

IN THE WAITANGI TRIBUNAL

Wai 2800

CONCERNING

the Treaty of Waitangi Act 1975

AND

the inquiry into Remaining
Historical Claims: Southern
North Island and South Island
Claims

**MEMORANDUM-DIRECTIONS OF CHIEF JUDGE ISAAC REGARDING THE
NGĀTI RANGATAHI (Wai 1623) CLAIM**

9 December 2022

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Jurisdictional matter regarding Ngāti Rangatahi kei Rangitīkei (Wai 1623) claim

Crown request for further information about the Wai 1623 claim to Wairau Valley

1. On 16 November 2022, in response to the Ngāti Rangatahi (Wai 1623) claimant submission (Wai 2800, #3.1.25) (responding to their Tribunal claim assessment), the Crown sought further information 'regarding which aspects of the original Wai 1623 statement of claim relate to the recently added claim concerning the Wairau Valley' (Wai 2800, #3.1.29 at [14]).
2. The Crown referred to the Wai 1623 claimants' submission that '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'. The Crown also referred to the Wai 1623 claimants seeking a finding that 'Ngāti Rangatahi ki Kākāriki have a claim against the Crown for its support of the New Zealand Company in Wairau' (Wai 2800, #3.1.29 at [12]).
3. The Crown observed that the original statement of claim for Wai 1623, dated 26 August 2008, did not refer to the Wairau Valley and that it understood the claim concerning the Wairau Valley was added to the Wai 1623 claim in an amendment dated 18 April 2019 filed in the Wai 2200 Porirua ki Manawatū district inquiry (Wai 2800, #3.1.29 at [13]-[14]).
4. The Crown said it appeared 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' (Wai 2800, #3.1.29 at [15]). The Crown said, however, that this is not clear from the material provided to date and so requested further clarification on this point.
5. The Crown advised that the information sought would assist it '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' (Wai 2800, #3.1.29 at [14]).

Ngāti Rangatahi response regarding the Wai 1623 claim to Wairau Valley issues

6. On 2 December 2022, Donna Hall and Lyndon Rogers counsel for the Ngāti Rangatahi (Wai 1623) claimants submitted in response to the Crown's query about the claim to the Wairau Valley (Wai 2800, #3.1.31).
7. Counsel submitted that the short answer to the Crown's question is that 'Wairau is in the Kāpiti District referred to in the 2008 Statement of Claim. Kāpiti was the culmination of the many heke south, and remained the central hub for Ngāti Toa political and military operations into the 1840's and beyond' (Wai 2800, #3.1.31 at [9]). Counsel said that the Wai 1623 claimants have not 'added' a location to their claim in the 2019 amended

statement of claim, rather it ‘simply particularised aspects of the 2008 Statement of Claim that were already before the Tribunal’ (Wai 2800, #3.1.31 at [19]).

8. Counsel referred to Ngāti Toa, Taranaki and Waikato traditions, in which ‘Kāpiti means more than Kāpiti Island and the immediately adjoining mainland’. Counsel said it ‘was shorthand for the southern lands taken and occupied by Te Rauparaha and his allies’ (Wai 2800, #3.1.31 at [10]). Counsel also referred to specific geographical references in the Waitangi Tribunal report entitled *Te Tau Ihu o te Waka a Maui: Preliminary Report on Customary Rights in the Northern South Island*, (Wai 785) and in the Ngāti Toa Rangatira Claims Settlement Act 2014.
9. Counsel submitted that the Ngāti Rangatahi Wai 1623 claimants consider there is a ‘clear nexus between events at Wairau and their eventual expulsion from the Hutt Valley and the Kāpiti District altogether – both in their own forced migration, and in the mind of the Crown and pākehā settlers [sic]’ (Wai 2800, #3.1.31 at [18]). Counsel concluded that the Wai 1623 claimants consider this information sufficient to explain their understanding of Wairau ‘as situated within the Kāpiti District of the 1830’s - 1840’s’ (Wai 2800, #3.1. 31 at [19]). In view of this, counsel advised that the Wai 1623 claimants do not consider that ‘the jurisdictional risk raised by the Crown’ arises (Wai 2800, #3.1.31 at [20]).
10. The Wai 1623 claimants reserved the right to respond to the Crown’s further submission on this matter upon receipt of their answers (Wai 2800, #3.1. 31 at [4]).

Next steps

11. Counsel for the Crown are directed to submit a response to the Wai 1623 submission above by **5pm, Thursday 22 December 2022**.
12. Claimant counsel are directed to submit a consequent reply by **5pm, Thursday 26 January 2023**.

The Registrar is to send this direction to all those on the notification list for Wai 2800, the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims.

DATED at Gisborne this 9th day of December 2022



Chief Judge W W Isaac
Presiding Officer

WAITANGI TRIBUNAL