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

BEFORE THE WAITANGI TRIBUNAL

WAI 2800

IN THE MATTER OF

the Treaty of Waitangi Act 1975

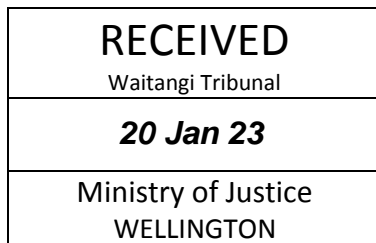
AND

IN THE MATTER OF

the Inquiry into Remaining Historical Claims:
Southern North Island and South Island
claims

MEMORANDUM OF CROWN COUNSEL

20 Hānuere | January 2023



**Te Tari Ture
o te Karauna**
Crown Law

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MAY IT PLEASE THE TRIBUNAL:

1. This memorandum provides the Crown's response to the memorandum of counsel for the Wai 1623 claimants regarding their claim concerning the Wairau Valley, in accordance with memorandum-directions of the Tribunal.¹
2. The memorandum of counsel for Wai 1623 responded to the Crown's request for further information regarding which aspects of the original Wai 1623 statement of claim relate to the claim, in the claimants' amended statement of claim dated 18 April 2019,² concerning the Wairau Valley.³
3. In their memorandum of counsel the claimants say:
 - 3.1 The claim concerning the Wairau Valley in the amended statement of claim refines their claims concerning events in the "Kāpiti District" referred to in their 2008 statement of claim. Their traditional usage of "Kāpiti" refers to an area which covers land in the lower North Island and upper South Island and encompasses the Wairau Valley.⁴ They rely on the work of S Percy Smith, the Tribunal's Wai 785 report on customary rights in Te Tau Ihu, and the Ngāti Toa Rangatira Claims Settlement Act 2014 in relation to their position.⁵
 - 3.2 The events at Wairau were part of the chain of events that led to the exclusion of Ngāti Rangatahi from occupation of any lands in Kāpiti.⁶

¹ Wai 2800, #2.5.12 Memorandum-directions of Chief Judge Isaac regarding the Ngāti Rangitahi (Wai 1623) claim, 9 December 2022; email from the registrar dated 23 December 2022 advising the Presiding Officer directed the Crown to file this response by 20 January 2023.

² Wai 1623, #1.1.1(d) Amended Statement of Claim, dated 18 April 2019.

³ Wai 2800, #3.1.29 Memorandum of Crown counsel, dated 15 November 2022 at [13]–[15].

⁴ Wai 2800, #3.1.31 Submissions of Ngāti Rangatahi in response to Crown memorandum, dated 2 December 2022 at [9]–[10].

⁵ At [12]–[15].

⁶ At [16].

4. The Crown is grateful to the claimants for providing this further information.
5. The Crown requested this information to assist it in forming a position on whether the amendment regarding the Wairau Valley is a new historical claim contrary to s 6AA of the Treaty of Waitangi Act 1975.⁷ The Crown is satisfied the claimants' submission referred to in paragraph 3.2 above demonstrates that their claim concerning the Wairau Valley relates to, and particularises, the claim in their 2008 statement of claim concerning Crown actions preceding the expulsion of Ngāti Rangatahi from the Hutt Valley.
6. In terms of the claimants' submission referred to in paragraph 3.1 above, the Crown acknowledges the claimants' position as to their traditional usage of "Kāpiti". The Crown considers the additional materials cited by the claimants—the work of S Percy Smith, the Tribunal's Te Tau Ihu report, and the Ngāti Toa Claims Settlement Act 2014—do not support the claimants' description, as outlined in their memorandum of counsel, of the traditional usage of the term "Kāpiti". However, the Crown considers this issue does not need to be resolved for the purposes of the s 6AA question discussed above. It could be addressed at a hearing of the Wai 1623 claim in so far as it is necessary for the Tribunal to inquire into the claimants' claims against the Crown.

20 Hānuere | January 2023



D Hunt
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel

⁷ Wai 2800, #3.1.29 Memorandum of Crown counsel, dated 15 November 2022 at [14].