KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA I TE TRIRITI O WAITANGI
BEFORE THE WAITANGI TRIBUNAL

WAI 3287
WAI 3325

IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	
IN THE MATTER	of a claim by **Chris Insley** on behalf of Te Taumata Māori Landowners Collective

BRIEF OF EVIDENCE OF TE KAPUNGA DEWES

25 October 2024

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TIMATANGA KŌRERO

1. Ko Ngati Porou, ko Te Arawa, ko Te Whakatohea oku iwi.

2. Ko Te Kapunga Dewes toku ingoa.

3. I have decades of senior management experience in the forestry and manufacturing sectors. I currently lead a Māori landowner advisory, advocacy and consultancy service, Whenua Oho alongside my position as CEO of Interpine Innovation, a Forest Consultancy and Innovation company. I am the Chair of Ngā Pou a Tāne – the National Māori Forestry Association and am a Trustee on a number of Māori Ahu Whenua Trusts. I also have a role as a lead technical advisor to Te Taumata.

4. The Crown has always and continues to rely upon the forests on, and afforestation of, Māori land for it to meet its commitments under international emission agreements, it itself has entered into. I understand the mechanics of these international agreements including how they impact on our Nationally Determined Contribution (**NDC**), which sets and measures our performance in moving towards a lower carbon emission economy.

5. Māori landowners, particularly in the central north island, are some of the largest forest owners. The commitments the Crown has entered into see the Crown and Councils "incentivise" Māori landowners to afforest their land, or keep land returned to them through Treaty settlements in forestry, even if it is not the best option for those peoples. These commitments were largely entered into without consulting those Māori landowners. I explain this in more detail below.

6. Although the reliance upon Māori landowners is rarely written into any agreements, it is clear through the actions of Crown and Council and incentives provided to landowners for the afforestation of their land. This particularly affects Maori who have large forest estates, own rural hill country for which forestry is the best form of economic use, or own under developed land that has reverted to bush cover.

7. I have had experience of these Crown actions incentivising either planting forest, or maintaining forest cover, on Maori land although there are others with better knowledge as relates to this.

8. Despite the incentives, Māori have never fully received the full benefits from carbon sequestration, nor in some circumstances have they had an option on whether land returned to them is subject to the emissions trading scheme and liabilities it imposes for failing to maintain forest cover.

9. In the Treaty settlement process, for every hectare of Pre-1990 exotic forest land that is returned, the settling group can receive up to 60 New Zealand Carbon Units (**NZU's**). I understand this is not the case for all forests returned. However, I can only speak on my experience with regards to my work where the forests I have been involved with were given 60 NZU's per hectare. It is also important to note that landowners only received those NZU's if the land had been registered in time with the ETS.

10. Receiving 60 NZU's per hectare of forests may seem like a windfall benefit to the settling iwi, but it comes with a liability we have to take on as well. Any change to land use of those forested lands will result in a liability for the landowner. This liability can be to 400 NZU's per hectare. This means the settling iwi has to pay that difference the iwi and the amount of the difference can be significant.

11. The result is that the iwi has no option but to leave those lands in forestry. This applies even if there are other, better, land use options available to the iwi. The problem for them is that the cost of changing land use is far too high.

12. I do note that this situation is not restricted to just Iwi and Māori. It is all forests owners. However, large amounts of the New Zealand forest estate are owned by Maori. This in turn has a significant effect on Māori.

CROWN FALURE TO MEANINGFULLY REGULATE FORESTRY

13. The Crown has been actively attempting to regulate the environmental impacts of forestry. Unfortunately, some of this regulation is being driven by political propaganda objectives from and protecting the Farming

industry rather than informed by facts and data. For example, biodiversity benefits are often cited as reasons against monocultural exotic forests. However, this simplistic view is not supported by data and is never referenced against our over abundance of pasture that is a biodiversity desert by comparison.

14. Oftentimes the “incentives” offered by the Crown are not just positive encouragements. They also have negative impacts. If I were to afforest land to the sum equivalent to 1000 NZU’s, I would receive a balance sheet bump and an opportunity to monetise those NZU’s. However, if I was of the mind to change the land and de-forest that land, I would have a significant liability. These “incentives” are more like loans than anything else. I think it would be much more productive to have the scheme designed as such.

15. Despite encouraging forestry activity and obtaining the benefits of that activity for the purposes of meeting international obligations, the Crown has done very little to thoughtfully address the myth regarding forestry slash and debris – part of the propaganda that the media and politicians push is that pine forests is the main offender for slash. This was particularly prevalent after cyclone Gabrielle in 2023. The industry could and should do better. That is only part of the solution. It was wrongly assumed that the slash and debris was solely pine trees, however, around 50% of the debris and slash was native timber. The indicates that there are other land management issues that need to be addressed.

16. Putting to one side the source of the debris, the main issue with slash is the failure by the Crown and Councils to meaningfully regulate the forestry industry and its environmental impacts. It is important to note that most forests in Māori ownership were returned as part of Treaty settlements. They were originally planted by the Crown who then sold the forests to large international forestry operators. It is these operators that have been managing and harvesting these forests. Maori forest owners have had to pay for these forests as part of their Treaty settlements, and many obtained the forests because they wanted land returned. The term of the forestry licences mean that control of the land only reverts to Maori after it is clear-felled. Because the forests are usually already in the ETS, the area needs to be replanted within a short

time period otherwise the owner has a substantial liability. Replanting is also usually required by Councils, who are now also requiring the Maori landowner to deal with slash issues, which imposes another cost.

17. I will touch more on policy relating to the regulation of the forestry industry later in my evidence.

Judicial Review of Climate Change Policy decision

18. In 2023, Nga Pou a Tane, endorsed by membership and Te Taumata where Chris Insley was the Chair, on behalf of Māori landowners, began judicial review proceedings against the then government' decision, through Te Uru Rakau, to begin charging land owners $30 per hectare of land that is registered in the ETS. This JR was undertaken with other industry groups dissatisfied with the charge setting process.

19. The judicial review proceeding was successful in that the changes that were meant to be implemented for 2023-2024 did not go ahead and were removed for 2023 - 2024. This saved the industry approximately $19M, and an estimated saving for Maori landowners north of $5M for that year. However, the government has still decided to propose an annual fee, albeit at a reduced rate of $15 per hectare.

20. This is again evidence that Maori landowners are constantly having to fight the Crowns actions and policy decisions. Even if the policy decisions come from a place of conservation, or an angle of environmentalism, they are made without meaningful engagement with Maori. I want to emphasise this point of engagement. Yes, the Crown and Councils do engage. However, in my personal and now extensive experience they never truly engage in a meaningful way that takes into account the Treaty of Waitangi, the feedback of those Maori landowners that are consulted, and the broader implications for Maori communities from the decisions they are proposing to make.

21. It is not enough to just compile the feedback. It needs to be a meaningful part of decision making from the time it is given. This is something that I would say rarely happens, if at all.

Further proposed changes to the ETS

22. As part of my role as lead technical advisor to Te Taumata, we drafted a lengthy submission to both Minister Nash and Minister Shaw (as they were at the time) in relation to a proposed change to the ETS, the proposed removal of exotic trees from the permanent category of the ETS.

23. I **attach** to this Brief of Evidence as **Appendix A** the submission of Te Taumata "Toitū te whenua, Toitū ngā hua o Tāne".

24. Part of that submission focussed on the benefit to Māori landowners of keeping exotic trees in the Permanent Category of the ETS. The biggest benefit being allowing Māori landowners options in deciding what to plant on their land, and how they want to use their land. It also touches on issues surrounding those lands that are already planted in exotic trees which would at some point require deforesting, leaving those Māori landowners with the liability under the ETS, again resulting in Māori landowners having pay the Crown when they have limited means to do so, and because of problems they have inherited from the period when the land was under Crown management. It also means that they miss out on any economic benefit their land can provide.

25. I understand that these proposed changes were linked to an attempt to try and make forestry practises more environmentally friendly, especially after the devastation of cyclone Gabrielle. However, the removal of exotic tree species alone is not the answer, nor was it backed by evidence. As noted above, half of the slash and forestry debris that ended up on beaches was native, this points to past forestry and land management practices as being an issue, not just the tree species. We had several recommendations to the Ministers, one of which included an industry led Code of Practice for forestry. We believed that such a code needed to be industry led because there has often been too much misinformation, and misrepresentations about the forestry industry and its practices. Also, we believed that the forestry sector as a whole needed to take responsibility for the role that its past practices had played in the issue.

26. As I noted above, the forests that have been returned through settlements, had in fact been planted by the Crown and then managed by the parties to which the Crown sold the trees. These forests weren't

planted by us, but we took them on because we wanted our land back and because we saw a future economic opportunity in forestry. The Crown is now wanting to push the liability for the poor planting works and forest management onto Maori. The result is that we are now having to fight the Crown about issues that we did not cause but have had to work through.

27. The policy work done on forestry, if read by anyone without any expertise in forestry would come to the same conclusion. Like any industry or practice area, it requires real expertise and knowledge of the industry to make properly informed and practical decisions.

28. Furthermore, the proposed changes were going to see Maori landowners deprived of a possible $7.3 - $11.5B opportunity to sustainably develop their land. Especially where some Māori land is not practically feasible for anything but forestry, steep and narrow valleys and terrain.

29. Our key recommendations to the Ministers were:

    (a) to keep exotic tree species in the permanent category of the ETS;

    (b) that the ETS continue to recognise the carbon sequestration value of forestry;

    (c) that the Minister accept our industry led Code of Practice as a solution to the issue without the need to take further regulatory action;

    (d) that the Minister agree to work proactively, collaboratively, and in partnership, empowering Ngā Pou a Tāne; and

    (e) that the Minister makes officials aware that misrepresentation of the forestry industry is unacceptable.

Other Government Regulatory Action Affecting Maori

30. Maori are the second largest landowners of native forests, with collectively nearly 700,000 hectares of native forests. These forests however were subject to the Forest Act 1949, and now also the Conservation Act 1987. These pieces of legislation have largely

curtailed Maori landowners ability to do anything with their lands, without first receiving government approval. Outside of the cutting of native timber on these lands for firewood, everything else requires government or Council approval.

31. I note this briefly, because again, there was clear reason to protect native forests from the huge deforestation that had been happening in the mid 20th century. However, it has a negative impact on how Māori can use their land, and what they can use the trees on their land for, freely and within their own autonomy. It means that land planted in native trees will have no other use beside carbon sequestration. In the longer term this means that Maori land will be permanently unavailable for any other productive use and the landowner will lose a choice over what they do with their land.

DATED this 25th day of October 2024

Te Kapunga Dewes