;
- Pressure to relinquish the land, for example, from local government for unpaid rates and central government interests to see the land integrated into Fiordland National Park; and
- '[T]housands of dollars' in costs for attending planning tribunals and district scheme hearings.[76]

The Tribunal concluded that the claim was 'well founded' and that there was 'an obligation on the Crown to compensate such owners for lost milling opportunities'. It made several recommendations, including that:

> The Crown should either allow the owners of the Waitutu Incorporation to market their forest to best advantage or compensate them adequately … [and] … the Crown should reimburse the Waitutu Incorporation for all provable, actual, and reasonable costs incurred in negotiations and planning applications up to the date on which the incorporation receives consent to market its timber resources or alternative remedies are agreed upon between the incorporation and the Crown.[77]

The claim was later settled by the Waitutu Block Settlement Act 1997 (discussed in the following section).[78]

3.3.3 The Ngāi Tahu settlement

The Crown and Ngāi Tahu signed the Ngāi Tahu Deed of Settlement on 21 November 1997, given effect the following year by the Ngāi Tahu Claims Settlement Act 1998. The 1997 Deed reflects the Crown view that the Southland Forests Claim (Wai 158) mostly concerned contemporary Crown forest policy, particularly policy beginning with the export ban on woodchips in 1990, implemented under the Customs Act 1966 and, later, the Forests Amendment Act 1993. The 1997 Deed stated:

> The Crown records that it regards the substance of the Wai 158 claim as relating to the Crown's contemporary indigenous forest policy that was initially given expression through the imposition of the wood-chip export ban made in July 1990 under the Customs Act 1966 and also given expression through the enactment of the Forests Amendment Act 1993 (i.e. Part IIIA of the Forests Act 1949) and that the Crown reserves its position in respect of the

[75] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, p 249.
[76] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, pp 308-309.
[77] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, pp 309-310.
[78] Waitutu Block Settlement Act 1997, s 13(1).

> claim. The Crown notes that the Wai 158 claim was filed in July 1990 almost immediately following the imposition of the wood-chip export ban by the Crown.[79]

The Ngāi Tahu Claims Settlement Act 1998 settles all Ngāi Tahu claims concerning the allocation of land under the South Island Landless Natives Act 1906. The Act does not settle non-Ngāi Tahu claims within the Ngāi Tahu takiwa, nor does it settle all claims concerning SILNA land.[80] The Act specifically excludes the Southland Forests Claim (Wai 158) from its settlement provisions insofar as the claim does not relate to the original allocation of land under the South Island Landless Natives Act 1906. This is set out in section 10 of the Act, where it defines 'Ngāi Tahu claims' as follows:

> **10 Meaning of Ngāi Tahu claims**
>
> (1) In this Act, **Ngāi Tahu Claims**—
>
> …
>
> (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) … [81]

3.4 The Waitutu Incorporation and Rakiura Maori Land Trust settlements

The Waitutu Incorporation, which was originally included in the list of organisations Mr McAnergney stated he was making the Southland Forests Claim (Wai 158) on behalf of, reached a settlement with the Crown in 1996, given effect through the Waitutu Block Settlement Act 1997.[82] The settlement stated that the forest would be preserved and managed by the Crown, while still owned by the Waitutu Incorporation. The Crown paid the Waitutu Incorporation $18.5 million over five years, based on the commercial value of the timber. The Waitutu Incorporation in return 'gave up its claims' under the Ngai Tahu Lands and Fisheries Claim (Wai 27) and the Southland Forests Claim (Wai 158).[83] The Waitutu Block Settlement Act 1997 states:

> **13 No further inquiries into claim by [Waitutu] Incorporation to Waitangi Tribunal**
>
> (1) Despite any other enactment or rule of law, no court or tribunal has jurisdiction to inquire or further inquire into or to make any finding or recommendation in respect of those parts of the following claims made to the Waitangi Tribunal that are attributable to the Incorporation:
>
> (a) the Wai 27 claim made by Tariana Nilsen on behalf of the [Waitutu] Incorporation concerning Wairaurahiri land [discussed above]:
>
> (b) the Wai 158 claim made by Robert Kenneth McAnergney as a member of the Murihiku negotiating team and others.[84]

---

[79] Te Rūnanga o Ngāi Tahu and Her Majesty the Queen, *Deed of Settlement: Section 1* (New Zealand Government, 1997), https://www.govt.nz/treaty-settlement-documents/ngai-tahu/, para 1.2.4.
[80] Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008*, 3 vols. (Wellington: Legislation Direct, 2008).
[81] Ngāi Tahu Claims Settlement Act 1998, s 10.
[82] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1); Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 34.
[83] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 34.
[84] Waitutu Block Settlement Act 1977, s 13.

On 26 July 1999, after both the Waitutu and Ngāi Tahu settlements, the Office of Treaty Settlements advised the Waitangi Tribunal Unit that:

> Two aspects of Wai 158 have been settled. These are:
>
> i. Any claim by a Ngai Tahu claimant that might relate to the original allocation of land under the South Island Landless Natives Act 1906 [section 10(1)(e) of the Ngai Tahu Claims Settlement Act 1998 refers]; and
> ii. those parts of Wai 158 that are attributable to the Waitutu Incorporation [section 13 Waitutu Block Settlement Act refers].[85]

The Rakiura Maori Land Trust reached a settlement with the Crown in 1999, given effect through the Tutae-Ka-Wetoweto Forest Act 2001. Rakiura Maori Land (Inc) was also originally included in the list of organisations Mr McAnergney stated he was making the Southland Forests Claim (Wai 158) on behalf of and has been interpreted to mean the Rakiura Maori Land Trust.[86] The Crown paid the Rakiura Maori Land Trust $10.9 million, again based on the commercial value of the timber. This came from the $20 million set aside for negotiations. In return, the Trust would continue to manage the forest based on an agreement of conserving it 'in perpetuity'.[87]

Unlike the Waitutu Block Settlement Act 1997, the Tutae-Ka-Wetoweto Forest Act 2001 does not appear to explicitly prevent the Tribunal from inquiring into the Rakiura Maori Land Trust's claims under the Southland Forests Claim (Wai 158). However, it appears that the consequence of these settlements was that any claims concerning the two forests were now legally settled and are no longer eligible for inquiry as part of the Southland Forests Claim (Wai 158). In 2005, the Tribunal appeared to confirm this understanding in the *Waimumu Trust (SILNA) Report 2005.* There, the Tribunal noted that by then (2005) the Southland Forests Claim (Wai 158) had 'lost the owners of the Waitutu and Lords River [Rakiura] forests'.[88]

3.5 The Northern South Island/Te Tau Ihu o Te Waka a Maui Inquiry (Wai 785)

The Northern South Island Claims/Te Tau Ihu o Te Waka a Maui Inquiry (Wai 785) also included grievances concerning land allocated to Te Tau Ihu iwi under the SILNA in Murihiku/Southland, as well as grievances concerning the Crown's treatment of Te Tau Ihu iwi during its negotiations and settlement with Ngāi Tahu. Claims from Rangitāne and Te Atiawa alleged that the Ngāi Tahu Claims Settlement Act 1998 impacted their access to land reserves allocated to them as 'landless natives'.[89] These SILNA-related grievances are addressed in *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa 2007* and *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008.*[90]

---

[85] Margaret Dugdale for the Director, Office of Treaty Settlements to Moana Murray, Claims Administrator, Waitangi Tribunal, 26 July 1999, 'Wai 158 – Southland Forests Claim'.
[86] Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1).
[87] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 39.
[88] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 102.
[89] Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008*, 3 vols. (Wellington: Legislation Direct, 2008).
[90] Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa 2007* (Wellington: Legislation Direct, 2007); Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008*, 3 vols. (Wellington: Legislation Direct, 2008).

In *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims,* 2008, the Tribunal found that the landless natives reserves were 'an inadequate remedy' and that Crown actions in that regard constituted a breach of its Treaty obligations.[91] In its preliminary 2007 report for the inquiry, the Tribunal found that the Crown had breached the Treaty of Waitangi by dealing exclusively with Ngāi Tahu within the Ngāi Tahu takiwa.[92]

3.6 The Waimumu Trust (SILNA) Inquiry (Wai 1090)

In 2004, the Tribunal began an urgent inquiry into the Waimumu Trust Claim (Wai 1090), a claim that is closely linked to the Southland Forests Claim (Wai 158).[93] The Waimumu Trust Claim (Wai 1090) concerned the impacts of then current Crown indigenous forestry policy on SILNA landowners in Waimumu, Murihiku/Southland. The claim was brought on 18 November 2003 by Rewi Walter Anglem, Taare Hikurangi Bradshaw, and Kemble Wingham Roderique on behalf of all beneficiaries of the Waimumu Trust. The Waimumu Trust was formed in 1984 to manage Māori land in Waimumu and is one of the trusts Mr McAnergney originally listed in his Southland Forests Claim (Wai 158). The Waimumu Trust administers 4440 hectares of indigenous forested SILNA land in central Murihiku/Southland. In 2005, there were 4166 beneficial owners of the land.[94]

The then Chairperson of the Tribunal, Chief Judge Joseph Williams, granted an urgent inquiry on 9 February 2004 determining that 'the loss complained of, if made out, is significant, even crippling' and that 'the loss would be ongoing and therefore compounding'.[95] (At the time, the loss had been quantified as just over $20 million by an expert valuation.[96])

3.6.1 Scope of the Waimumu Trust (SILNA) Urgency Inquiry (Wai 1090)

The Waimumu Trust Claim (Wai 1090) alleged the Forests Amendment Bill 1999 (now the Forests Amendment Act 2004) would cause significant economic loss by removing the claimants' ability to export timber that was not sustainably logged, and by failing to compensate for this loss. The claim was broadened in January 2004, through an amended statement of claim, to also include the impacts of the Resource Management Act 1991, the Southland District Plan in 2001, and changes to SILNA land policy in the early 2000s.[97]

For the purpose of the urgent inquiry, the Tribunal focussed on the original part of the claim regarding the Forests Amendment Bill 1999 (which would become the Forests Amendment Act 2004). This meant that for urgency purposes, the Tribunal did not undertake a broad scope inquiry into claimant

[91] Waitangi Tribunal, *Report on Northern South Island Claims 2008*, vol III, p 1365.
[92] Waitangi Tribunal, *Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa 2007*, pp 174-181.
[93] Wai 1090, #2.21.
[94] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp viii, 1.
[95] Chief Judge J V Williams, decision of the Chairperson with respect to urgency, 9 February 2004 (Wai 1090, #2.1).
[96] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 1.
[97] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 1; Rewi Walkter Anglem, Taare Hikurangi Bradshaw, and Kemble Wingham Roderique, statement of claim, 18 November 2003 (Wai 1090, #1.1); Robert Kenneth McAnergney, amended statement of claim, 6 June 1997 (Wai 158, #1.1(a)).

concerns on *all* issues raised in their claim. Instead, with a focus on the matters for urgent inquiry, the Tribunal chose to treat the further issues raised in the amended statement of claim as 'ancillary'.[98]

The Tribunal inquired and reported on the narrower issue for urgent inquiry in the following year with the *Waimumu Trust (SILNA) Report 2005.* On that issue*,* the Tribunal found the claim was not well founded.[99]

The Tribunal covering letter to the Minister for Māori Affairs and the Minister Coordinating SILNA Policy explained that approach and confirmed that the Tribunal had not inquired into wider SILNA-related claims or issues:

> In hearing this urgent claim, we have been conscious of the need not to make findings on matters which relate to other SILNA claims without hearing from those claimants, and not to treat this inquiry as if it were a full hearing of all SILNA issues. Our findings relate to the Wai 1090 claim alone.[100]

In its report, the Tribunal stated the urgency inquiry had not been able to address all issues in the Waimumu Trust Claim (Wai 1090) and because of this: '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'. However, the Tribunal also advised that, due to the prioritising of historical and urgent claims: 'It may be many years before the Tribunal is in a position to inquire further into the SILNA claims'.[101]

3.6.2 Relationship to the Southland Forests Claim (Wai 158)

Given the similarities between the Waimumu Trust Claim (Wai 1090) and the Southland Forests Claim (Wai 158), the Tribunal specifically discussed the relationship between the two claims in its report. The Tribunal noted that the Southland Forests Claim (Wai 158) is specifically excluded from the Ngāi Tahu Claims Settlement Act 1998 (except for any issues relating to the original allocation of SILNA land).[102]

The Tribunal also noted that on inquiring into the relationship between the Waimumu Trust Claim (Wai 1090) and the Southland Forests Claim (Wai 158), claimants for the Southland Forests Claim (Wai 158) advised that their claim, presumably in the context of the narrow focus of the urgency inquiry, 'was more extensive' and that the principal claimant, Mr McAnergney, did not intend to participate in the Waimumu Trust (SILNA) urgency Inquiry (Wai 1090) hearing.[103] Neither Mr McAnergney nor any of the other SILNA claimants are listed as interested parties for the inquiry.[104]

3.6.3 Summary of the Tribunal's *Waimumu Trust (SILNA) Report* findings

The Tribunal found that the first part of the claim relating to the Forests Amendment Bill 1999 (which became the Forests Amendment Act 2004) was not well founded because the Tribunal was not

[98] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 7, 8,76, 77.
[99] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*.
[100] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p viii.
[101] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 77.
[102] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 8.
[103] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 8.
[104] Mr McAnergney or any of the other claimants are not listed as interested parties for the Waimumu Trust (SILNA) Inquiry (Wai 1090) in the Tribunal Case Management system (TCM).

presented with any credible valuations of the economic loss faced by the Waimumu Trust as a direct result of the policy.[105]

As noted above, the wider claim grievances raised in the amended statement of claim concerning the Resource Management Act 1991, the Southland District Plan in 2001, and other changes to SILNA land policy in the early 2000s were all treated as 'ancillary' by the Tribunal for the purposes of the urgency inquiry and report. While the Tribunal therefore did not make findings on the wider issues, it felt it had received enough evidence to make some preliminary views 'for the guidance of claimants and the Crown in any further discussions'. The Tribunal found: 'the evidence available to us enabled well-grounded preliminary views on other [ancillary] issues, which will be of value to the claimants and the Crown in the resolution of these important claims'.[106]

The Tribunal recorded the following preliminary views:

- The Resource Management Act 1991 'is a key constraint on the claimants' ability to make an economic use of their SILNA lands', although it did not make a full finding 'because the claimants ha[d] not actually tested the parameters of this constraint by seeking a resource consent';
- The Crown's policy change to no longer treat SILNA land as compensatory and therefore no longer a special class of Māori land, 'was probably inconsistent with both the historical facts and the principles of the Treaty'. However, the Tribunal cautioned that this preliminary view was based on incomplete evidence, stating: 'we make no findings in the absence of hearing from other SILNA claimants, and with no opportunity to carry out a full inquiry into the historical facts'; and
- The Crown's actions in replacing negotiations with SILNA owners with payments under the Nature Heritage Fund 'breached the principles of the Treaty of Waitangi'.[107]

These issues are discussed further in section 5 of this paper.

3.7 Summary of remaining claim issues

In summary, there have been several Tribunal inquiries, Treaty settlements, and other developments since the Southland Forests Claim (Wai 158) was filed in 1990 that appear to have limited the scope of what remains to be inquired into from the original claim. The issues that appear to remain open for inquiry include:

- Crown indigenous forestry policy for SILNA land and the economic consequences; and
- Crown takings of SILNA land without consent or adequate compensation,

insofar as these:

- Do not relate to the original allocation of SILNA land;
- Have not previously been inquired into by the Tribunal (such as in the Ngai Tahu Inquiry (Wai 27), the Northern South Island Inquiry (Wai 785), or the Waimumu Trust (SILNA) Inquiry (Wai 1090)); and

[105] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 6, 81.
[106] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp viii, 76, 77.
[107] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 103-104.

- Have not been settled by Treaty settlement legislation (such as the Waitutu Incorporation settlement, the Ngāi Tahu settlement, or the Rakiura Māori Land Trust settlement).

4 The Claim and the current Tribunal inquiry 2014 - present

On 11 November 2014, almost ten years after the Waitangi Tribunal issued its urgency report into Waimumu SILNA lands, Mr McAnergney requested an update from the Tribunal on the status of his claim (Wai 158) and inquired into possible sources of funding for hui regarding the claim.[108] The Assistant Registrar replied that the Tribunal was 'unable to indicate when it will be able to inquire into [Mr McAnergney's] claim' and that the Tribunal did not provide funding for claimants, suggesting that he instead approach the Crown Forestry Rental Trust.[109]

Four years later, on 6 September 2018, Chief Judge Isaac appointed a Tribunal standing panel to inquire into remaining historical claims in the South-Western North Island, the South Island, and the Chatham Islands, and appointed himself as the Presiding Officer.[110] On 8 March 2019, he appointed Dr Monty Soutar and Dr Robyn Anderson as members of the inquiry panel.[111]

On 1 October 2018, Chief Judge Isaac included the Southland Forests Claim (Wai 158) on a list of 30 claims considered as possibly eligible to participate in the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800). He advised claimants of their claims' inclusion on this list and asked parties to file submissions if they considered this assessment to be incorrect.[112] Although the Tribunal did not receive submissions from counsel for the Southland Forests Claim (Wai 158), the Tribunal did receive a notice of authority to act in relation to the inquiry, which Chief Judge Isaac took 'to indicate that those claimants wish to participate in the inquiry'.[113]

The Crown's response submission of 21 December 2018 identified several claims the Crown believed raised post-allocation SILNA land issues (issues concerning SILNA land after it was originally allocated), and Crown views on which claims were eligible to participate in the Inquiry (Wai 2800). The Crown identified six claims potentially eligible as being post-allocation SILNA land claims that also raise forestry issues. These are:

- The Southland Forests Claim (Wai 158);
- The Section 3A Block XIV Tautuku Survey District (Chaslands Mistake) Claim (Wai 709);
- The Tautuku and Waikawa Lands (Resource Management) Claim (Wai 783);
- The Pohio Newton Rickus Trust SILNA Claim (Wai 994);
- The Waimumu Trust Claim (Wai 1090); and

[108] James, Waitangi Tribunal, file note, 11 November 2014.
[109] Waitangi Tribunal to Ken McAnergney, 30 January 2015.
[110] Chief Judge W W Isaac, memorandum of the Chairperson, 6 September 2018 (Wai 2800, #2.5.1).
[111] Chief Judge W W Isaac, memorandum-directions of the Presiding Officer appointing members of the panel, 8 March 2019 (Wai 2800, #2.5.3).
[112] Chief Judge W W Isaac, memorandum-directions of the Presiding Officer concerning eligibility of claims, 1 October 2018 (Wai 2800, #2.5.2).
[113] Chief Judge W W Isaac, memorandum-directions of the Presiding Office concerning eligibility of claims, 12 June 2019 (Wai 2800, #2.5.4), p 2.

- The SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim (Wai 2163).[114]

Four of those claims were not included in the current inquiry.[115] Advice from Tribunal Legal Advisors/Deputy Registrars is that the Section 3A Block XIV Tautuku Survey District (Chaslands Mistake) Claim (Wai 709) and the Tautuku and Waikawa Lands (Resource Management) Claim (Wai 783) both appear to be inactive and the Tribunal has no record of any communication from the claimants since the claims were originally registered in 1998 and 1999 respectively. The Pohio Newton Rickus Trust SILNA Claim (Wai 994) is considered a contemporary claim and the Tribunal has additionally not received any recent communication from the claimants.[116] The Waimumu Trust (SILNA) Claim (Wai 1090) is considered a contemporary claim and was partly reported on in the *Waimumu Trust (SILNA) Report 2005* (discussed above).[117]

The Crown submitted that the Tribunal should hear parts of the Southland Forests Claim (Wai 158) (along with other claims concerning SILNA forestry policy) within its economic development kaupapa inquiry. It was suggested the elements not related to forestry policy could then be heard in the current Inquiry (Wai 2800). The Crown submitted this approach 'would allow these matters [forestry policy] to be dealt with by a panel with expertise on economic development and alongside other forestry issues'.[118]

On 12 June 2019, Chief Judge Isaac directed claimants to respond to the Crown's submission by 10 July 2019.[119] Claimants for the Southland Forests Claim (Wai 158) responded but this initially was not received by the Tribunal (discussed below).[120]

On 11 December 2019, Chief Judge Isaac decided that, unless submissions were filed by 17 January 2020 seeking a different approach, the Southland Forests Claim (Wai 158) would be heard as part of the Tribunal Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800). This was because the Tribunal had received a request from claimants to be heard as part of that inquiry and not as part of a future economic development kaupapa inquiry, and because it was unknown when the Tribunal economic development kaupapa inquiry would take place.[121]

After considering submissions, Chief Judge Isaac determined that the claims to be included in the current inquiry were:

- The Southland Forests Claim (Wai 158);
- The Ngāti Rangatahi kei Rangitīkei Claim (Wai 1623);

---

[114] J R Gough and T L Hocking, Counsel for the Crown, memorandum of counsel for the Crown responding to 1 October 2018 direction of the Presiding Officer, 21 December 2018 (Wai 2800, #3.1.3), pp 12-13.

[115] These are: The Section 3A Block XIV Tautuku Survey District (Chaslands Mistake) Claim (Wai 709); The Tautuku and Waikawa Lands (Resource Management) Claim (Wai 783); and the Pohio Newton Rickus Trust SILNA Claim (Wai 994).

[116] Advice from Waitangi Tribunal Legal Advisor/Deputy Registrar, received September 2020 and 1 February 2021.

[117] Any residual historical elements of the claim are largely contextual to the core issues and are generic in nature. The Tribunal has additionally not received any recent communications from the claimants.

[118] J R Gough and T L Hocking, Counsel for the Crown, memorandum of counsel for the Crown, 21 December 2018 (Wai 2800, #3.1.3), p 12.

[119] Chief Judge W W Isaac, memorandum-directions, 12 June 2019 (Wai 2800, #2.5.4).

[120] Chief Judge W W Isaac, memorandum-directions, 11 December 2019 (Wai 2800, #2.5.5).

[121] Chief Judge W W Isaac, memorandum-directions, 12 June 2019 (Wai 2800, #2.5.4).

- The SILNA Estate Crown Forests Amendment Act 1992 (Te Aika) Claim (Wai 2163);
- The Descendants of Priscilla Muriwai Dennison Claim (Wai 2236); and
- The Geary Whānau Middle Island Half-Castes Crown Grants Act 1877 Lands Claim (Wai 2324).[122]

On the same day, 11 December 2019, the Tribunal received a Joint Memorandum of Counsel on behalf of the Southland Forests Claim (Wai 158) and the SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim (Wai 2163) claimants dated five months earlier on 10 July 2019.[123] In the memo, claimant counsel reiterated that the Southland Forests Claim (Wai 158) was eligible to participate in the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800) because it 'include[d] allegations about Crown actions that occurred after the allocation of SILNA land and prior to the 1992 historical-contemporary cut-off'.[124]

Claimant counsel also submitted that the Southland Forests Claim (Wai 158) and the SILNA Estate and Crown Forests Amendment Act 1992 (Te Aika) Claim (Wai 2163) 'should fully participate and be heard in the Wai 2800 Inquiry rather than partly adjourned to the future economic development kaupapa inquiry' for the following reasons:

- It was unknown when the economic development kaupapa inquiry would commence (the submission sets out that Mr McAnergney is elderly and has been waiting since 1990 for his claim to be heard);
- Splitting the subject matter of the claim into the two different inquiries would be an 'impossible and superficial' divide of subject matter;
- Deferring some elements of the claims would 'limit the possible redress the Wai 2800 Tribunal would be likely to recommend, as only part of the picture would be presented to the Tribunal';
- Because 'the named claimants have a legal interest in that claim … [and] … should therefore as of right have the choice of which inquiry to progress their claim if they are recognised to be eligible in more than one'; and
- Deferring some elements of the claims would obstruct the claimants' rights to development and natural justice.[125]

Following receipt of this submission, Chief Judge Isaac confirmed that the Southland Forests Claim (Wai 158) would be inquired into fully as part of the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800) because the submission was consistent with his previous direction.[126]

[122] Chief Judge W W Isaac, memorandum-directions, 11 December 2019 (Wai 2800, #2.5.5).
[123] Chief Judge W W Isaac, further memorandum-directions of Chief Judge W W Isaac concerning eligibility of claims, 18 December 2019 (Wai 2800, #2.5.6); Dr B D Gilling, G M Davidson, and R L Brown, Counsel for Claimants, Joint memorandum of Counsel, 10 July 2019 (Wai 2800, #3.1.14).
[124] Dr B D Gilling, G M Davidson, and R L Brown, Counsel for Claimants, Joint memorandum of Counsel, 10 July 2019 (Wai 2800, #3.1.14), p 2.
[125] Dr B D Gilling, G M Davidson, and R L Brown, Counsel for Claimants, Joint memorandum of Counsel, 10 July 2019 (Wai 2800, #3.1.14), pp 3-9.
[126] Chief Judge W W Isaac, further memorandum-directions (Wai 2800, #2.5.6).

On 5 August 2021, counsel for Mr McAnergney requested another update on the status of the Wai 2800 inquiry. An Assistant Registrar for the Tribunal responded that 'Wai 2800 is still in its pre-hearing and planning phase, and dates have not yet been set for the hearing of claims'.[127]

5 Existing relevant sources and potential gaps in evidence

This section assesses existing coverage of issues relating to the Southland Forests Claim (Wai 158), identifies potential gaps, and provides suggested sources for any further research that may be required. This assessment has been divided into more detailed consideration of three discrete topics relevant to the Claim:

- Topic One: Historical background to the SILNA and SILNA forests from their allocation and after the land was allocated;
- Topic Two: Alleged takings of SILNA land after 1906 without consent or proper compensation; and
- Topic Three: Crown indigenous forestry policy relating to SILNA land from 1990 and the economic consequences for SILNA owners.

Topics Two and Three represent the two major issues that appear raised by the Southland Forests Claim (Wai 158), as it remains and as outlined above in section 2.2. As also mentioned above, the claim excludes issues relating to the original allocation of land under the South Island Landless Natives Act 1906. Nevertheless, some context on the historical background to the Act and related historical developments with the SILNA lands is likely to prove useful for understanding the claimant's grievances concerning land alienation and indigenous forestry policy impacting on their land. For this reason, Topic One concerning a brief historical background to the SILNA and SILNA forests has been included as a discrete topic.

Existing published sources provide coverage of the three topics, particularly given three Waitangi Tribunal inquiries have considered SILNA-related grievances: The Ngai Tahu Lands and Fisheries Inquiry (Wai 27); The Waimumu Trust (SILNA) Inquiry (Wai 1090); and the Northern South Island Claims Inquiry (Wai 785).[128] Some potential gaps in coverage remain, which are discussed below.

5.1 Topic One: Historical background to the SILNA and SILNA forests from their allocation and after the land was allocated

5.1.1 Topic One: Overview

The South Island Landless Natives Act was passed in 1906 to grant land to Te Waipounamu/South Island Māori left landless following the extensive Crown land purchases between 1844 and 1864, including the Murihiku purchase in 1853 and the Rakiura purchase in 1864. During this time, the Crown acquired 34.5 million acres of land from Ngāi Tahu, which comprised 'most of the South Island and

[127] Email communication with Waitangi Tribunal Assistant Registrar dated 9 August 2021 and 9 November 2021.

[128] A keyword search of Waitangi Tribunal reports shows that these three are the main inquiries that cover SILNA-related issues.

more than half the land mass of New Zealand', leaving a total 37,492 acres.[129] At the time, qualifying as 'landless' meant owning less than 40-50 acres of land.[130]

Claims made by Te Waipounamu/South Island Māori led to a series of commissions and, eventually, the South Island Landless Natives Act in 1906. The Act granted 57,000 hectares of land in Te Waipounamu/the South Island to approximately 4,000 Māori individuals deemed landless. Today, SILNA lands are primarily managed through trusts and incorporations, with some being managed by the Māori Trustee.[131]

It is unclear from research undertaken for this paper what portion of SILNA land contained indigenous forest when it was granted. However, in 2009 the Ministry of Agriculture and Forestry reported on a 1999 survey that showed approximately 17,3000 hectares of SILNA land had some form of indigenous forest cover (excluding forests on Rakiura/Stewart Island and in the Waitutu and Whakapoai blocks). Most of the SILNA land that contains indigenous forest is located in the lower South Island in Rowallan Alton, West Rowallan, Tautuku-Waikawa, Hokonui-Waimumu, and Waitutu. There are also SILNA forests in South Westland, the Heaphy River area, and the outer Marlborough Sounds. According to the Ministry of Agriculture and Forestry, in 2009 SILNA forests made up '1.6 percent of all privately owned indigenous forests in New Zealand, and account[ed] for approximately 4 percent of Māori-owned indigenous forests'.[132]

Major developments after the South Island Landless Natives Act passed in 1906, include:

- The Gilfedder/Haszard Commission in 1914, which looked into how the land could be better utilised;
- The resulting amendment to the Native Land Act 1909;
- The investigation into claims relating to SILNA land by Judge Rawson in 1916-17;
- The Native Land Amendment Act 1919, which 'provided for money to be substituted for land in the case of eligible persons who missed the original allocations';
- The Native Land Amendment and Native Land Claims Adjustment Act 1923 (discussed further in section 5.2); and
- Ongoing claims for the settlement of Ngāi Tahu grievances and the Ngaitahu Claim Settlement Act 1944.[133]

Existing sources provide very good coverage of these developments and are discussed below.

5.1.2 Topic One: Existing relevant sources

The *Ngai Tahu Report 1991* provides extensive historical background to the establishment of the South Island Landless Natives Act 1906 and the original allocations of land to Māori that were considered landless. The report details the events leading up to, and some events following, the passing of the

[129] Waitangi Tribunal, *Ngai Tahu Report 1991*, vol 1, p 821.
[130] Crown Law Ofice, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)'.
[131] Ministry of Agriculture and Forestry, 'SILNA Forests: Review of the 2002 SILNA Policy and the Implementation Package', discussion document, 2009, p 6.
[132] Ministry of Agriculture and Forestry. 'SILNA Forests', pp 6-8.
[133] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', pp 10-11; Cecilia Edwards, 'Origins of Government Policy: South Island Landless Māori' (report for the Crown Law Office, Wellington, 2000) (Wai 1090, #A10).

Act in 1906. This begins with background information on the Crown land purchases in Murihiku/Southland and Rakiura/Stewart Island. The report then outlines the series of commissions that responded to calls by South Island Māori for redress over the land purchases, including: the Mackay Royal Commission 1886-87; the Joint Middle Island Native Claims Committee 1888 and subsequent committees of 1889 and 1890; and the Mackay Royal Commission 1891 and subsequent reports. After detailing the government's landless natives scheme and grants made under the South Island Landless Natives Act 1906, the report also covers the Gilfedder and Haszard Commission of Inquiry 1914.[134]

Evidence provided for the Ngai Tahu Inquiry (Wai 27) by David Armstrong on the Crown's reserve policy concerning Ngāi Tahu 1890-1944 (Wai 27, #M16), and its supporting papers (Wai 27, #M17), provide further coverage of the South Island Landless Natives Act 1906 and some key events following its enactment. This includes: the Gilfedder Haszard Commission in 1914; the Native Land Claims Commission in 1921; and the Ngaitahu Claim Settlement Act 1944.[135]

'Origins of Government Policy: South Island Landless Maori' was written by Cecilia Edwards for the Crown Law Office in 2000 (Wai 1090, #A10). The report provides an overview of SILNA policy, examines the Government's intentions behind SILNA policy, considers how SILNA policy has changed over time, and examines the relationship between SILNA policy and the settlement of Ngāi Tahu claims.

Chapter 2 sets out the origins of SILNA land policy, including:

- Early government responses to Ngāi Tahu claims;
- The first and second Mackay Commissions in 1886-1887 and 1890-1891 respectively;
- The Joint Committee reports in 1888, 1889, and 1890; and
- Landlessness claims in Marlborough, which Edwards described as 'the separate but parallel track Government embarked on in relation to the landless Maori in northern South Island'.[136]

Chapter 3 details land allocations before the South Island Landless Natives Act 1906 was passed, including:

- The Smith/Mackay Commission from 1893-1905, which began the process of allocating land to landless Māori and recommended legislation as a mechanism to issue title (this would become the South Island Landless Natives Act 1906); and
- The integration of policy with Marlborough/Buller landless Māori from around 1896, described by Edwards as a policy 'of dealing with landlessness of South Island Maori, rather than Ngai Tahu, Ngati Kuia and Rangitane' [emphasis in original].[137]

Chapter 4 details the drafting of the South Island Landless Natives Act 1906 and its passage through Parliament in 1906. Chapter 5 covers some developments from when the Act was passed to the mid-1900s that may also provide useful context to more recent SILNA policy, including:

[134] Waitangi Tribunal, *Ngai Tahu Report 1991*, vol 1.
[135] David Anderson Armstrong, evidence concerning the Crown's reserve policy concerning Ngāi Tahu 1890-1944 (Wai 27, #M16); David Anderson Armstrong, supporting papers for evidence concerning the Crown's reserve policy concerning Ngāi Tahu 1890-1944 (Wai 27, #M17).
[136] Edwards, 'Origins of Government Policy', p 26.
[137] Edwards, 'Origins of Government Policy', p 30.

- The Gilfedder/Haszard Commission in 1914 and subsequent amendment to the Native Land Act 1909;
- The investigation into claims relating to SILNA land by Judge Rawson in 1916-17;
- The Native Land Amendment and Native Land Claims Adjustment Act 1919 and the Native Land Amendment and Native Land Claims Adjustment Act 1923; and
- Ongoing claims for the settlement of Ngāi Tahu grievances and the Ngaitahu Claim Settlement Act 1944.[138]

'Report on Crown Historical Research on the South Island Landless Natives Act 1906', written by Jim McAloon in 2001 (Wai 1090, #A4) covers the political context of the South Island Landless Natives Act 1906 in slightly more detail, providing a perspective on how the Crown and Ngāi Tahu saw the purpose of the South Island Landless Natives Act 1906. McAloon examines the political context in which the Act came into being, considers how land allocations made under the Act were viewed by Ngāi Tahu and by the Crown, and provides an overview of events leading up to and following the Act's passing in 1906. The report was written for Te Puni Kōkiri/Ministry of Māori Development and Rau Murihiku Whenua Māori (the negotiating team discussed in section 3 that represented Māori owners of indigenous forests of which Mr McAnergney was a member). The report covers:

- The history of Ngāi Tahu claims from 1849-1878, beginning with petitions concerning the inadequacy of reserves and the failure of the Crown to fulfil the terms of Kemp's Deed;
- The Smith/Nairn Commission from 1878-81, which McAloon describes as '[t]he first really sympathetic and concrete response' to Ngāi Tahu claims from the Crown;[139]
- The Mackay Commissions of 1886-87 and 1890-91;
- The Joint Committees from 1888-90;
- The land allocations from 1890-1906;
- The Smith/Mackay Commission from 1893-1905;
- The passage of the South Island Landless Natives Act 1906; and
- The Gilfedder/Haszard Commission in 1914.

'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', written by the Crown Law Office in 2001 provides further information on the background to the SILNA. This includes consideration of the purpose behind the Act, the series of commissions leading up to the Act, the drafting of the Act, some limited information on the land and forests granted under the Act, and some developments after the Act was passed (such as the 1914 Inquiry and the Native Land Amendment Act 1919).[140]

The *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa 2007* and the *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008* provide further background information on the landless natives grants that will be useful for contextualising the Southland Forests Claim (Wai 158). Much like the above sources, they provide information on events leading up to the SILNA, the passing of the SILNA in 1906, and some

[138] Cecilia Edwards, 'Origins of Government Policy'.
[139] Jim McAloon, 'Report on Crown Historical Research on the South Island Landless Natives Act 1906', (report for Te Puni Kōkiri/Ministry of Māori Development and Rau Murihiku Whenua Māori, 2001) (Wai 1090, #A4), p 1.
[140] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)'.

developments after the Act's passing. They provide additional information on the relationship between Ngāi Tahu and Te Tau Ihu iwi, as well as the Te Tau Ihu iwi land allocations in Murihiku that are not covered in the Ngāi Tahu reports.

In particular, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008* provides further information on the reserves created for 'landless Māori' in Te Tau Ihu. The Tribunal recorded that nearly 10,000 acres of land in Port Adventure (Rakiura/Stewart Island) was designated for approximately 3000 Marlborough Māori in 1905. However, the Tribunal stated that the land designations were never actually made available. The Tribunal stated that the Crown considered compensating those who had been designated land in Rakiura/Stewart Island and never received it, but that nothing came of it.

Further background to the allocation of SILNA land in Murihiku/Southland and Rakiura/Stewart Island that does not need to be repeated here can be found in the *Ngai Tahu Ancillary Claims Report 1995* and the *Waimumu Trust (SILNA) Report 2005*.[141]

5.1.3 Topic One: Summary

Together, the reports outlined above provide substantial coverage of the historical background to the South Island Landless Natives Act 1906. This provides sufficient context for understanding the history and unique circumstances of SILNA land as that relates to the claimants' grievances concerning indigenous forestry policy and land alienation.

There are further sources on the Record of Inquiry that have not been reviewed for this paper but may provide useful for supplementing the sources discussed here. These can be found on the Records of Inquiry for the Ngai Tahu Inquiry (Wai 27) in the Record of Documents in various series', and the Northern South Island Claims Inquiry (Wai 785) in the Record of Documents in various series'. This includes, but is not limited to:

- Additional supporting documents to Tribunal research Vols 1,2 (Wai 27, #AB27);
- Evidence of Robert A Whaitiri, Sydney Cormack and Jim McAloon on Murihiku (Wai 27, #E1);
- Evidence of Sydney Cormack on the Murihiku reserves (Wai 27, #E16);
- Further evidence of James Peter McAloon on the Murihiku Block (Wai 27, #J2);
- Evidence of Graham John Sanders on the Murihiku and Rakiura purchases (Wai 27, #O12);
- Evidence of David James Alexander on the Murihiku and Stewart Island reserves (Wai 27, #O14(a)) and supporting papers (Wai 27, #O14(b));
- Supporting papers to evidence of David J Alexander on Otakou, Murihiku and Rakiura reserves (Wai 27, #P6);
- Evidence of David James Alexander on Otakou, Murihiku and Rakiura reserves (Wai 27, #P7);
- Evidence of Ronald Tindal on Titi Islands (Wai 27, #P8(a));
- Further evidence of David Anderson Armstrong on the Murihiku purchase (Wai 27, #P18);
- Further evidence of James Peter McAloon on Murihiku Block and Rakiura, February 1989 (Wai 27, #Q3);
- Evidence of Deborah Montgomerie on the Rakiura purchase, July 1989 (Wai 27, #U3);

[141] Claims relating to the original allocation of SILNA land in Murihiku/Southland and Rakiura/Stewart Island in the *Ngai Tahu Ancillary Claims Report 1995* include Wai 27 Claims 62, 86, 88 92, and 114.

- Report by GV Butterworth and SM Butterworth, *Review of research on Northern South Island claims*, February 1993 (Wai 785, #A21);
- Ngai Tahu casebook, 28 September 2000 (Wai 785, #B1); and
- Crown casebook (filed by Nadine Johnston), 27 March 2013 (Wai 785, #V16).

Archival sources that have been identified as potentially relevant are listed in the Appendix to this paper.

5.2 Topic Two: Alleged takings of SILNA land after 1906 without consent or proper compensation

5.2.1 Topic Two: Overview

There is less coverage of the alienation of SILNA land after 1906. Most of the information found comes from a research report, 'Landless Natives Reserves in Nelson and Marlborough', written in 1999 by David Alexander (Wai 785, #A54) and the Tribunal's *Waimumu Trust (SILNA) Report 2005.* Together these provide an overview of legislative developments that enabled SILNA land to be alienated, but do not provide information on additional specific instances of SILNA land subject to that power, that are not already reported on by the Tribunal. The relevant powers, policies, and other developments include:

- The Native Land Act 1909, which first allowed SILNA land to be alienated;
- 1909 Regulations setting out the Governor's powers to lease SILNA land on behalf of owners;
- The Native Lands Amendment Act 1914, which according to the Crown Law Office: 'reinstated the prohibition on alienation of SILNA land';
- Crown proposals in 1921-1922 to repurchase SILNA land that had not been occupied, which did not eventuate;
- The Native Land Amendment and Native Land Claims Adjustment Act 1923, which allowed SILNA land to be alienated again; and
- Appeals by some SILNA landowners to sell their interests in the Port Adventure block to the Crown in 1924, which also did not eventuate.[142]

Sources relevant to these developments are discussed in more detail below.

5.2.2 Topic Two: Existing relevant sources

The most recent and most extensive report considering the powers and policies concerning SILNA land alienation appears to be David Alexander's 1999 report, 'Landless Natives Reserves in Nelson and Marlborough' (Wai 785, #A54). Although the focus is on the northern South Island area and does not provide detail of specific instances of alienation of SILNA land in Murihiku/Southland, the report provides a useful outline of relevant legislative developments enabling the alienation of SILNA lands, along with Crown proposals to purchase land on Rakiura/Stewart Island that did not eventuate. In his summary of the report, Alexander states: 'Since being granted in 1910 the [SILNA] lands have been

[142] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', Appendix II; David Alexander, 'Landless Natives Reserves in Nelson and Marlborough', August 1999 (Wai 785, #A54); Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*; Edwards, 'Origins of Government Policy'.

treated no differently to other Maori owned land. They have been able to be partitioned, alienated (for long term lease or by sale), and become multiply owned'.[143]

Alexander's report reveals major mechanisms by which SILNA land could be regularly alienated. Firstly, Alexander provides an overview of how succession laws, along with the Native Land Act 1909, enabled the removal of restrictions against alienation and allowed SILNA land to be sold under certain conditions. Secondly, Alexander explains how the Native Lands Amendment Act 1914 gave the Governor 'power to vest any lands awarded to landless Maori in the local Land Board in trust for the beneficial owners. The Land Board then had the power to lease out the lands'. Alexander discusses examples of SILNA land in Marlborough that was vested in the local Land Board but does not provide examples of similar experiences for land in Murihiku/Southland (that district being outside his report scope). Alexander explains that the Native Lands Amendment Act 1914 was amended by 1916 so that 'only the control of the landless native lands, rather than the land itself, could be vested in the Land Boards'.[144]

Thirdly, Alexander's report outlines proposals by the Crown in 1921-1922 to purchase SILNA land that had not been occupied, with compensation to be set as though the land had been taken under the Public Works Act. The Port Adventure Block on Rakiura/Stewart Island was considered as part of these proposals due to the value of its forest. Alexander states that, in the end, the Crown purchases did not go ahead because of insufficient finances being available.[145]

One year after deciding not to go ahead with that proposal, the Crown passed the Native Land Amendment and Native Land Claims Adjustment Act 1923. That Act included power for the Crown to take any unoccupied SILNA land, subject to the payment of compensation. However, Alexander states that never happened either, also due to financial constraints. Alexander states that Crown proposals to acquire unoccupied SILNA land were 'laid to rest' in 1929 when the Crown moved to offering financial help for SILNA landowners to develop their land.[146]

Finally, Alexander's report provides an overview of the history of the Port Adventure (Stewart Island) Reserve from 1898-1930 as illustration of his wider consideration of Crown policies and legislation concerning SILNA lands. That includes information on appeals by some SILNA landowners to sell their interests in the Port Adventure block to the Crown in 1924, given they could not occupy it. As discussed above, the Crown had shown interest in purchasing the block due to the value of its forest. However, Alexander states that the idea was again 'shelved', this time because the Crown considered acquisition in this case too complex.[147]

The Tribunal's *Waimumu Trust (SILNA) Report 2005* provides additional background information on the legislative changes that allowed SILNA land to be alienated and unoccupied SILNA land to be taken by the Crown. The Tribunal notes that the Native Land Amendment and Native Land Claims Adjustment Act 1923 allowed SILNA land to be alienated, but that it is 'not clear on the evidence before the Tribunal when the SILNA lands could finally be alienated as if they were ordinary Maori land'. The Tribunal describes the 1923 Act as allowing SILNA land to be sold or exchanged freely to the

[143] David Alexander, 'Summary of report of David Alexander', 21 March 2003 (Wai 785, #A54(a)), p 2.
[144] Alexander, 'Landless Natives Reserves in Nelson and Marlborough', pp 120-121.
[145] Alexander, 'Landless Natives Reserves in Nelson and Marlborough'.
[146] Alexander, 'Landless Natives Reserves in Nelson and Marlborough', p 128.
[147] Alexander, 'Landless Natives Reserves in Nelson and Marlborough', p 410.

Crown or to private owners, although the sale of SILNA land to private owners still required consent from the Governor. The 1923 Act also allowed the Crown to 'resume' (take) unoccupied land, with compensation given to owners under the Public Works Act 1908.[148]

In its report, the Tribunal also discusses SILNA land in Hokonui (Waimumu) alienated between 1923-2004. The Tribunal states that by the year 2004, nearly two-thirds of SILNA land in Hokonui had been permanently alienated 'either to the Crown for forestry and other purposes (TV transmitters, for example) or to private owners'.[149] It is unclear whether this is the land Mr McAnergney refers to in the Southland Forests Claim (Wai 158). Nor does the report outline whether the alienations occurred through willing land transactions or by compulsory taking or 'without the consent of the owners', as is alleged in the claim.[150]

'Origins of Government Policy: South Island Landless Maori', written by Cecilia Edwards in 2000 (Wai 1090, #A10) provides background information on the legislative changes that allowed SILNA land to be alienated, including through the Native Land Act 1909. It does not, however, provide specifics about how this was put into practice, so its use is more contextual in providing additional background on powers and policies concerning the land alienation alleged in the Southland Forests Claim (Wai 158). Chapter 5 outlines the Government's SILNA land policy after 1906, including:

- Regulations in 1909 setting out the Governor's powers to lease SILNA land on behalf of owners; and
- The repeal of the South Island Landless Natives Act 1906 by the Native Land Act 1909, which allowed 'Maori [to] alienate or dispose of their interest in land the same way as Europeans' and allowed the Crown to dispose of SILNA land remaining in Crown control, so long as compensation was given to the beneficiaries.[151]

'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', written by the Crown Law Office in 2001, provides some additional general information on overall SILNA land alienation, including that by 2001: 'It is not known how much SILNA land has been alienated but it appears that 17-20 percent of land originally allocated [under the SILNA] in Southland has been alienated'.[152]

Finally, the Tribunal report *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008* provides further details of some SILNA land blocks alienated in Marlborough and how this process occurred but does not mention examples of SILNA land alienated in Murihiku/Southland.[153]

5.2.3 Topic Two: Summary

In summary, there is substantial source material on Crown legislation and policies impacting on SILNA lands generally. There is less information on how those policies and practices were implemented in practice for SILNA lands and even less for SILNA lands in Murihiku/Southland, with the exception of

[148] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 23, 90.
[149] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 29.
[150] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 29; Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1), p 1.
[151] Edwards, 'Origins of Government Policy: South Island Landless Maori', p 57.
[152] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', Appendix II.
[153] Waitangi Tribunal, *Report on Northern South Island Claims 2008*, vol II, pp 672, 1365.

some limited detail on Hokonui, Waimumu and the Port Adventure (Stewart Island) Reserve. There is similarly limited information on instances within those SILNA lands subject to the Southland Forests Claim (Wai 158) that were alleged to have been taken without consent or proper compensation.

Further information would be required to determine any instances of SILNA land alienation after 1906 that have not already been reported on and settled (as identified in this paper), by what means any alienations occurred, the level of owner consent, and whether adequate compensation was provided.

Sources that have not been reviewed for this paper but could provide more detailed information on blocks still subject to the claim include those filed on the Tribunal Record of Inquiry for the Ngai Tahu Inquiry (Wai 27) in the Record of Documents A and AB series, and the Tribunal Northern South Island Claims Inquiry (Wai 785) in the Record of Documents A series. This includes, but is not limited to:

- Research undertaken by Waitangi Tribunal staff on the Murihiku Ancillary claims, 1 November 1991 (Wai 27, #AB24) [primary sources only];
- Research undertaken by Waitangi Tribunal staff on the Rakiura Ancillary claims (Wai 27, #AB25) [primary sources only];
- Report by Hilary Anne Mitchell and Maui John Mitchell, *Land Purchases from iwi, Land Court Judgments Iwi Manawhenua*, March 1992 (Wai 785, #A10);
- Report by Miriam Clark, *Land Alienation of Ngati Tama Manawhenua Ki Te Tau Ihu 1855-1999*, September 1999 (Wai 785, #A49); and
- Revised report by Hilary Anne Mitchell and Maui John Mitchell, *Land Purchases, Court Judgments, Iwi Manawhenua*, 1999 (Wai 785, #A64).

Archival sources listed in the Appendix accompanying this paper may also assist.

5.3 Topic Three: Crown indigenous forestry policy relating to SILNA land from 1990 and the economic consequences for SILNA owners

5.3.1 Topic Three: Overview

Existing sources provide good coverage of government forestry policies from the 1980s to the mid-2000s, as well as their impacts on SILNA forest owners. As discussed earlier, research undertaken for this claim assessment strongly suggests that the indigenous forestry policy referred to in the Southland Forests Claim (Wai 158) was a policy announcement in March 1990 that the Government would ban the export of non-sustainable indigenous forest produce (timber, logs, or woodchips), implemented in July 1990 through export regulations under the Customs Act 1966. Sources on this topic show there have been further developments since this initial policy, including:

- The Forests Amendment Act 1993;
- A 1999 High Court decision that the regulations were unlawful;
- Changes in government SILNA forestry policy from 2000;
- The Southland District Plan 2001 made under the Resource Management Act 1991; and
- The Forests Amendment Act 2004.

These developments are discussed in more detail below.

5.3.2 Topic Three: Existing relevant sources

The Tribunal's *Waimumu Trust (SILNA) Report 2005* provides a thorough overview of government SILNA forestry policies from the 1980s to the mid-2000s, and their impacts on SILNA forest owners in Waimumu that are likely to apply to other SILNA forest owners. The report also covers developments with negotiations and settlements between the Crown and some SILNA forest owners since the Southland Forests Claim was filed in 1990 (discussed earlier in section 3).

The report outlines how the Government faced public pressure in the 1980s to conserve indigenous forests across the country and responded with efforts to regulate logging. According to the Tribunal, the Government 'develop[ed] the policy objective of maintaining or enhancing, in perpetuity, the existing area of indigenous forest through protection, sustainable management, or reforestation with indigenous species'.[154]

In March 1990 the Government introduced a ban on exporting indigenous forest produce (timber, logs, or woodchips) that was not certified as sustainable, implemented through July 1990 regulations under the Customs Act 1966. The Tribunal states that:

> The policy also provided incentives for private owners to conserve and protect their forests, which included:
>
> - the contestable forest heritage fund (later renamed the nature heritage fund), to encourage voluntary agreements with the Crown to protect forests; and
> - Nga Whenua Rahui, a contestable 'trust fund' to assist owners of Maori land to protect their indigenous forests.[155]

As discussed above in section 3, the Government then initiated discussions with Māori indigenous forest owners, through the Cabinet Committee on Treaty of Waitangi Issues, about possible compensation, with negotiations underway by June 1990.[156]

The Tribunal found, in its *Waimumu Trust (SILNA) Report 2005*, that from 1990, the Minister of Customs continued to permit the export of unsustainably harvested indigenous wood products 'as a transitional measure'.[157]

In 1992 the Government proposed the Forests Amendment Bill, which would require all privately-owned indigenous forests to be milled sustainably. After meeting with Rau Murihiku Whenua Maori, the Government agreed to exclude forests on SILNA land from the Bill and continue negotiating with Maori landowners in order 'to reach an agreement to protect most of the land covered by the [Forests] Act'. The Forests Amendment Act 1993 passed with sustainability exemptions for four categories of forest, including forests on SILNA land. It should be noted that although SILNA landowners were now exempt from sustainability provisions under the Forests Amendment Act 1993, they were still subject to the export ban under the Customs Act 1966 and other restraints under the Resource Management Act 1991.[158]

---

[154] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 31.
[155] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 31.
[156] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 31.
[157] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005* (Wellington: Legislation Direct, 2005), p 33.
[158] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 34, 309-310.

The report covers the 1999 High Court decision that the export ban on indigenous forest produce was unlawful. In 1997, Alan Johnston Sawmilling Ltd filed a judicial review of the 1990 regulation banning the export of indigenous forest produce from forests on SILNA land. Alan Johnston Sawmilling Ltd had been declined a number of export permits and, as a result, had a stockpile of woodchips from SILNA forests in the Rowallan Alton district. Following the High Court ruling, the Government announced a policy to negotiate with groups of SILNA landowners with the intent of 'bringing their forests under the sustainable management regime of the 1993 [Forests Amendment] Act voluntarily rather than legislating them under it compulsorily'. The Government allocated nearly $20 million for this and, in the meantime, also offered a voluntary moratorium.[159]

The Tribunal notes that SILNA land policy was 'extensively revised' after the change of government in 1999. Firstly, the government no longer considered the provision of SILNA land to the original owners as 'compensatory' and therefore a special category of land. Secondly, Government policy changed from a focus on 'achieving sustainable forestry management by negotiated settlements' to encouraging sustainability through providing grants 'to develop sustainable development plans and streamline consent processes'.[160]

As set out in the 2001 Crown Law Office report, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', the Southland District Council had proposed a district plan in 1994 under the Resource Management Act 1991 to restrict the logging of indigenous forests in Southland by making it a 'controlled activity' that required resource consent.[161] The Māori Trustee, on behalf of many SILNA landowners, appealed the rule to the Planning Tribunal (which later became the Environment Court). The Crown argued that SILNA land was never granted as 'compensation' and therefore the Government did not owe SILNA landowners further compensation for their economic losses. The Court accepted the Crown's argument and upheld the Southland district plan, which came into force in 2001.[162]

The Tribunal *Waimumu Trust (SILNA) Report 2005* records further changes in government SILNA forestry policy occurred with the Forests Amendment Act 2004. The Act:

- Banned the export of indigenous forest woodchips and logs (while allowing the export of indigenous timber and 'finished products');
- Removed the exemption of indigenous forests on SILNA land from the export ban and prohibited compensation for owners; and
- Allowed SILNA landowners to sell unsustainably harvested indigenous forest produce in the domestic market (as long as it was also allowed under the Resource Management Act 1991).[163]

In place of negotiating with owners on compensation payments, the new policy implemented conservation covenants with the Nature Heritage Fund, where owners could be granted a payment based on the conservation value of the land, as opposed to the timber (or lost opportunity) value acknowledged in the Waitutu and Rakiura settlements. $16.1 million was set aside for conservation

[159] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 37-38.
[160] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 40.
[161] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)'; Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*.
[162] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 44-45.
[163] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 42, 76.

covenants. According to the Tribunal, the conservation value 'is much lower than the timber value and is limited to a share of a fixed sum which [would run] out in 2009'. Payments under the conservation covenants would be exempt from income tax. The Government also extended the voluntary moratorium until 2005.[164]

The Government identified forests on SILNA land in Waitutu, Tautuku-Waikawa, and West Rowallan (land areas referred to in the Southland Forests Claim (Wai 158)) as priorities for conservation covenants and began discussions with the owners. The Tribunal stated that these owners 'have not been quick to take up this option'. At the time of writing in 2005, five sections had been 'secured', including four sections in the Rowallan block and one in the Hokonui block. In 2003, the Government also announced that a 'second phase' of conservation covenants would go ahead for 'other SILNA forests of lower conservation value'.[165] Therefore, the commercial opportunities available to indigenous forest owners in Murihiku/Southland at the time the *Waimumu Trust (SILNA) Report 2005* was written were:

- Sustainable logging under the Resource Management Act 1991; or
- Payment for a conservation covenant from the Nature Heritage Fund.

The Crown Law Office report of 2001 on the history of government policy regarding SILNA lands provides further information on forestry policy and the consequences for SILNA forest owners.[166] This includes SILNA forests being 'accorded a special status' when the export ban on indigenous woodchip was approved in June 1990. The Crown Law Office stated:

> - From 1990 to 1995 SILNA forests were exempt on a case by case basis from the Customs Act regulation banning the export of indigenous woodchips.
> - Since 1993 SILNA forests have been exempted from the export and milling controls, and the requirement for sustainable management, introduced into the Forests Act 1949 by an amendment in 1993.[167]

As discussed above, the Tribunal noted in its *Waimumu Trust (SILNA) Report 2005* that SILNA landowners were still subject to the export ban under the Customs Act 1966 and other restraints under the Resource Management Act 1991.[168]

Jim McAloon's 2001 report on the Crown's Historical Research report discusses the Crown's argument that the granting of SILNA land was a 'charitable measure' and separate from Ngāi Tahu's broader claims, thus justifying the Crown position that forest on SILNA land should be treated the same as forest on any other private land:

> The Crown Law position, in essence, is that because Ngai Tahu insisted that the South Island Landless Natives Act 1906 and the allocations under that Act were no settlement of Ngai Tahu

[164] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 42-43, 99.
[165] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, p 43.
[166] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', p 3.
[167] Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', p 3.
[168] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 34, 309-310.

> claims, the land allocated under that Act has no special status and native forest on that land should be subject to the same regulatory regime as that on other privately-owned land.[169]

Without referring directly to the Southland Forests Claim (Wai 158), McAloon considers whether SILNA landowners expected to benefit financially from the timber on their land. He argues that the Gilfedder/Haszard Commission demonstrated that the owners of SILNA land did indeed expect to be able to log the forests and receive the financial gains. He states:

> It seemed clear that, whatever the modern view of the desirability of logging timber such as that found on the Landless Natives blocks, there was a clear expectation that the grantees of these lands should derive financial benefit from the timber on the lands. It seems, in fact, that the recommendation of the Gilfedder-Haszard Commission directly disproves the Crown's attempt to deny the proposition that "one of the arguments for special treatment of the SILNA forests is that these land were intended to form an 'economic base', and therefore any limitation on logging would conflict with this founding principle.["] What is clear from the Gilfedder-Haszard Commission is that the Ngai Tahu owners of the Landless Natives blocks expected to derive economic benefit from the land, and this was clearly expected to include logging.[170]

As discussed above in section 3.3, The Tribunal *Ngai Tahu Ancillary Claims Report 1995* also provides information on forestry policy developments impacting SILNA owners in Wairaurahiri that are likely applicable to other SILNA forest owners. These are outlined in the discussion for Claim 89, which includes, for example, impacts of the Resource Management Act 1991 and the Forests Amendment Act 1993 on SILNA landowners.[171]

5.3.3 Topic Three: Summary

In summary, existing sources provide useful coverage of government forestry policies and their impacts on SILNA forest owners that are likely relevant context to the Southland Forests Claim (Wai 158). However, there are some gaps, including:

- Information on indigenous forestry policy after the *Waimumu Trust (SILNA) Report* was published in 2005; and
- The economic and other consequences of indigenous forestry policies for SILNA landowners.

Further information will therefore be needed to demonstrate economic losses suffered by the claimants, along with any important forestry policy developments since 2005.

It is important to note again in this context that the Tribunal, in the *Waimumu Trust (SILNA) Report 2005*, did not uphold the narrower claim issues heard under urgency that the Waimumu Trust had faced significant loss as a direct result of government policy because it was not presented with any credible valuations of the economic loss faced by the Waimumu Trust. Since that time, it is possible further information might have become available, but this was not investigated in the preparation of this this paper.

---

[169] McAloon, 'Report on Crown Historical Research on the South Island Landless Natives Act 1906', p 35.
[170] McAloon, 'Report on Crown Historical Research on the South Island Landless Natives Act 1906', p 35 citing Crown Law Office, 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)', p 9.
[171] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, pp 307-310.

The Tribunal in that urgent inquiry also noted that further research would be necessary for any general inquiry into claims relating to SILNA land and that with the urgency focus it did not have the resources to undertake research or even examine all of the documents supplied to the Tribunal during the Waimumu Trust (SILNA) Inquiry. In its *Waimumu Trust (SILNA) Report* the Tribunal stated:

> The Tribunal's limited resources preclude the completion of original research and a line-by-line analysis of all the documents supplied. Those steps would of course be essential to the preparation of an accurate and complete picture appropriate for an inquiry into a general SILNA claim.[172]

Sources that have not been reviewed for this paper but may provide useful are located on the Tribunal Record of Inquiry for the Ngai Tahu Inquiry (Wai 27) in the Record of Documents AB series, and as discussed above, potentially all documents on the Record of Inquiry for the Waimumu Trust (SILNA) Inquiry. This includes, but is not limited to:

- Research undertaken by Waitangi Tribunal staff on the Murihiku Ancillary claims, 1 November 1991 (Wai 27, #AB24) [primary sources only];
- Research undertaken by Waitangi Tribunal staff on the Rakiura Ancillary claims (Wai 27, #AB25) [primary sources only];
- Report by Doug McPhail, 'Constraints and Opportunities for South Island Landless Natives Act (SILNA) 1906 Indigenous Forest Utilisation', August 2002 (Wai 1090, #A3); and
- Briefing paper for the Local Government and Environment Select Committee on the Economic Values of SILNA Forests (Wai 1090, #A30).

Archival sources listed in the Appendix accompanying this paper may also assist.

6 Overall summary of existing evidential coverage and potential gaps in coverage

In summary, existing sources provide:

- Topic One: Substantial coverage of the historical background to the South Island Landless Natives Act 1906 and SILNA forests from their allocation and after the land was allocated;
- Topic Two: Limited coverage of alleged takings of SILNA land after 1906 without consent or proper compensation; and
- Topic Three: Substantial coverage of Crown indigenous forestry policy relating to SILNA land from 1990, with gaps in:
    - Coverage of Crown indigenous forestry policy relating to SILNA land after 2005 (when the Tribunal published its *Waimumu Trust (SILNA) Report*); and
    - Alleged economic consequences for SILNA landowners.

The following information will therefore likely be needed for an inquiry into the Southland Forests Claim (Wai 158):

[172] Waitangi Tribunal, *Waimumu Trust (SILNA) Report 2005*, pp 6, 78, 81.

- Information on SILNA land alienations that occurred 'without owner consent', including compulsory takings and Crown purchases of SILNA land from 1906 to the present, within areas that have not already been reported on by the Tribunal and settled;
- Any relevant Crown indigenous forestry policy developments after 2005; and
- Economic and other consequences of Crown indigenous forestry policies for SILNA landowners.

Claim Assessment Bibliography

Official publications

- Legislation:

South Island Landless Natives Act 1906.

Public Works Act 1908.

Native Land Act 1909.

Native Lands Amendment Act 1914.

Native Land Amendment and Native Land Claims Adjustment Act 1919.

Native Land Amendment and Native Land Claims Adjustment Act 1923.

Ngaitahu Claim Settlement Act 1944.

Maori Affairs Act 1953.

Customs Act 1966.

Resource Management Act 1991.

Forests Amendment Act 1993.

Te Ture Whenua Maori Act 1993.

Waitutu Block Settlement Act 1997.

Ngāi Tahu Claims Settlement Act 1998.

Tutae-Ka-Wetoweto Forest Act 2001.

Forests Amendment Act 2004.

Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairua Claims Settlement Act 2014.

- Deeds of Settlement

Te Rūnanga o Ngāi Tahu and Her Majesty the Queen. *Deed of Settlement: Section 1*. New Zealand Government, 1997, https://www.govt.nz/treaty-settlement-documents/ngai-tahu/.

Correspondence to the Waitangi Tribunal

A G McHugh, Deputy Chief Judge, Māori Land Court to Timothy Te Aika. 9 July 1991.

Alton/Rowallan meetings minutes. 30 August 1991. Arowhenua Marae, Temuka.

Brian Roche, Chief Negotiator, Ngai Tahu Claims, Office of Treaty Settlements to Mr E J Palmer, the Trustees of Tautuku Block X Section 3C Trust. 21 February 1997.

E J Palmer to the Registrar, Waitangi Tribunal. 23 September 1997. 'Waitangi Tribunal Claim Wai 158'.

E J Palmer to the Registrar, Waitangi Tribunal. 30 September 1997.

Geoff Melvin, Registrar (acting), Waitangi Tribunal to Alan Groves. 2 May 1997. 'Wai 158: Southland Indigenous Forests Claim'.

Geoff Melvin, Registrar, Waitangi Tribunal to David Parker, Anderson Lloyd. 3 August 1997. 'Wai 158: Southland Forests claim'.

George Ryan, Chairman, Rakiura Maori Land Trust to Waitangi Tribunal. 26 January 1997.

James, Waitangi Tribunal. File note. 11 November 2014.

Janett Associates. 'Submission to Ministers of the Environment and Conservation on Indigenous Forest Policy by Murihiku Forest Owners'. [Not dated.]

John Delamare, Manager, Claims & Negotiations, Department of Justice to Deputy Chief Judge A G McHugh, Waitangi Tribunal. 3 February 1992.

Kim Skelton, Assistant Registrar, Waitangi Tribunal to Mr E J Palmer. 4 December 1997. 'Claims to the Waitangi Tribunal concerning lands in Southland'.

Māori Land Court minutes. 18 September 1991. 74 South Island MB 104-108. Invercargill.

Māori Land Court minutes. 19 September 1991. 74 South Island MB 109-111. Invercargill.

Maori Owners of Indigenous Forests meeting minutes. 21 April 1990. Ascot Park Motor Hotel, Invercargill.

Margaret Dugdale for Director, Office of Treaty Settlements to Moana Murray, Claims Administrator, Waitangi Tribunal. 26 July 1999. 'Wai 158 – Southland Forests Claim'.

Martin R. McColgen to Tom Benion, Registrar, the Waitangi Tribunal. 3 December 1991.

R. K. McAnergney, Murihiku Maori Land Owners Negotiation Group to Mr Parou Tupangaia, Maori Land Information Office, Department of Justice. 16 August 1990.

S Cormack to the Registrar, Department of Justice. 24 January 1992.

S J Hadfield, Deputy Registrar, Māori Land Court to Mr M Colgan. 10 July 1991. 'Indigenous Forest Policy – Rowallan Alton : File TEW 98/1/5'.

Timothy Te Aika to Judge McHugh, Deputy Chief Judge, Māori Land Court. 28 June 1991.

Waitangi Tribunal file note. 30 October 1997.

Waitangi Tribunal to Ken McAnergney. 30 January 2015.

Unsigned 'Revised Framework Agreement on Southland Indigenous Forest Allocated to Maori Landowners under 1906 Legislation'. September 1990 [no further information given].

Evidence filed on the Waitangi Tribunal Record of Inquiry

- Ngai Tahu Inquiry (Wai 27)

Armstrong, David Anderson. 'Evidence concerning the Crown's reserve policy concerning Ngāi Tahu 1890-1944' (Wai 27, #M16).

Armstrong, David Anderson. 'Supporting papers for evidence concerning the Crown's reserve policy concerning Ngāi Tahu 1890-1944' (Wai 27, #M17).

- Northern South Island Claims/Te Tau Ihu o Te Waka a Maui Inquiry (Wai 785)

Alexander, David James. 'Landless Natives Reserves in Nelson and Marlborough'. August 1999 (Wai 785, #A54).

Alexander, David James. 'Summary of report of David Alexander'. 21 March 2003 (Wai 785, #A54(a)).

- Waimumu Trust (SILNA) Inquiry (Wai 1090)

Edwards, Cecilia. 'Origins of Government Policy: South Island Landless Māori'. Report for the Crown Law Office. Wellington, 2000 (Wai 1090, #A10).

McAloon, Jim. 'Report on Crown Historical Research on the South Island Landless Natives Act 1906'. Report for Te Puni Kōkiri/Ministry of Māori Development and Rau Murihiku Whenua Māori, 2001 (Wai 1090, #A4).

Waitangi Tribunal reports

Waitangi Tribunal. *Ngai Tahu Ancillary Claims Report 1995*. Wellington: Brookers Ltd, 1995.

Waitangi Tribunal. *Ngai Tahu Report 1991*. 3 vols. Wellington: Brooker and Friend Ltd, 1991.

Waitangi Tribunal. *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa 2007*. Wellington: Legislation Direct, 2007.

Waitangi Tribunal. *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008.* 3 vols. Wellington: Legislation Direct, 2008.

Waitangi Tribunal. *Waimumu Trust (SILNA) Report 2005.* Wellington: Legislation Direct, 2005.

Statements of claim, memoranda, directions, and submissions filed on the Waitangi Tribunal Record of Inquiry

- The Southland Forests Claim (Wai 158)

Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1).

Robert Kenneth McAnergney, amended statement of claim, 6 June 1997 (Wai 158, #1.1(a)).

Chief Judge E T J Durie, memorandum-directions of Tribunal directing Registrar to register and defer claim, 27 August 1990 (Wai 158, #2.1).

Owners and Trustees of Alton and Rowallan blocks, letter concerning Wai 158 and authority of Robert Kenneth McAnergney, 27 November 1991 (Wai 158, #2.2).

Deputy Chief Judge A G McHugh, memorandum-directions of Tribunal concerning statements received from owners and trustees of Alton and Rowallan blocks, 14 January 1992 (Wai 158, #2.3).

- The Waimumu Trust (SILNA) Claim (Wai 1090)

Rewi Walkter Anglem, Taare Hikurangi Bradshaw, and Kemble Wingham Roderique, statement of claim, 18 November 2003 (Wai 1090, #1.1).

Rewi Walkter Anglem, Taare Hikurangi Bradshaw, and Kemble Wingham Roderique, amended statement of claim, 16 January 2004 (Wai 1090, #1.1(a)).

Chief Judge J V Williams, decision of the Chairperson with respect to urgency, 9 February 2004 (Wai 1090, #2.1).

Chief Judge J V Williams, memorandum-directions of the Chairperson appointing a Presiding Officer, 24 May 2004 (Wai 1090, #2.21).

- The Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800)

Chief Judge W W Isaac, memorandum of the Chairperson appointing a standing panel to inquire into remaining historical claims in the south-western North Island, the South Island and the Chatham Islands, 6 September 2018 (Wai 2800, #2.5.1).

Chief Judge W W Isaac, Appendix A: Map of the included inquiry districts, 6 September 2018 (Wai 2800, #2.5.1(a)).

Chief Judge W W Isaac, memorandum-directions of the Presiding Officer concerning eligibility of claims, 1 October 2018 (Wai 2800, #2.5.2).

Chief Judge W W Isaac, memorandum-directions of the Presiding Officer appointing members of the panel, 8 March 2019 (Wai 2800, #2.5.3).

Chief Judge W W Isaac, memorandum-directions of the Presiding Office concerning eligibility of claims, 12 June 2019 (Wai 2800, #2.5.4).

Chief Judge W W Isaac, memorandum-directions of Chief Judge W W Isaac concerning eligibility of claims, 11 December 2019 (Wai 2800, #2.5.5).

Chief Judge W W Isaac, further memorandum-directions of Chief Judge W W Isaac concerning eligibility of claims, 18 December 2019 (Wai 2800, #2.5.6).

J R Gough and T L Hocking, Counsel for the Crown, memorandum of counsel for the Crown responding to 1 October 2018 direction of the Presiding Officer, 21 December 2018 (Wai 2800, #3.1.3).

Dr B D Gilling, G M Davidson, and R L Brown, Counsel for Claimants, Joint memorandum of Counsel on behalf of Wai 158 and Wai 2163 responding to the Tribunal direction of 12 June 2019 and the Crown memorandum of 21 December 2018, 10 July 2019 (Wai 2800, #3.1.14).

- Government publications

Crown Law Office. 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)'. April 2001 [provided by the Crown Law Office].

Department of Conservation. 'Southland rainforest permanently protected'. Department of Conservation, Te Papa Atawhai, media release, 10 October 2019. https://www.doc.govt.nz/news/media-releases/2019/southland-rainforest-permanently-protected/, accessed 5 February 2021.

Ministry of Agriculture and Forestry. 'SILNA Forests: Review of the 2002 SILNA Policy and the Implementation Package'. Ministry of Agriculture and Forestry discussion document, 2009. Available from https://www.mpi.govt.nz/dmsdocument/5176/direct, accessed 5 February 2021.

Websites

Citizens Advice Bureau. 'Waitutu Incorporation Management Committee'. Citizens Advice Bureau website. https://www.cab.org.nz/service-provider/KB00024551, last modified 7 May 2019.

Rakiura Maori Lands Trust. 'Lords River Management Plan'. Rakiura Maori Lands Trust website. https://www.rmlt.co.nz/index.php?page=1615, accessed 1 February 2021.

Appendix: Possible relevant sources held at Archives New Zealand (accessed through online 'Archway' search)

AADS Department of Lands and Survey, Head Office; AAQU Department of Lands; ABWN Land Information New Zealand, National Office; ACGT Department of Lands and Survey, Head Office [record group]; BAPP Land Information New Zealand, Hamilton Regional Office

AADS W3562/299 22/1099/2 [4] South Island landless natives – Southland, 1928-1934

AADS W3562/299 22/1099/12 South Island landless natives - Orbell, James W., Orbell, John Arthur, Orbell, Mary Emma, Orbell, Edward - Claim to Sec. [Section] 5, Block XIII - Rowallan S. D. [Survey District], 1929

AADS W3562/298 22/1099 [4] South Island landless natives, 1915-1919

AADS W3562/298 22/1099 [5] South Island landless natives, 1916-1921

AADS W3562/325 22/2258 [3] Landless natives - South Island, 1892-1898

AADS W3562/325 22/2258 [4] Landless natives - South Island, 1898-1905

AADS W3562/325 22/2258 [5] Landless natives - South Island, 1890-1925

AADS W3562/325 23132/31 - [22/2258] [2] Landless natives - Claims, South Island, 1894-1895

AAQU 889 W3428/680 22/1099/2 South Island Landless Natives - Southland District, 1934-1968

AAQU 889 W3428/680 22/1099/3 South Island Landless Natives, 1914-1930

ABWN 6095 W5021/570 22/1099 [1] South Island Landless Natives - General File, 1924-1987

ABWN 6095 W5021/570 22/1099/2 [2] Southland Land District - South Island Landless Natives - Southland District, 1970-1974

ABWN 6095 W5021/570 22/1099/3 [1] South Island Landless Natives – Claims, 1920-1926

ABWN 6095 W5021/570 22/1099/8 [2] Marlborough Land District - South Island Landless Natives, 1935-1973

ABWN 6095 W5021/571 22/1099/15 [1] Southland Land District - Wellman W R Ashburton - Section 6 Block XIV, Waitutu Survey district, Granted under South Island Landless Natives Act to Wellman family, 1939-1957

ABWN 7609 W5021/831 39870 [1] Southland Land District - South Island Landless Natives - Land in Block IV, Aparima Hundred 1898-1966

ABWN 7609 W5021/831 39882 [1] South Island Landless Natives, 1907-1909

ABWN 7611 W5021/847 1910/413 The South Island Landless Natives Act 1906, 1910

ABWN 8787 W5280/190 Maori Land Court Minute Book - Landless Natives Royal Commission [Walter Edward Rawson, Commissioner], 1917

ABWN 8923 W5278/1 South Island Landless Natives - Alphabetical list of Owners, 1895

ABWN 8923 W5278/66 221.1 List of Awards to Landless Natives in the Middle Island, 1902-1930

ABWN 8923 W5278/66 221.2 List of Awards to Landless Natives in the Middle Island, 1902-1930

ABWN 8923 W5278/67 Papers relating to Judge Rawson's Report on South Island Landless Natives, 1918

ABWN 8923 W5278/85 229.1 Register of Maori Titles Issued Under Various Acts - Middle Island, 1886

ABWN 8923 W5278/87 Native Land Register South Island Landless Natives, c.1900

ABWN 8923 W5278/88 South Island Landless Natives Claims Register, 1889-1917

ABWN 8923 W5278/89 South Island Landless Natives Plans of South Island Native Blocks, 1908-1922

ABWN 8923 W5278/90 Schedule of Middle Island Native Reserves, 1879

ABWN 8923 W5351/1 221 Notes by Judge Rawson made prior to the Native Purposes Act 1931, 1930?

ABWN 8923 W5351/1 221 List of Awards to Landless Natives in the Middle Island by Messrs. S Percy Smith and A MacKay in the Wanaka Block, 1905?

ABWN 8923 W5351/1 221 [Descriptions of Landless Native Blocks - New Zealand Gazette 1908]. C.1908

ABWN 8923 W5351/2 221 Landless Natives in Southland Land District at May 1922, 1922

ABWN 8923 W5351/2 221 Bruce Bay Area, Westland, 1919

ABWN 8923 W5351/2 221 Hokonui and Forest Hill Blocks, Southland, 1917

ABWN 8923 W5351/2 221 Port Adventure, Lords River, and Toitoi Blocks, Rakiura, 1917

ABWN 8923 W5351/2 221 Raymond's Gap, Southland, 1920

ABWN 8923 W5351/3 221 Waiau Block, 1917?

ABWN 8923 W5351/3 221 Waiau and Wairaurahiri Blocks, Southland, 1929

ABWN 8923 W5351/3 221 Waikawa Block, Southland, 1922

ACGT 18190 LS1/1365 39876 Landless Natives, South Island, no date

ACGT 18190 LS1/1365 39882 South Island Landless Natives, no date

BAPP 24556 A1721/255/o Reserves for Landless Natives: Report of the Commission of Inquiry in regard to the existing reserves for landless natives in the South Island and in the Waikato-Maniapoto Native Land Court District, and as to the disposition thereof [Published in the Appendices to the Journals of the House of Representatives 1914, G2, 1914

AAKW Rt. Hon. Doug Graham, MP; ABGI Hon. Dr Clive Matthewson; ABWA Hon. Ben Couch

AAKW 7812 W5105/22 Treaty Negotiations - SILNA [South Island Landless Natives Act 1906] forests [logging of], 1999

ABGI 22758 W3715/2 BIF 1 Special Ministerial Committee on Indigenous Forests Policy - Policy for Indigenous Forests: Export of Woodchips and Associated Matters, 1990

ABWA 27550 W2740/31/[1284] CS (84) 599 Cabinet - Logging of Waitutu Incorporation Land - 12 July 1984, 1984

AAMK Department of Maori Affairs, Head Office; ACIH Department of Maori Affairs [record group]; BBHT Ministry of Maori Development Gisborne Office; CAUV Te Puni Kokiri, Southern Regional Office, Christchurch

AAMK 869 W3074/91/a 5/17/1 Maori Trust Mortgages - South Island Landless Maori Grants - Miscellaneous Enquiries, 1954-1973

ACIH 16036 MA1/991 1909/710 Received: 23rd November 1909. - From: J.C. Thomson, Member of Parliament Wellington. - Subject: For copy of regulations under the South Island landless Natives Act 1906, 1909

ACIH 16036 MA1/1040 1910/5024 Received: 15th November 1910. - From: Watson and Hoggitt, Solicitor, Invercargill. - Subject: Section 440 Block 4 Forest Hill (South Island). Application under South island Landless Native Act 1906 for leave to lease John Edwards and others to Charles McIntosh, 1910

ACIH 16036 MA1/1067 1912/88 Received: 9th January 1912. - From: George Ashwell, 148 East Belt, Christchurch. - Subject: wishes to know if he can sell his interests in Block 4 Section 16 Rowallan (South Island Landless Native Grant) as the land is so situated that it is of no use to him, 1912

ACIH 16036 MA1/1096 1913/570 Received: 22nd February 1913. - From: Chief Judge, Native Land Court. - Subject: South Island Landless Natives. Correspondence with Judge Gilfedder as to whether persons who are not landless can succeed to interests of deceased landless Natives in South Island Reserves. [Includes: 1912/916.], 1912-1913

ACIH 16036 MA1/1100 1913/2134 Received: 14th May 1913. - From: Pipihe Pepene, Tuatapere, South Island. - Subject: South Island Landless Natives Reserve. Maoris wish to establish a sawmill with a view to profitably clearing their holdings. They ask if Government can arrange to finance them, 1913

ACIH 16036 MA1/1121 1914/994 Subject: Part Two. Royal Commission to be appointed to inquire into position of lands for landless Natives in South Island and Waikato. To consist of Judge of Native Land Court and an Officer of Lands Department. [Former Papers. Native Department.], 1927-1943

ACIH 16036 MA1/1121 1914/994 [1] Received: 3rd April 1914. - From: Cabinet. - Subject: Part One. Royal Commission to be appointed to inquire into position of lands for landless Natives in South Island and Waikato. To consist of Judge of Native Land Court and an Officer of Lands Department, 1914-1926

ACIH 16036 MA1/1122 1914/994 [3] Subject: Part Three. Royal Commission to be appointed to inquire into position of lands for landless Natives in South Island and Waikato. To consist of Judge of Native Land Court and an Officer of Lands Department, no date

ACIH 16036 MA1/1155 1916/2413 Received: 1st July 1916. - From: Native Affairs Committee, House of Representatives. - Subject: Petition No. [Number] 154/16 James R.F. Green and 23 others. That provision be made for individualising lands granted to landless Natives in South Island, 1916

ACIH 16036 MA1/1255 1921/9 Received: - From: Native Department. - Subject: Landless Natives Lands (south Island). Investigation by Informal Committee. Ministers papers, 1921-1929

ACIH 16036 MA1/1256 1921/9 Part 3. Received: - From: Native Department. - Subject: Landless Natives Lands (South Island). Investigation by Informal Committee, 1929

ACIH 16036 MA1/1256 1921/10 Received: 6th January 1921. - From: Under Secretary, Native Department, Wellington. - Subject: South Island Landless Natives Grants. Payment of compensation in lieu of grants of land, 1920-1930

ACIH 16036 MA1/1340 1924/274 Received: 2nd September 1924. - From: Under Secretary for Lands, Wellington. - Subject: South Island Landless Natives. Port Adventure and Toitoi Blocks. For reference to Court under section 6/1922, 1924-1929

ACIH 16036 MAW2459/32 5/13/56 South Island Landless Natives - Land claim by Albert Spencer Acker (Armstrong) on behalf of Estate of George Cutherbert Spencer Acker (Armstrong), 1928-1934

ACIH 16036 MAW2459/53 5/17/2 [1] South Island Landless Maori Grants -Consents to Sales of Timber and Land (Section 110/1931), 1948-1954

ACIH 16036 MAW2459/54 5/17/2 [2] South Island Landless Maori Grants -Consents to Sales of Timber and Land, 1954-1958

ACIH 16036 MAW2459/54 5/17/2 [3] South Island Landless Maori Grants -Consents to Sales of Timber and Land, 1958-1965

ACIH 16036 MAW2459/55 5/17/3 [4] South Island Landless Maori Grants -Crown Purchases of Land, 1953-1958

ACIH 16036 MAW2459/55 5/17/3 [5] South Island Landless Maori Grants -Crown Purchases of Land, 1958-1962

ACIH 16036 MAW2459/55 5/17/3 [6] South Island Landless Maori Grants -Crown Purchases of Land, 1962-1964

ACIH 16088 MA81/1 Minute Book of Proceedings and Evidence - 7 July - 22 August, 1914

BBHT 4940/233/c 14/16/135 Maori Land Development - Waikawa Trust, 1984-1985

CAUV CH460/Box8 4/9/92 Development - Development Scheme, Rowallan / Alton Maori Corporation, 1983-1984

AANS Department of Conservation, Head Office; DAFU Department of Conservation, Southland Conservancy Office

AANS 828 W5491/889 9/7/276 Acquisition of Private Lands - Ptoposed lease of Waitutu Blocks from Waitutu Incorporation - Waitutu S.F. [State Forest] 19 - Southland Conservancy, 1976-1978

AANS 828 W5942/505 36/7/19/1 [New Zealand Forest Service] - Waitutu Incorporation Land - Southland Conservancy - Plans for Wood Utilisation, 1981-1983

AANS 828 W5942/506 36/7/19/1A [1] [New Zealand Forest Service - Forest Operations And Management] - Waitutu Incorporation Land - Southland Conservancy - Officials Committee Investigation May-June 1984 - [Confidential], 1984

AANS 828 W5942/506 36/7/19/1A [2] [New Zealand Forest Service - Forest Operations And Management] - Waitutu Incorporation Land - Southland Conservancy - Officials Committee Investigation May-June 1984 - [Confidential], 1984

AANS 828 W5942/506 36/7/19/1A [3] [New Zealand Forest Service - Forest Operations And Management] - Waitutu Incorporation Land - Southland Conservancy - Officials Committee Investigation May-June 1984 - [Confidential], 1984-1985

AANS 25344 W5883/97 R21-110 [1] Advocacy Issues - Forest Amendment Act – General, 1994-1996

DAFU D312/35/x [Environmental Forestry - Animal Control - Hunting] - Rakiura Maori Land Incorporation, 1984

DAFU D323/25/l ADM 20/7 [Administration] - Legal Matters - Rakiura Maori Land Claims, 1988

DAFU D323/25/m ADM 20/7 Administration - Legal Matters - Rakiura Maori Land Claims, 1987-1991

DAFU D324/137/l 20/55 [Maori Land & Survey Liens] - Rowallan-Alton Incorporation, 1981-1982

DAFU 18836 D311/239/f 20/55 Rowallan-Alton Incorporation, 1982-1983

DAFU 19842 D523/23/d NHF 001 [1] Nature Heritage Fund – Policy, 1990-1995

DAFU 19842 D562/1/i ACT 031 Acts & Legislation - South Island Landless Natives Act 1906, 1994-1997

ACCQ Ministry for Primary Industries, National Office

ACCQ 21680/45 MG/04/02 Management Planning & Reporting. Indigenous Forestry Unit. SILNA [South Island Landless Natives Act], 1997-2003

ACCQ 21680 W5616/193 LEG/V15/2 [1] Ministry of Forestry [MOF] Legislation: Indigenous Forestry Provisions [IFP] Forest Amendment Act 1993, 1990-1993

ACCQ 21680 W5616/213 LEG/20/8 [1] Indigenous Forestry Issues: South Island Landless Natives Act 1906, 1994-1995

ACCQ 23983/173 53/3 Ministerial Briefings [Ministry of Forestry - SILMA [South Island Landless Maoris Act] Lands, Te Awahohonu Forest, Purchase Agreement, Tussock Moth, etc, 1996

ACCQ 23983/173 53/5 Ministerial Briefings [Ministry of Forestry - Tussock Moth, Sale of Crown's Interest in the Te Awahohonu Forest Lease, Purchase Agreement, SILMA [South Island Landless Maoris Act] Recommendations, Departmental Forecast Report, Sustainable Forest Management Plans, etc, 1996

ACCQ 23983/173 53/6 Ministerial Briefings [Ministry of Forestry - Wood and Paper Strategy Industry for Australia, Financial Assistance to Maori Lessors of Crown Lease Forests, Urban Trees Bill, SILMA [South Island Landless Maoris Act] Lands, etc, 1996

ACCQ 23983/174 53/8 Ministerial Briefings [Ministry of Forestry - Intergovernmental Panel on Forests, International Meetings, Tussock Moth, SILMA [South Island Landless Maoris Act], Sustainable Indigenous Forest Management under the Forests Amendment Act, 1933, etc, 1996

ADSQ New Zealand Forest Service [record group]

ADSQ 17639 F1/250 8/0 South Island Landless Native Reserves, 1921-1924

ADSQ 17639 F1/250 8/0 [1] South Island Landless Native Reserves, 1925-1937

Claim Assessment Bibliography

Official publications

- Legislation:

South Island Landless Natives Act 1906.

Public Works Act 1908.

Native Land Act 1909.

Native Lands Amendment Act 1914.

Native Land Amendment and Native Land Claims Adjustment Act 1919.

Native Land Amendment and Native Land Claims Adjustment Act 1923.

Ngaitahu Claim Settlement Act 1944.

Maori Affairs Act 1953.

Customs Act 1966.

Resource Management Act 1991.

Forests Amendment Act 1993.

Te Ture Whenua Maori Act 1993.

Waitutu Block Settlement Act 1997.

Ngāi Tahu Claims Settlement Act 1998.

Tutae-Ka-Wetoweto Forest Act 2001.

Forests Amendment Act 2004.

Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairua Claims Settlement Act 2014.

- Deeds of Settlement

Te Rūnanga o Ngāi Tahu and Her Majesty the Queen. *Deed of Settlement: Section 1*. New Zealand Government, 1997, https://www.govt.nz/treaty-settlement-documents/ngai-tahu/.

Correspondence to the Waitangi Tribunal

A G McHugh, Deputy Chief Judge, Māori Land Court to Timothy Te Aika. 9 July 1991.

Alton/Rowallan meetings minutes. 30 August 1991. Arowhenua Marae, Temuka.

Brian Roche, Chief Negotiator, Ngai Tahu Claims, Office of Treaty Settlements to Mr E J Palmer, the Trustees of Tautuku Block X Section 3C Trust. 21 February 1997.

E J Palmer to the Registrar, Waitangi Tribunal. 23 September 1997. 'Waitangi Tribunal Claim Wai 158'.

E J Palmer to the Registrar, Waitangi Tribunal. 30 September 1997.

Geoff Melvin, Registrar (acting), Waitangi Tribunal to Alan Groves. 2 May 1997. 'Wai 158: Southland Indigenous Forests Claim'.

Geoff Melvin, Registrar, Waitangi Tribunal to David Parker, Anderson Lloyd. 3 August 1997. 'Wai 158: Southland Forests claim'.

George Ryan, Chairman, Rakiura Maori Land Trust to Waitangi Tribunal. 26 January 1997.

James, Waitangi Tribunal. File note. 11 November 2014.

Janett Associates. 'Submission to Ministers of the Environment and Conservation on Indigenous Forest Policy by Murihiku Forest Owners'. [Not dated.]

John Delamare, Manager, Claims & Negotiations, Department of Justice to Deputy Chief Judge A G McHugh, Waitangi Tribunal. 3 February 1992.

Kim Skelton, Assistant Registrar, Waitangi Tribunal to Mr E J Palmer. 4 December 1997. 'Claims to the Waitangi Tribunal concerning lands in Southland'.

Māori Land Court minutes. 18 September 1991. 74 South Island MB 104-108. Invercargill.

Māori Land Court minutes. 19 September 1991. 74 South Island MB 109-111. Invercargill.

Maori Owners of Indigenous Forests meeting minutes. 21 April 1990. Ascot Park Motor Hotel, Invercargill.

Margaret Dugdale for Director, Office of Treaty Settlements to Moana Murray, Claims Administrator, Waitangi Tribunal. 26 July 1999. 'Wai 158 – Southland Forests Claim'.

Martin R. McColgen to Tom Benion, Registrar, the Waitangi Tribunal. 3 December 1991.

R. K. McAnergney, Murihiku Maori Land Owners Negotiation Group to Mr Parou Tupangaia, Maori Land Information Office, Department of Justice. 16 August 1990.

S Cormack to the Registrar, Department of Justice. 24 January 1992.

S J Hadfield, Deputy Registrar, Māori Land Court to Mr M Colgan. 10 July 1991. 'Indigenous Forest Policy – Rowallan Alton : File TEW 98/1/5'.

Timothy Te Aika to Judge McHugh, Deputy Chief Judge, Māori Land Court. 28 June 1991.

Waitangi Tribunal file note. 30 October 1997.

Waitangi Tribunal to Ken McAnergney. 30 January 2015.

Unsigned 'Revised Framework Agreement on Southland Indigenous Forest Allocated to Maori Landowners under 1906 Legislation'. September 1990 [no further information given].

Evidence filed on the Waitangi Tribunal Record of Inquiry

- Ngai Tahu Inquiry (Wai 27)

Armstrong, David Anderson. 'Evidence concerning the Crown's reserve policy concerning Ngāi Tahu 1890-1944' (Wai 27, #M16).

Armstrong, David Anderson. 'Supporting papers for evidence concerning the Crown's reserve policy concerning Ngāi Tahu 1890-1944' (Wai 27, #M17).

- Northern South Island Claims/Te Tau Ihu o Te Waka a Maui Inquiry (Wai 785)

Alexander, David James. 'Landless Natives Reserves in Nelson and Marlborough'. August 1999 (Wai 785, #A54).

Alexander, David James. 'Summary of report of David Alexander'. 21 March 2003 (Wai 785, #A54(a)).

- Waimumu Trust (SILNA) Inquiry (Wai 1090)

Edwards, Cecilia. 'Origins of Government Policy: South Island Landless Māori'. Report for the Crown Law Office. Wellington, 2000 (Wai 1090, #A10).

McAloon, Jim. 'Report on Crown Historical Research on the South Island Landless Natives Act 1906'. Report for Te Puni Kōkiri/Ministry of Māori Development and Rau Murihiku Whenua Māori, 2001 (Wai 1090, #A4).

Waitangi Tribunal reports

Waitangi Tribunal. *Ngai Tahu Ancillary Claims Report 1995*. Wellington: Brookers Ltd, 1995.

Waitangi Tribunal. *Ngai Tahu Report 1991*. 3 vols. Wellington: Brooker and Friend Ltd, 1991.

Waitangi Tribunal. *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa 2007*. Wellington: Legislation Direct, 2007.

Waitangi Tribunal. *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims 2008.* 3 vols. Wellington: Legislation Direct, 2008.

Waitangi Tribunal. *Waimumu Trust (SILNA) Report 2005.* Wellington: Legislation Direct, 2005.

Statements of claim, memoranda, directions, and submissions filed on the Waitangi Tribunal Record of Inquiry

- The Southland Forests Claim (Wai 158)

Robert Kenneth McAnergney, statement of claim, 23 July 1990 (Wai 158, #1.1).

Robert Kenneth McAnergney, amended statement of claim, 6 June 1997 (Wai 158, #1.1(a)).

Chief Judge E T J Durie, memorandum-directions of Tribunal directing Registrar to register and defer claim, 27 August 1990 (Wai 158, #2.1).

Owners and Trustees of Alton and Rowallan blocks, letter concerning Wai 158 and authority of Robert Kenneth McAnergney, 27 November 1991 (Wai 158, #2.2).

Deputy Chief Judge A G McHugh, memorandum-directions of Tribunal concerning statements received from owners and trustees of Alton and Rowallan blocks, 14 January 1992 (Wai 158, #2.3).

- The Waimumu Trust (SILNA) Claim (Wai 1090)

Rewi Walkter Anglem, Taare Hikurangi Bradshaw, and Kemble Wingham Roderique, statement of claim, 18 November 2003 (Wai 1090, #1.1).

Rewi Walkter Anglem, Taare Hikurangi Bradshaw, and Kemble Wingham Roderique, amended statement of claim, 16 January 2004 (Wai 1090, #1.1(a)).

Chief Judge J V Williams, decision of the Chairperson with respect to urgency, 9 February 2004 (Wai 1090, #2.1).

Chief Judge J V Williams, memorandum-directions of the Chairperson appointing a Presiding Officer, 24 May 2004 (Wai 1090, #2.21).

- The Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800)

Chief Judge W W Isaac, memorandum of the Chairperson appointing a standing panel to inquire into remaining historical claims in the south-western North Island, the South Island and the Chatham Islands, 6 September 2018 (Wai 2800, #2.5.1).

Chief Judge W W Isaac, Appendix A: Map of the included inquiry districts, 6 September 2018 (Wai 2800, #2.5.1(a)).

Chief Judge W W Isaac, memorandum-directions of the Presiding Officer concerning eligibility of claims, 1 October 2018 (Wai 2800, #2.5.2).

Chief Judge W W Isaac, memorandum-directions of the Presiding Officer appointing members of the panel, 8 March 2019 (Wai 2800, #2.5.3).

Chief Judge W W Isaac, memorandum-directions of the Presiding Office concerning eligibility of claims, 12 June 2019 (Wai 2800, #2.5.4).

Chief Judge W W Isaac, memorandum-directions of Chief Judge W W Isaac concerning eligibility of claims, 11 December 2019 (Wai 2800, #2.5.5).

Chief Judge W W Isaac, further memorandum-directions of Chief Judge W W Isaac concerning eligibility of claims, 18 December 2019 (Wai 2800, #2.5.6).

J R Gough and T L Hocking, Counsel for the Crown, memorandum of counsel for the Crown responding to 1 October 2018 direction of the Presiding Officer, 21 December 2018 (Wai 2800, #3.1.3).

Dr B D Gilling, G M Davidson, and R L Brown, Counsel for Claimants, Joint memorandum of Counsel on behalf of Wai 158 and Wai 2163 responding to the Tribunal direction of 12 June 2019 and the Crown memorandum of 21 December 2018, 10 July 2019 (Wai 2800, #3.1.14).

- Government publications

Crown Law Office. 'A Review of Origins and History of Government Policy Regarding the Lands Reserved under the South Island Landless Natives Act 1906 (SILNA)'. April 2001 [provided by the Crown Law Office].

Department of Conservation. 'Southland rainforest permanently protected'. Department of Conservation, Te Papa Atawhai, media release, 10 October 2019. https://www.doc.govt.nz/news/media-releases/2019/southland-rainforest-permanently-protected/, accessed 5 February 2021.

Ministry of Agriculture and Forestry. 'SILNA Forests: Review of the 2002 SILNA Policy and the Implementation Package'. Ministry of Agriculture and Forestry discussion document, 2009. Available from https://www.mpi.govt.nz/dmsdocument/5176/direct, accessed 5 February 2021.

Websites

Citizens Advice Bureau. 'Waitutu Incorporation Management Committee'. Citizens Advice Bureau website. https://www.cab.org.nz/service-provider/KB00024551, last modified 7 May 2019.

Rakiura Maori Lands Trust. 'Lords River Management Plan'. Rakiura Maori Lands Trust website. https://www.rmlt.co.nz/index.php?page=1615, accessed 1 February 2021.