

In the Waitangi Tribunal
Remaining Historical Claims: South Island Claims

Wai 2800
Wai 158

In the Matter of the Treaty of Waitangi Act 1975

And

In the Matter of the Inquiry into the Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800)

And

In the Matter of a claim by Robert Kenneth McAnergney, as a member of the Murihiku negotiating team, and Tā Mark Wiremu Solomon, on behalf of the owners of lands arising from the provisions of the South Island Landless Natives 1906 (Wai 158)

Memorandum of Counsel Submitting Feedback in respect of Claim Assessment

Dated 18th October 2022

RECEIVED

Waitangi Tribunal

18 Oct 22

Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

1. This Memorandum of Counsel (**memorandum**) is filed on behalf of a claim by Robert Kenneth McAnergney, as a member of the Murihiku negotiating team, and Tā Mark Solomon, co-claimant, on behalf of the owners of lands arising from the provisions of the South Island Landless Natives Act 1906 (Wai 158) (**claimants**).
2. This memorandum is filed in response to the Tribunal's Memorandum-Directions dated 20 September 2022, ¹ in which the Chairperson directed that claimant responses to the Tribunal's claim assessments for Wai 158 (**claim assessment**) and others be filed by 18 October 2022.
3. Following the release of the claim assessment and advice from counsel, the claimants confirm that they intend to continue participating in Wai 2800.

STATEMENT OF CLAIM

4. Given the time elapsed since the original filing of the claim, there are numerous developments regarding the claim and the inquiry process. Some of these are already captured in the claim assessment, but the claimants wish to draw others to the Tribunal's attention.
5. There are a number of previous and upcoming developments to the statement of claim for Wai 158 to be included.
6. On 6 November 2020, counsel filed a memorandum of counsel adding Tā Mark Solomon as an additional named claimant. By the beginning of October 2022, the memorandum had not been registered on the record of inquiry. Counsel inquired about this with Tribunal staff and the memorandum was subsequently registered on the record of inquiry on 4 October 2022. Consequently, the claim now formally includes Tā Mark Solomon as a named claimant in addition to Mr Ken McAnergney.

¹ Wai 2800 #2.5.10

7. The claimants seek to widen the scope of Wai 158 to be inclusive of other descendants of original grantees under the South Island Landless Natives Act 1906 (SILNA). Counsel are drafting an amendment to the statement of claim that seeks to alter the claim to become the SILNA Lands Claim, rather than merely "Southland Forests". The Tribunal can expect to receive an amended statement of claim in due course.
8. Mr McAnergney and the experiences of his whanaunga mostly concern forestry issues, but SILNA issues are much broader and across the entire motu. Therefore, going forward, in additional issues relating to indigenous forests, Wai 158 will also include issues of non-forested land, either pastoral or abandoned.
9. The current iteration of the statement of claim, which dates back to 1997, is limited to Southland and forestry. Mr McAnergney and Tā Mark intend to amend and broaden the scope of Wai 158 to include Māori with SILNA lands within and beyond Southland, including non-forest land. In the immediate future, Wai 158 is looking to incorporate the experiences of Māori who hold SILNA land in West Rowallan, Rowallan-Alton, the West Coast (Bruce Bay), and Tautuku/TautukuWaikawa.
10. To be clear, this broadening will help to ensure that the claim deals more extensively and comprehensively with the range of matters not excluded by the Ngai Tahu Claims Settlement Act 1998 from the Tribunal's jurisdiction.

COMMENTS ON CLAIM ASSESSMENT

11. Counsel have been instructed to advise that the map appearing on *Page 2* of the claim assessment is misleading. Counsel request that the map be amended to show the whole of the South Island and Stewart Island in relation to the North Island, and note that the Chatham Islands should not appear in the Cook Strait, as presently shown on the Map.
12. Additionally, for future reference a new Te Wai Pounamu / South Island map should preferably also show the location of all SILNA land, but especially those lands located in South Otago, Southland and the lower West Coast

because the claims for those claimants on the West Coast are a part of the claimant group.

13. Counsel note that at *Page 10* of the claim assessment, it is stated that Mr McAnergney, with his Murihiku Land Owner Negotiating Team and the Treaty of Waitangi Task Force, agreed that they needed to have a “roll of current owners and their names and addresses”. Mr McAnergney confirms that he did not receive any funding. Therefore, he was able to neither commence nor complete this process. Mr McAnergney still requires funding to undertake this research all these years later. Descendants of the original owners are key to this process as they will form the claimant community and become more important as work progresses.
14. At *paragraph 2.2* of the claim assessment, Wai 158 is summarised as consisting of two allegations. That the claimants have been prejudiced by:
 - a. The Crown’s national policy on indigenous forests; and
 - b. The Crown, from 1906, taking parts of the claimants’ land without consent or adequate compensation.
15. The claim assessment says that research already undertaken “strongly suggests” that the indigenous forestry policy refers to regulations implemented through the Customs Act 1966 in July 1990. To clarify, indigenous forestry policy refers to the regulations mentioned by the claim assessment in addition to policy pursued through the Resource Management Act 1991, and regulations made by district and regional councils concerning indigenous forest produce.
16. Counsel note that *Page 6* of the claim assessment also subsequently sought further clarification from the claimants to “determine what the second part of the claim regarding land takings refers to.”
17. Mr McAnergney has been unsuccessful in getting further details on specific land takings. This is due in part to the tight timeframes Mr McAnergney had to comment on the claim assessment, as well as the overall length of time that has been taken to get to this point with the claim. Unfortunately, in the

32 years since Mr McAnergney lodged his claim, a significant number of knowledge keepers have died which makes the task of recovering any such information much more difficult. Mr McAnergney is concerned that most, if not all, of the first-hand memory of land taking since 1906 has now been lost as kuia and koroua have passed on.

18. Mr McAnergney advised that from his own memory, land takings may have taken place within the Waimumu area, relating to the Crown erecting power pylons and repeater stations, and most likely authorised by the Public Works Act 1981 or its previous iterations. Some such land issues were addressed in the Waimumu Report.
19. As a result of losing knowledge keepers, Wai 158 will need to call upon technical and other evidence to support its claims.
20. Included at *Page 7* of the claim assessment is a breakdown of further claim amendments, including a brief summary of Mr E J Palmer's attempt to include "the Resource Management Act 1991 and the Clutha District Council District Plan notified on 14 January 1995".
21. Counsel notes that, after Mr Palmer's attempt to amend Wai 158 was declined by the Tribunal, Mr Palmer went on to file his own claim as Wai 685. Unfortunately, Mr Palmer has passed away. As a valued knowledge keeper for Māori with SILNA land, the claimants note that his personal contribution to the upcoming inquiry will be missed.
22. Mr McAnergney is looking to progress Wai 158 alongside Wai 685 and has made some preliminary steps to progress this with Mr Palmer's claimant group for the Block X Section 3C Trust of the Tautuku-Waikawa SILNA lands.
23. The Wai 158 claimants have also taken the initiative to form an incorporated society to facilitate the progression of the SILNA claims across the board, rather than leaving matters with simply the narrow focus of the Southland forests.
24. Counsel submit that there are a number of documents that ought to be considered as a part of Wai 158, including, but not limited to:


- a. the evidence of Alan David Reid, produced for the Waimumu Claim recorded as Wai 1090 #A17;
 - b. Doug McPhail's 2002 report "Constraints and Opportunities for the South Island Landless Natives 1906 Indigenous Forest Utilisation";
 - c. Cecelia Edwards "Origins of Government Policy: South Island Landless Natives" report, as well as supporting papers;
 - d. Nigel Scott report to te Rūnanga o Ngāi Tahu October 2005;
 - e. Standing Wood Volumes of the Landless Native Grant of Southland and Stewart Island, prepared by L.E. Burrows, G.R. Evans, C.C. Cruden, David Janett and Associates; and
 - f. Counsel note that these, together with the Ruru/ Bayfield report for Ministry of Agriculture and Forestry "SILNA Forest: Review of the 2002 SILNA Policy and the Implementation Package", are mostly listed in the Claim assessment bibliography.
25. The Standing Wood Volumes quantify, by type and volume, standing timber. This report ought to be updated, and would be useful to show the Crown the change in value for SILNA forest land.
26. Mr McAnergney wishes to endorse the inclusion of The Waimumu Trust (SILNA) Claim (Wai 1090) record of inquiry, and especially 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). As well as the Ruru/ Bayfield report for Ministry of Agriculture and Forestry "SILNA Forest: Review of the 2002 SILNA Policy and the Implementation Package",
27. In relation to relevant Crown indigenous forestry policy developments since 2005, Counsel seek to draw the Tribunal's attention to issues regarding carbon credit sequestration. This is a clear development in more recent times that the claimants will seek more information on and address in a future Amended Statement of Claim. Wai 158 will also aim to include land development and use issues relating to the various blocks of SILNA land that are not focussed on forestry.

28. As a consequence of this particular policy development and possibly more, the claimants have been prejudiced by lost opportunity and a loss of income. The Rowallan-Alton Incorporation, for example, has lost the opportunity to earn income through involving Māori Owners of Indigenous Forests Landscape in the carbon sequestration.
29. Further fine-tuning also needs to be done regarding the several SILNA blocks that have received Tiriti settlements from the Crown. At the least, those blocks form part of the tapestry of SILNA lands and issues. The claimants believe their stories need to be relayed in order for this Tribunal to form a complete picture of what SILNA aimed to do, what it achieved, and the problems resulting from it, leading to Tiriti grievances, most of which still require settlement.
30. Counsel note that at page 21 of the claim assessment for Wai 158:
- “[On 11 November 2014] ... Mr McAnergney requested an update from the Tribunal on the status of his claim and inquired into possible sources of funding for hui regarding the claim. 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.”*
31. In April of 2022, Counsel made contact with Crown Forestry Rental Trust (CFRT) to discuss Wai 158’s funding opportunities. Counsel found that because there is no Crown forest land remaining in the South Island as they have all been returned to iwi in settlements, no funding can be made available through CFRT. This was confirmed in the evidence given by Ms Anita Miles on behalf of CFRT in the recent Wai 3060 Whakatika ki Runga inquiry.
32. While the inquiry is historic it does not fit into the district inquiry funding rubric and CFRT criteria. Therefore, Wai 158 is not eligible for funding, unlike

other historic inquiries. Nor does it meet the typical funding requirements for Kaupapa inquiries, focusing on a particular theme and being resourced on an ad hoc basis by related government departments.

33. The claimants require financial assistance to progress their claim. While CFRT is limited in its ability to fund Waitangi Tribunal claims, the claimants would be severely prejudiced if they did not receive funding.
34. Counsel propose that the Crown set up a body to provide funding in a manner that is similar to CFRT by managing annual rental fees for licences to use certain Crown pastoral land. This funding would be granted to Wai 2800 SILNA claimants in the same way and under the same conditions that funding has been made available to every other historical claimant appearing in the district inquiries.
35. Land Information New Zealand manages around 1.2 million hectares that stretch almost the length of the South Island. Wai 158 concerns land in this rohe.² Therefore, the claimants assert that it would be appropriate that where the claimants' tūpuna were given land incapable of providing economic support that their claim be supported financially by Crown land.

Dated at Wellington this 18th day of October 2022



Dr B D Gilling, D T Hilton, E Coffey
Counsel for the Claimants

² Land Information New Zealand