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

BEFORE THE WAITANGI TRIBUNAL

WAI 2800

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IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the Inquiry into Remaining Historical Claims:  
Southern North Island and South Island  
claims

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MEMORANDUM OF CROWN COUNSEL

15 Whiringa-ā-rangi | November 2022

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Waitangi Tribunal

16 Nov 22

Ministry of Justice  
WELLINGTON



**Te Tari Ture  
o te Karauna**  
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**MAY IT PLEASE THE TRIBUNAL:**

1. The Tribunal has released claim assessments of the five claims it has included in the Wai 2800 inquiry.<sup>1</sup> The Presiding Officer invited claimants to submit their feedback on the claim assessments and directed the Crown to submit in reply by 15 November 2022.<sup>2</sup>

**Wai 158 Southland Forests Claim**

***Claimant submissions in response to Tribunal claim assessment***

2. The claimants have indicated they will file an amended statement of claim which alters the claim from the “Southland Forests” claim to the “SILNA Lands Claim”.<sup>3</sup> The claimants submit this amended claim will widen the scope of Wai 158:<sup>4</sup>
  - 2.1 to include other descendants of the original grantees under the South Island Landless Natives Act 1906 (**SILNA**);
  - 2.2 to include issues relating to non-forested land, in addition to existing issues relating to indigenous forests; and
  - 2.3 to include SILNA lands within and beyond Southland, as the current statement of claim is limited to Southland.
3. The claimants submit this intended broadening of the claim will “help to ensure the claim deals more extensively and comprehensively with the range of matters not excluded by the Ngāi Tahu Claims Settlement Act 1998 from the Tribunal’s jurisdiction”.<sup>5</sup>
4. In a previous memorandum dated 10 July 2019, counsel for the Wai 158 claimants and, at that time, the Wai 2163 claimants,<sup>6</sup> said the claims which fall within Wai 158 include:<sup>7</sup>

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<sup>1</sup> Wai 2800, #2.5.9 Memorandum-directions of Chief Judge Isaac releasing five claim assessments, 7 August 2022.

<sup>2</sup> Wai 2800, #2.5.9 at [9]; Wai 2800, #2.5.10 Memorandum-directions of Chief Judge Isaac granting extensions for filing claimant feedback on claim assessments, 20 September 2022 at [11].

<sup>3</sup> Wai 2800, #3.1.24 Memorandum of Counsel Submitting Feedback in respect of Claim Assessment, dated 18 October 2022 at [7].

<sup>4</sup> Wai 2800, #3.1.24 Memorandum of Counsel Submitting Feedback in respect of Claim Assessment, dated 18 October 2022 at [7]–[9].

<sup>5</sup> Wai 2800, #3.1.24 Memorandum of Counsel Submitting Feedback in respect of Claim Assessment, dated 18 October 2022 at [10].

<sup>6</sup> As noted below, Mahony Horner Lawyers have filed a memorandum of counsel concerning the Wai 2163 claim, dated

... 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.

5. In response to the Tribunal's claim assessment, the Wai 158 claimants do not address specifically whether these previously foreshadowed claim issues will be included in the amended statement of claim.

### ***Crown submissions***

6. The Crown welcomes the claimants' indication they intend to file an amended statement of claim. That amended pleading will assist the Crown and the Tribunal to understand the scope of the SILNA-related issues the claimants seek to have inquired into. It will assist the Tribunal and the claimants to determine which claims are ready to proceed, the priority issues to be heard, and which claims have not been considered in previous inquiries.<sup>8</sup> It will also assist in determining what gap-filling research is required, considering the available evidence as set out in the claim assessment.<sup>9</sup>
7. The Crown will review the amended statement of claim to assess whether, in its view, any aspects of the amended claim have been settled by Treaty settlement legislation or whether any new historical claims have been added contrary to s 6AA of the Treaty of Waitangi Act 1975.
8. In making these points, the Crown agrees with the indications in the claim assessment that careful consideration will need to be given to the effect existing settlement legislation and previous Tribunal inquiries have on limiting the issues that remain to be inquired into for the Wai 158 claim.<sup>10</sup>

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2 November 2022, which says they no longer act for the Wai 2163 claimants.

<sup>7</sup> Wai 2800, #3.1.14 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, dated 10 July 2019 at [16].

<sup>8</sup> Being the relevant procedural steps for this stage of the Wai 2800 inquiry process, as set out in Wai 2800, #2.5.9 Memorandum-directions of Chief Judge Isaac releasing five claim assessments, 7 August 2022 at [3(e)]; referring to Wai 2800, #2.5.1(b) Appendix B: Outline of the fast-track process for claims in districts with completed Tribunal inquiries, 6 September 2018.

<sup>9</sup> Wai 2800, #2.5.9 at [3(f)].

<sup>10</sup> Wai 2800, #6.2.5 Claim assessment for the Standing Panel: The Southland Forests Claim (Wai 158), dated July 2022 at 7 and [3.7] on 20.

## **Wai 1623 Ngāti Rangatahi kei Rangitikei Claim**

9. The Crown’s submissions relate to the claim allegations raised by the Wai 1623 claimants regarding the Wairau Valley.

### ***Tribunal claim assessment***

10. The Tribunal’s claim assessment notes the claimants allege that Ngāti Rangatahi sought to settle in the Wairau Valley with Ngāti Toa but were forcibly removed by the Crown after the Wairau conflict in 1843.<sup>11</sup>
11. The claim assessment says the Crown, in its December 2018 submissions on eligibility relating to Wai 1623 for this inquiry,<sup>12</sup> did not comment on these allegations concerning the Wairau Valley.<sup>13</sup> As discussed below, the Crown’s submissions on eligibility preceded the Wai 1623 claimants filing their amended statement of claim, dated 18 April 2019, which added the claims concerning the Wairau Valley.

### ***Wai 1623 submissions in response to claim assessment***

12. In response to the claim assessment noting the claimants’ allegations regarding the Wairau Valley, the claimants submit: “the claim is that Ngāti Rangatahi were a significant hapū of the group of Ngāti Toa in Wairau and that their claim as members of that group has not yet been settled by the Crown”.<sup>14</sup> The claimants say a key finding sought will be that Ngāti Rangatahi ki Kākariki have a claim in full against the Crown for its support of the New Zealand Company in Wairau.<sup>15</sup>

### ***Crown submissions***

13. The Crown understands this claim concerning the Wairau Valley was added to the Wai 1623 claim in an amended statement of claim, dated 18 April 2019, filed in the Wai 2200 Porirua ki Manawatū inquiry. It states:

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<sup>11</sup> Wai 2800, #6.2.3 Claim Assessment for the Standing Panel: Ngāti Rangatahi kei Rangitikei Claim (Wai 1623), dated July 2022 at 4.

<sup>12</sup> Wai 2800, #3.1.3 Memorandum of counsel for the Crown, dated 21 December 2018.

<sup>13</sup> Wai 2800, #6.2.3 Claim Assessment for the Standing Panel: Ngāti Rangatahi kei Rangitikei Claim (Wai 1623), dated July 2022 at 6.

<sup>14</sup> Wai 2800, #3.1.25 Submissions of Ngāti Rangatahi in response to claim assessment, dated 18 October 2022 at [9].

<sup>15</sup> Wai 2800, #3.1.25 Submissions of Ngāti Rangatahi in response to claim assessment, dated 18 October 2022 at [57].

- 13.1 “Ngāti Rangatahi came to live with Ngāti Toa on Kapiti, in the Wairau Valley in the South Island, in the Hutt Valley, and at Pauatahanui. They relocated to Kakariki under the aegis of Te Rangihaeata of Ngāti Toa, Ngāti Huia and Ngāti Rangatahi”.<sup>16</sup>
- 13.2 “Ngāti Rangatahi next sought to settle with Ngāti Toa in the Wairau Valley, near what is now Nelson; but they were obliged to leave there. Following an attack by a party of Europeans, Captain Wakefield, and several others of the European vigilantes, including a Magistrate, were killed”.<sup>17</sup>
- 13.3 “Ngāti Rangatahi claims for the failure of the Crown to protect them in their right to settle at their chosen location in the Wairau Valley”.<sup>18</sup>
14. The original statement of claim for Wai 1623, dated 26 August 2008, does not refer to the Wairau Valley.<sup>19</sup> The Crown therefore respectfully requests the Tribunal seek further information from the claimants regarding which aspects of the original Wai 1623 statement of claim relate to the recently added claim concerning the Wairau Valley. This information would assist the Crown in forming a position on whether or not the amendment including the Wairau Valley is a new historical claim excluded from the Tribunal’s jurisdiction under s 6AA of the Treaty of Waitangi Act.
15. It appears to the Crown that the claims concerning the Wairau Valley may relate to the allegations in the original Wai 1623 statement of claim concerning the Ngāti Rangatahi migrations that occurred with the purpose of locating a suitable area to settle, and Crown actions preceding Ngāti Rangatahi expulsion from the Hutt Valley.<sup>20</sup> However, this is not clear from the material filed to date by the Wai 1623 claimants and so further clarification on this point is requested as set out above.

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<sup>16</sup> Wai 1623, #1.1.1(d), Amended Statement of Claim, dated 18 April 2019 at [2].

<sup>17</sup> Wai 1623, #1.1.1(d), Amended Statement of Claim, dated 18 April 2019 at [10].

<sup>18</sup> Wai 1623, #1.1.1(d), Amended Statement of Claim, dated 18 April 2019 at [15].

<sup>19</sup> Wai 1623, #1.1.1 Statement of claim, 26 August 2008.

<sup>20</sup> Wai 1623, #1.1.1 Statement of claim, 26 August 2008 at 5, “The acts of the Crown leading to the expulsion of Ngāti Rangatahi from the Hutt Valley and the destruction of homes, marae, chapel, stock and crops”.

### **Wai 2163 SILNA Estate Crown Forests Amendment Act 1992 Claim**

16. The memorandum of counsel filed by Mahony Horner Lawyers dated 2 November 2022 says they were advised by the current named claimant for the Wai 2163 claim, Benjamin Te Aika,<sup>21</sup> that he does not wish to pursue the claim.<sup>22</sup>
17. As Mahony Horner Lawyers appear to be in touch with Mr Te Aika, the Crown respectfully suggests the Tribunal direct them to obtain from Mr Te Aika formal confirmation that he seeks to withdraw the claim. This will ensure the position is clear as to whether the claim remains to be inquired into.

### **Wai 2236 Descendants of Priscilla Muriwai Dennison Claim and Wai 2324 Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim**

18. In memorandum-directions of 11 December 2019, the Tribunal decided that Wai 2236 and Wai 2324 were eligible for inclusion and inquiry in the Wai 2800 inquiry.<sup>23</sup>
19. Respectfully, the Crown's position remains that Wai 2236 has been settled by the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 and Wai 2324 has been settled by the Taranaki Iwi Claims Settlement Act 2016, and the Tribunal does not have jurisdiction to inquire into the claims.<sup>24</sup> The Crown notes the Wai 2324 claimants confirm, in their submissions in response to the Tribunal's claim assessment, that their tūpuna were of Ngā Mahanga descent of Taranaki.<sup>25</sup> Ngā Mahanga are included in the definition of Taranaki Iwi whose historical claims are settled under the Taranaki Iwi Claims Settlement Act 2016.<sup>26</sup>

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<sup>21</sup> See Wai 2163, #1.1.1(a) Memorandum of Counsel from Morrison Kent Lawyers, dated 10 December 2018 advising the Tribunal of the addition of the current named claimant, Mr Te Aika.

<sup>22</sup> Memorandum of Counsel Providing Update in respect of Claim Assessment (filed by Mahony Horner Lawyers), dated 2 November 2022 at [3].

<sup>23</sup> Wai 2800, #2.5.5 Memorandum-directions of Chief Judge W W Isaac concerning eligibility, 11 December 2019 at [23] and [28].

<sup>24</sup> Wai 2800, #3.1.3 Memorandum of counsel for the Crown responding to 1 October 2018 Directions of the Presiding Officer, 21 December 2018 at [5], [8], [33.3] and [50] and Wai 2800, #3.1.17 Memorandum of counsel for the Crown, 17 January 2020 at [12]. See also Wai 2800, #2.5.5 at [19]–[23] and [24]–[28].

<sup>25</sup> Wai 2800, #3.1.26 Submissions on behalf of Wai 2324, dated 18 October 2022 at [35].

<sup>26</sup> Taranaki Iwi Claims Settlement Act 2016, s 13(1)(iv), and see ss 14 and 15 regarding the settlement of the historical claims of Taranaki Iwi.

20. A consequence of the Crown's position is that the Crown does not intend to enter settlement negotiations in respect of Wai 2236 and Wai 2324 (on the ground that the Crown considers these claims are settled, fully and finally).

15 Whiringa-ā-rangi | November 2022



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D Hunt  
Counsel for the Crown

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