WAI 3325 – CLIMATE CHANGE PRIORITY INQUIRY

HEARING WEEK 2

HELD VIA AVL

MONDAY 7 APRIL 2025 - FRIDAY 11 APRIL 2025

Tribunal:	Judge Stephanie Milroy Kevin Prime Basil Morrison Prue Kapua Professor David Williams
Crown Counsel:	Jeremy Prebble Nixon Fong Grace Seeley Anna McTaggart
Claimant Counsel:	Darshini Dorn Katie Paul Luke Evison Janet Mason Bryce Lyall Tom Bennion Kudrat Jasper Sontier Majka Cherrington Emma Jackson Evelyn Rongo Annette Sykes Jack Potaka Komal Singh Toni Talamaivao Tania Te Whenua Matanuku Mahuika Sam Vincent Michael Sharp Nicole Smith Hannah Swedlund
Interpreter:	Paiheke McGarvey
Witnesses:	**Day 1 - Monday 7 April 2025** John Henry Te Urikore Katene Hooker Alison Anitawaru Cole Larian Tuari Wallace Aramoana

Maude Edwards
Suzette Rowena Te Aomarama Klock Griffith
Te Mauri Keno
Gaylene Kohunui

Day 2 - Tuesday 8 April 2025
Ngaire Therese Ngamoki
Christine Mihiterina Martin
Kahukore Felicity Baker
Emma Bailey
Adrian Maximilian Keepa Pucher

Day 3 - Wednesday 9 April 2025
Wayne James Ngata
Roanna Bennett
Haukapuanui Malcolm Vercoe
Kataraina Pirihira Gail Skerrett-White
Michael Richard Skerrett

Day 4 - Thursday 10 April 2025
Professor Elizabeth Jane Kelsey

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Dr James Every-Palmer KC
Aroha Wikotu

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PLEASE NOTE: In recognising that the spelling of names, dialect, and kupu differ across hapū and iwi, we acknowledge that each kupu has a whakapapa that is valid. With respect of these differences, the following transcripts have been specified for continuity in our mahi. The dialectal variations have been transcribed verbatim.

HEARING COMMENCES ON MONDAY 7 APRIL 2025 AT 9.01 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

(09:03) KEVIN PRIME: (MIHI)

E ngā reo, e ngā mana, e ngā waka, e ngā tini kārangaranga, ki a koutou katoa kua hono mai i runga i te ipurangi i tēnei ata, tēnā rā koutou katoa. Ka mihi rā ki a koutou, ki tēnā, ki tēnā o koutou, e noho nei ki o koutou kāinga, o roto hoki o koutou tari. Nei rā te whakamihi atu ki a koutou. **To the voices, to the mana, to the waka, to the various people form throughout the country, those who have joined online this morning, greetings. I want to acknowledge you and each and every one of you, from your home and your officers. So, I want to greet you all.**

E mihi ana hoki ki o tātou aituā maha kua taka atu ki tua o te ārai. Tēnei te tuku i te poroporoaki atu ki a rātou. E kīia nei te kōrero, ko rātou kua tangihia, kua mihia, kua poroporoakitia. Nā reira rā, me kī, kua ea. **I also want to acknowledge all of the deaths who have passed beyond the veil. I want to express our farewell sentiments to them. It is said that those who have been mourned, lamented, and farewelled. That has been satisfied.**

Engari ki a koutou katoa kua hono mai, nau mai, haere mai, whakauru mai ki roto i tō tātou nei hononga ki te ipurangi i te rā nei. E haere mai rā hoki, whakauru mai rā i runga i te karanga o Te Rōpū Whakamana i te Tiriti o Waitangi, ki tā mātou heamana hoki, ki raro i te whakahaere o te kaiwhakahaere o te Kaiwhakawā i tēnei ata, te Kaiwhakawā Milroy. Ko ia e whakatutuki nei te kaupapa mō tātou. Nā reira, he mea whakauru mai, nau mai. **To those joining in, welcome, greetings, as you join in online, on this day, to our sitting. Welcome, and come forth on the call of the Waitangi Tribunal. Also, want to acknowledge the Judge, the presiding officer this morning, Judge Milroy. Who is the presiding officer of this kaupapa, and so, to all those joining in, welcome.**

Me mihi kau tonu ki te mana whenua i roto i tēnei rohe, tēnei wāhi, a Te Ātiawa, Ngāti Toa Rangatira, tēnā rā koutou. Ki ngā maunga whakahī hoki, ki a koutou katoa kua hono mai, tēnā koutou, tēnā koutou, kia ora tātou. **I want to pay homage to the local iwi of this region of this territory, Te Ātiawa, Ngāti Toa Rangatira, greetings to them. To the prominent mountains also, and to all who have joined. Greetings, greetings, thank you all.**

(09:04) JUDGE STEPHANIE MILROY: (MIHI)

Tēnā koutou katoa. Nau mai haere mai ki tēnei nohoanga tuarua o Te Rōpū Whakamana i te Tiriti o Waitangi, mō te Climate Change Inquiry. E tautoko ana au i te mihi o tō mātou kaumātua. **Welcome to the second sitting of the Waitangi Tribunal for the Climate Change Inquiry. I endorse the greetings expressed by our elder.**

Welcome to the second hearing of the Climate Change Inquiry. For those who may not have joined us previously in this inquiry, I will just introduce the panel. To my far left is our kaumātua, Mr Kevin Prime. Sitting next to him is Mr Basil Morrison. To my immediate right is Ms Prue Kapua, and at the far right is Professor David Williams. Welcome to you all.

This week, we are hearing the opening submissions and evidence for the hapū o Ngāruahine, Wai 3382. Te Upokorehe Future Generations, Wai 3279. Te Rūnanga o Ngāti Whakaue Inc, and Ngāti Whakaue ki Maketū hapū, Wai 3409. And for the Climate Change, Wai 3346, Kataraina Skerrette-White's claim. Ngā Toki Whakarururanga, Wai 3395. We are also hearing further evidence for the Wai 3262 claim.

HOUSEKEEPING (09:06:53)

JUDGE MILROY:

As I said at our last judicial conference, rather than asking you all, because you are all on AVL to make appearances, I will just do a role call to save a bit of time. This role call is not in any particular order, it is just in the order of the RSVPs, as they came in.

The first is for Woodward Law, these are Wai 3414, Wai 3412, Wai 3413, Wai 2607, and we have listed, Donna Hall, Darshini Dorn, and Bryn Singers. Are they with us today?

(09:10) MS DARSHINI DORN: (MIHI, APPEARANCE)

Tēnā koe, your Honour. I am just appearing today for Woodward Law. Unfortunately, Donna Hall is not able to make it, and neither is Bryn Singers.

JUDGE MILROY:

Then you have Michael Sharp, Wai 2607, and Wai 3340, and Mr Sharp, I can see you there. We also have Nicole Smith.

The next is EL Lawyers and Phoenix Law for Wai 3345, 3346, 3347, 3394, 2409, 3392, and 3411. Ms Paul.

(09:11) MS KATIE PAUL: (MIHI, APPEARANCE)

Kao, Ma'am. I appear for the claimants along with counsel Evison of Phoenix Law and counsel Brown of Phoenix Law. Ms Mason will join us via Zoom link.

JUDGE MILROY:

Sorry, there are a number of other claims which I will just quickly read out. Including, the Wai 120, Wai 3408, Wai 1018, Wai 3393, Wai 3396, Wai 3410, Wai 3407, Wai 3397, and Wai 1307.

Next, we have Mr Lyall for the Wai 3278, 3288, and 3279 claims.

(09:13) MR BRYCE LYALL: (MIHI, APPEARANCE)

Mōrena, your Honour. I am here alongside Ms Swedlund, we also have Ms Sreen, who will be appearing later in the week. I would also add that we represent the combined claims of Te Waimate Taiamai ki Kaikohe Claims Alliance, the Wai 421, 593, 869, 1383, and 1890.

JUDGE MILROY:

Next, we have Bennion Law for the Wai 3262, Wai 507, and Wai 2139 claims.

(09:13) MR TOM BENNION: (MIHI, APPEARANCE)

E te Kaiwhakawā, ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi, te kaikarakia, tēnā koutou. **Your Honour, the members of the Tribunal, and to the person who done the karakia.**

Yes, those are the three claims, Ma'am, and I have Ms Kudrat with me. I will be out at some periods on other work, but she will be constant through the inquiry.

JUDGE MILROY:

Next, we have Mr Hewison for the Wai 2821, and Wai 3361 claims.

(09:14) MR JASPER SONTIER: (MIHI, APPEARANCE)

Mōrena, your Honour. I am appearing on behalf of Dr Hewison, Jasper Sontier. He is unfortunately not able to make it today, and I'm hoping to be joined by Brooke Loader as well, later in the day.

JUDGE MILROY:

Will Dr Hewison be available later in the week?

MR SONTIER:

No, I'm not sure if he will be available, unfortunately. But we are representing the claimants as well.

JUDGE MILROY:

We also have Tukau Law, representing Wai 682, Wai 1464, and 1546, and Wai 2397.

(09:15) MS MAJKA CHERRINGTON: (MIHI, APPEARANCE)

Āe, tēnā koe e te Kaiwhakawā, otirā ki a koutou te Taraipiunara. Kei konei ahau, Ms Cherrington, māua ko Ms Jackson. Ka whakawhiti māua i tēnei wiki.

Yes, thank you, your Honour, and greetings to the Tribunal. We are here, Ms Cherrington with Ms Jackson.

Tuatahi, māku e tuku he mihi ki a koe Matua Kevin, nāu i whakapuare tō tātou nei hui i tēnei ata, he mihi nui ki a koe mō tēnā. **I want to acknowledge elder Kevin Prime who opened our hearing this morning. I want to thank you very much for that.**

Yes, Ma'am, Ms Cherrington, and Ms Jackson will be appearing throughout the week. We aren't taking active roles in this hearing week, so we do seek leave to attend via the livestream if that is okay, and we will reappear via Zoom if necessary.

JUDGE MILROY:
Next, we have Oranganui Legal for the Wai 3277 claim.

(09:16) MS EVELYN RONGO: (MIHI, APPEARANCE)
Mōrena, Ma'am. Appearing for Ngāti Koata. I too aren't playing an active role in this hearing. To reduce the congestion on the Zoom feed, I will also be going on to the livestream.

JUDGE MILROY:
Ms Sykes, for the Wai 3281 and Wai 2494 claims.

(09:16) MS ANNETTE SYKES: (MIHI, APPEARANCE)
Kei te tukuna te rākau ki te rōia hou mō Annette Sykes and Co. Kei a koe, Jack, hei whakatau i a tātou i te ata nei, kia mōhio mai koutou ko wai a Mr Potaka. Kei konei māua tahi me Mr Vincent e whakatau i ngā kerēme i tēnei wiki. **Our new lawyer, Jack, you will give greetings today, Mr Potaka. Appearing alongside Mr Vincent as well for claims.**

(09:16) MR JACK POTAKA: (MIHI, APPEARANCE)
Tēnā koutou, e te iwi. E whai ana i ngā mihi kua ūwhia ki runga ki a koe Matua Kevin. Nāu i whakatūwhera i te wāhanga ki a tātou i tēnei rā, e paihere

ai te rangi ki te whenua, te whenua ki te rangi e whai niho ai tēnei kaupapa i tēnei rā. **Greetings all. Following on from the acknowledgements that were made towards you, elder Kevin Prime, who opened our proceedings today. Binding the heaven and earth, and earth and heaven for this matter to gain peace on this day.**

Kia whakamōhio noa atu ki te Taraipiunara ko wai tēnei, ko Mr Potaka tēnei e tū ana ki te taha o Ms Sykes rāua ko Mr Vincent. Atu i te Pā o Aotearoa, ki roto i a Ngāruahine, whakahoki nei i ngā mihi ki ngā manga, ki ngā tapu, ki ngā ihi, ki ngā wehi, ki ngā mana, ngā mana whakatiketike o ngā papakāinga puta noa i te motu. **To inform the Tribunal as to who I am, I am Mr Potaka, appearing alongside Ms Sykes and Mr Vincent. From the far – from Ngāruahine, and also want to respond and acknowledge the essential and powerful forces, tapu, ihi, wehi, and the mana, the authorities, the highest mana of the villages and homes throughout the country.**

Koutou ki Te Whanganui-a-Tara, ki Te Ūpoko o te Ika, Te Ātiawa, Ngāti Toa Rangatira, Taranaki whānui. Hoki kōmuri atu rā ki roto tonu i Te Taihauāuru, ki a Ngāruahine, kua karapinepine mai nei i tēnei rā ki te kawe i ngā tuāhuatanga o te rā. Tēnei ka mihi atu ki a tātou katoa. **To those in Wellington, the head of the fish. Te Ātiawa, Ngāti Toa Rangatira, Taranaki whanui and coming back to the west, to Ngāruahine who have gathered today to convey the various matters on this day. So, I want to acknowledge everyone.**

E te Taraipiunara, e te Kaiwhakawā, ka nui te mihi ki a koe, e te honore, your Honour Milroy. Kāore e ārikarika ngā mihi ki a tātou katoa. Tēnā tātou. **To the Tribunal, to you, your Honour, thank you very much. I want to greet everyone, very much, thank you.**

JUDGE MILROY:

Next, we have Dixon & Co for Wai 2003.

(09:18) MS KOMAL SINGH: (MIHI, APPEARANCE)

Tēnā koe, e te Kaiwhakawā. Counsels name is Ms Singh. Your Honour, we are just going to note that we are appearing for Te Pouka Hapū, they are with the watching brief. With your leave, we would like to also attend via livestream when we can. I would also like to register the appearance of my colleague Ms Toni Talamaivao, who will be attending on my behalf via AVL on Tuesday, Wednesday, and Thursday. Due to some prior engagements that I have.

JUDGE MILROY:

Tēnā koe, Ms Te Whenua, representing Wai 3285 and Wai 3286.

(09:19) MS TANIA TE WHENUA: (MIHI, APPEARANCE)

Tēnā anō hoki koe e te Kaiwhakawā, otirā tō paewhiri, Te Rōpū Whakamana i te Tiriti o Waitangi. Anei ngā mihi ka rere atu ki a koe tō tātou pou tikanga, Matua Kevin, i whakatau i tō tātou hui i tēnei rā. Huri noa, aku hoa, e mihi ana i te ipurangi, ngā ritenga anō hoki ki ngā kaikerēme e mātakitaki mai o rātou marae, takiwā, o te motu. Tēnā tātou. **Greetings once again, your Honour, and your panel of the Waitangi Tribunal. I want to also thank you, our tikanga expert, elder Kevin Prime, who began our proceedings. To everyone, my friends who are joining in online, and also to the claimants watching from their marae, their districts throughout the country. Thank you all.**

JUDGE MILROY:

I have just seen Mr Matanuku Mahuika appearing. Mōrena.

(09:20) MR MATANUKU MAHUIKA : (MIHI, APPEARANCE)

Tēnā koe, Ma'am. Otirā, tēnā koutou te Rōpū Whakamana. Tēnā koe, te pāpā, me kī, Kevin, nāhau tēnei huihuinga i whakarite i tēnei rangi tonu. Otirā, tēnā tātou whakawhāiti mai nei ma runga i te rorohiko whakahaere tēnei kaupapa nei. **Thank you, Ma'am. Thank you also, to the Waitangi Tribunal. Thank you to the uncle, Kevin, it was you who opened our gathering today. Greetings to everyone who has come together online on this most important kaupapa.**

Ma'am, I am here for Mr Insley's claim. We do not have any witnesses appearing during this week so I will be rotating appearances with Mr Toms and Ms Hauraki during the course of the week. We may attend by way of the live stream like other parties have. But I thought I would attend this first part of the hearing, at least to make an appearance and let you know that we are floating around.

JUDGE MILNER:

I think finally, to the Crown, Mr Prebble.

(09:21) MR JEREMY PREBBLE KC: (MIHI APPEARANCE)

E ngā Kaiwhakawā, tēnā koutou. Ko Prebble ahau, kei konei mātou ko Mr Fong, ko Ms Seeley, ko Ms McTaggart mō te Karauna. **Your Honour, thank you. Prebble appearing alongside Mr Fong, Ms Seeley, and Ms McTaggart for the Crown.**

Thank you, your Honour. Mr Fong, as last time, is joining us separately form Auckland, whereas, in this room, it is myself, Ms Seeley, and Ms McTaggart. Thank you.

HOUSEKEEPING (09:21:49)

(09:22) MR SAM VINCENT: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, tēnā koutou ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. **Greetings, your Honour, and greetings to the members of the Waitangi Tribunal.**

May it please the Tribunal. I am of course appearing with Ms Sykes and Mr Potaka, representing claimants for Wai 3382. Which is a claim filed on behalf the claimants, respective hapū of Ngāruahine. We have with us here, John Hooker on my left and Allison Cole on my right, to ogive evidence this morning for the claim.

HOUSEKEEPING (09:23:01)

KARANGA (ALISON COLE)

KARAKIA (JOHN HOOKER)

WAIATA

(09:27) MR VINCENT: (#3.3.016)

I will give my opening submissions before we then handover to Mr Hookers evidence, followed by Ms Cole's evidence.

I refer the Tribunal to document number #3.3.016, those are the opening submissions, and I will give a brief summary of that. I will also refer now to the reference numbers for the evidence file for Mr Hooker and Ms Cole. Mr Hooker's affidavit is document #A040, and the exhibits are #A040(a) and (b). His summarised affidavit is #A040(c). Ms Cole's affidavit is document number #A039, exhibits are #A039(a), and summarised affidavit is #A039(b). Her speaking notes are #A039(c).

This claim is filed on behalf of all Ōkahu-Inuawai hapū and Kanihi Umutahi hapū. We are currently an Aotearoa pā, the marae of Ōkahu-Inuawai hapū. The Waitangi Tribunal has sat in this very wharenui to hear the claims filed by uri of Ngāruahine, and members of this hapū 15 years ago.

John Hooker is the chairmen of Ōkahu-Inuawai and ētahi atu hapū, as well as chairmen of the Kaumātua Council of Ngāruahine and also chairmen of the Aotea District Māori Council.

Alison Cole is an uri of Ngāruahine, she is a member of this hapū. Present kairangahau and lecturer for Wai Ora, here in Ngāruahine. While also being a lawyer with extensive practice in national law and matters of climate law and policy.

Mr Hooker and Ms Cole live here in this takiwā, the takiwā of their hapū. They see the extremely serious consequences of climate change on their whenua, their awa, the takutai moana and devastating impacts on the creatures here. They are driven by kaitiakitanga to protect all of this.

In the takiwā of this hapū, we also have unabated oil and gas extraction which mana whenua in this rohe have fought against long and hard. Their exercise of kaitiakitanga over this resource has been denied. On the contrary, the Crown has consistently worked to promote petroleum extraction on whenua Māori no matter how clear the terrible consequences are for our taiao. This hapū is now dealing with the consequences of petroleum in terms of climate breakdown and serious ecological harm.

I refer to the Ōkahu-Inuāwai Climate Strategy and kaitiaki environment plan appended to Mr Hooker's affidavit. This hapū understands the situation it is in and what needs to be done. His claim is a call for tino rangatiratanga so that the hapū is resourced and enabled to exercise its authority in this takiwā to protect te taiao.

This claim is also an urgent call for the Crown to take action to protect the hapū of the claimants from the devastation of climate change, including through the progressive loss of historic papa kāinga and wāhi tapu on land protected under Treaty settlement, and which was reserved land after the confiscations in the 1800s to protect that from coastal erosion, and also through the large scale debts of taonga species suffered here.

This claim is a call for real partnership. Renewable energy development is proceeding at pace but this hapū is struggling to ensure it is at the table and to stop the Crown from trampling over their rights as they proceed, and mistakes of the past cannot be repeated.

There must also be redress for the harms of climate change, harms which are felt here and harms which only stand to deepen. The harm is so grave, so irreparable that the obligations placed on the Crown are correspondingly

significant and urgent, and Ms Cole has a number of recommendations in that regard.

As I said, Mr Hooker will give evidence first. That is the end of my submissions to open us. I will hand over to my colleague Mr Potaka, he will go over **(inaudible 09:32:22).**

MR POTAKA:

Tēnā anō tātou me te Taraipiunara. E mihi anō ki a tātou katoa me ngā mihi e takahuri haere ana i tēnei kaikōrero, arorangi o te rā, ka nui ake ngā mihi ki a tātou katoa. **Greetings Tribunal. I want to acknowledge everyone once again, and first of all the acknowledgements that have been said throughout you all.**

MR JACK POTAKA CALLS

(09:33) JOHN HENRY TE URIKORE KATENE HOOKER: (#A040)

Q. Kia timata ake ngā kōrero i te rangi nei, tēnei te ui atu ki a koe Matua Hone, tēnā koa. Mō te Taraipiunara, ka taea e koe te whakamōhio atu ki te Taraipiunara, otirā tātou katoa e whakarongo mai nei i te rangi nei, ko wai koe, nō hea koe? **I wish to ask you elder Hone, greetings. For the Tribunal, are you able to share with the Tribunal, and everyone listening today, who you are, and where you're from?**

A. Ko wai tēnei, he uri o ngā Kāhui Maunga. Ki te taha o tāku kuia ko Ruapehu te maunga, Atihaunui a Pāpārangi te iwi, Otoko te pā, Ngāti Hine tāku hapū. Nō reira, ki te taha o tāku koroua, ko Taranaki te maunga, Ngaruahinerangi te iwi, Ōkahu Inuāwai te hapū. A, ka noho au ki runga i tāku marae, Aotearoa, ki roto o te wharenui Te Ngakaunui. **Who is this, I am a descendant of the mountain. On my grandmother's side Ruapehu is the mountain, Atihaunui a Pāpārangi is my iwi, Otoko is the pā, Ngāti Hine is my hapū. So, on my grandfather's side, Taranaki is the mountain, Ngaruahinerangi is my iwi, and Ōkahu Inuāwai is my hapū. I live on my marae, Aotearoa, in the Ngakaunui meeting house.**

Ko au te tiamana o tāku hapū. Tiama ōrite mō tāku hapū Ōkahu Inuāwai. Ko au hoki te tiamana o tō tātou nei rōpū kaumātua o Ngāruahine, kei muri i taku tuara ētehi o ngā kaumātua noho ake. Ko au hoki te tiamana o Aotea District Māori Council. Ka mihi ake. **I am the chair of my hapū. The co-chair for my hapū Ōkahu Inuāwai. I am also the chair of our organisation, Elders Council of Ngaruahine and behind me are some of the elders. I am also the chair of Aotea District Māori Council. Thank you.**

Q. Tēnā koe matua Hone. Ka taea hoki koe te mea atu ki te Taraipiunara tō ingoa roa? **Thank you, elder Hone. Are you also able to tell the Tribunal your full name?**

A. Hika, tēnā tātou. Ko John Henry Te Urikore Katene Hooker tāku ingoa, nō reira kei konei au hei kanohi mō tāku hapū me tāku iwi. **Thank you. John Henry Te Urikore Katene Hooker is my name, and so I am here to represent my hapū and my iwi.**

Q. Tēnā koe matua. Ka nui te mihi. **Thank you elder. Thank you very much.**

MR POTAKA ADDRESSES JUDGE MILROY – BRIEF OF EVIDENCE TAKEN AS READ – SUMMARY AT #A40(C) (09:35:01)

MR POTAKA TO JOHN HOOKER: (CONTINUES)

Q. Tuatahi ake, ko te kaupapa nei, ko tōu i tuhia e te matua i roto i te kōwai tuatahi ki te kōwai tuatoru ka whakamārama koe i te rautaki o Ōkahu Inuāwai e hāngai ana ki te patunga o te taiao, ka mutu ki te perēnē e kīia nei ko te kaitiaki environmental plan. Ko tōu e mea nei, mā ēnei rautaki e rua ka ārahi i tō iwi ki te tiaki i te taiao, i te whenua, i ō wai, i ō wāhi tapu katoa, a ko tāku pātai ki a koe, he aha te hua o ēnei rautaki ki te tiaki i te patunga o te taiao ki roto i a koe ki roto i tō takiwā? **Firstly, the matter pertaining to, you wrote, elder at paragraph one to paragraph three, you explain the strategy of Ōkahu Inuāwai pertaining to the damage to the environment and the plan, Kaitiaki Environmental Plan. You state here that through these two strategies, that will guide your people in protecting the environment,**

the land, your waterways, your sites of significance, so my question to you, what is the benefit of these strategies in protecting the environment against climate change in your district?

A. Ngā mihi ki a koe e te whanaunga. Te tirohanga whānui mō aua kaupapa e rua, tō mātou nei tirohanga tahi mano tau, koinā tō mātou nei tirohanga i roto i aua rautaki e rua. Kei roto aua tirohanga roa tō mātou nei hiahia kia tiaki ai ngā atua katoa i roto i te takiwā, ara tō tātou nei mana Tangaroa, a tātou nei mana Tūmatauenga, tō tātou nei mana Papatūānuku, tō tātou nei kaupapa a Ruaumoko, ara ngā maunga. Koinā tō tātou nei tino pūtake o ngā kaupapa e rua. **Thank you to my relation. The wide view on those two matters, are from our point of view, is firstly of 1000 years, that is our vision within those two strategies. Within that vision is our desire to protect all of the deity pertaining to the territories like the deity, the mana of Tangaroa, the deity of Tūmatauenga, the mana of Papatūānuku, and that is our purpose, also including Ruaumoko and the mountains. That is our most important foundation pertaining to both strategies.**

Q. Ka pai, ka pai. Ana ki te whakatūtuki i ēnei rautaki kua whakaritea e koutou, me aha pea te Karauna hei tautoko i a koutou ki te whakatūtuki i ēnei perene kua whakaritea e koutou? **All right, all right. Now if these strategies are to be realise, that have been developed by you, what must the Crown do to support you in realising these strategies that have been developed by you?**

A. Well, i tēnei wā kāore anō kua rewa tēnā. Tō mātou nei hiahia tukuna aua kaupapa e rua ki ngā kaunihera o Taranaki, kaunihera rahi TRC i roto i te marama o Hune. Kei te haere mai a World Indigenous People's Conference i taua wā, tō mātou nei hiahia kia rewa tēnā, aua kaupapa e rua ki ngā Kaunihera hei taua wā. **At this time that has not been lodged. But our desire is for those strategies to be provided to the council, local council, throughout Taranaki, and the larger council. Which is coming, World Indigenous People's Conference will take place at that time, and we want to launch those two strategies to the Council at that time.**

Q. Ka pai. Tēnā koe matua. He whakaaro anō tōu e hāngai ana ki ērā perene e rua kua hia koe ki te whakahua ake? **All right. Thank you elder. Do you have any other thoughts in terms of those two plans that you want to share?**

A. Oh, kei roto te whatumanawa tō mātou nei hiahia hei rautaki tēnā mō ngāi Māori hei rautaki tēnā hoki mō te hunga Ngāti Wikitoria hoki, and kia ora pai ai i roto te tirohanga whānui kotahi mano tau. **Within our hearts is our desire for that strategy to be used for the benefit of Māori and also for those who are Ngāti Wikitoria so that they can try within the wider vision over 1000 years.**

Q. Tēnā koe e mārama pai ana ki tāua kaupapa. Kia tahuri ināianei tāua ki te kaupapa tuarua o roto mai i tō tuhinga, kōia nei ko te kaupapa e hāngai ana ki te rironga o te whenua nā te hekenga o te paruparu o te whenua ki roto o te moana. Ko tāku pātai ki a koe ka mea atu koe – kei te titiro au ki te kōwai rima tae atu ki te kōwai tekau mā waru, ka mea atu koe kua pā nei tēnei tūāhuatanga ki a koutou ko tō hapū, tēnei mea te rironga o te whenua o ngā wāhi tapu. A, ka taea rānei te mea mai koe ētahi tauira o tēnei tūāhuatanga ki roto ki a koutou, o te rironga o te whenua? **Thank you I understand clearly that matter. Now let's turn our attention to the second matter in your written brief, and that is in relation to the land being taken, block of land, due to coastal erosion. My question for you is that you state that, I'm looking at paragraph 5 to paragraph 18, and you state that this has affected our people, our hapū, the coastal erosion, we're losing wāhi tapu, sites of significance. You state that there are some examples of this matter, the loss of land.**

A. Āe. He kino kaupapa patu ki te whatumanawa tēnei pānui. Ki a mātou koinā ngā wāhi tapu kei roto i tāku takiwā anake, kei roto te kōti, tāku tungāne mai i te hapū o Ngāti Tū, ko ia hoki te tiamana o taua hapū. But ngā wāhi tapu kei roto tāku takiwā, a ka tīmata ahau, kei te ngutuawa o Waihi, a ko Pukeoha tēnā, kua ngaro te nuinga o tō mātou nei pā tūwatawata ki roto o Tangaroa. Ka whakawhiti tonu ki tō tātou nei pā o Araukuku, Tupaea, taua pā ko te ingoa o tēnā ko Ōhawe Tokotoko, kua ngaro atu i te whitu tekau paihēneti o taua pā tūwatawata me te urupā ki te taha, kua ngaro. **Yes. That's something that lies close to our**

hearts. To us those are the wāhi tapu that are – my brother of Ngāti Tū, he is the chair of that hapū. But the wāhi tapu in my territory, commence at the river mouth of Waihi and that's Pukeoha which most of our fighting pā land has been lost to the sea. Crossing to our pā of Araikuku (Māori 09:41:32), that pā the name is Ōhawe Tokotoko, 70 percent of which has been lost of that pā and also the burial ground has been lost to the sea.

Haere tonu tāku haere ki te uru, ka tae ki tāku pā motuhake Rangatapu, kua ngaro te katoa o Rangatapu, ngaro katoa ki ngā ringa o Tangaroa. Haere tonu ki te uru, ka tae whakawhiti te awa o te Waingongoro, ka taea te kitea a Te Kawau, ngaro te nuinga o Te Kawau kua ngaro. Kua ngaro te urupā, kua ngaro te papa kāinga, kua ngaro te pā tūwatawata. Haere tonu tāku hīkoi ki te uru ka tae ki te ngutuawa o Ngaere ko Inaha tēnā, and te wāhi tapu ki reira ko Ōtaika, kua ngaro te nuinga o Ōtaika, kāore e taea te kitea te pā tūwatawata o mua, kāore e taea te kitea te urupā, kāore e taea te kitea te papakāinga. Koinā ngā wāhi tapu kei roto tāku takiwā mai Waihi tae noa ki Inaha so koinā. **Going towards the west, and reaching a special pā called Rangatapu, where it's all being lost, the land there from the hands of the sea. Crossing Te Waingongoro River and then you can see Te Kawau, which most of the pā has been lost, along with the urupā, the community, the fighting pā. Then I traverse to the west, the river mouth of Ngaire, and that's (Māori 09:42:45) and our wāhi tapu is Ōtaika which most of which Ōtaika cannot be seen, you can't see the old pā, and you can't see the burial grounds. Those are the wāhi tapu in my district from Waihi to Inaha.**

Q. Me te huhua hoki o ngā patunga ki runga i a koe e te matua, ka tangi hoki te ngākau ki te rongo ake i ērā tūāhuatanga. Katoa, katoa o ērā patunga kua puta i roto i ngā tau kua hori, ki tō whakapae ka mea atu koe i te kōwai tekau mā waru, ka mea atu koe te katoa o ēnei whenua kei te riro atu, kei te ngaua e te ringa o Tangaroa nā te patunga o te taiao. Ana kia mōhio mai koe Mr McGarvey e whakawhiti ana ahau, ka mea i te patunga o te taiao koia ko te climate change. Nō reira, kei te whakaae koe ki tērā whakaaro nē, nā te patunga o te taiao kua pēnei te āhua o ōu whenua, o

ōu wai? **So much damage has been done upon your lands elder, which affects the heart. In all of those losses over the years, you claim that at paragraph 18, you state that all of these lands are being lost to the hands of Tangaroa, to the sea, and is a damage to the environment. To you Mr McGarvey, climate change. Do you agree with that view, that due to climate change that that is what has damaged your land, and your waters?**

A. Tino tautoko ki te nuinga o ngā petroleum, ngā hinu o Papatūānuku kei roto tāku takiwā nā te tangotanga o ērā hinu o Papatūānuku, a mōhio noa tātou kei te piki ake ngā raru i roto te wāhi o Tawhirimatea, a Tangaroa hoki, a ka ngaro haere, mimiti haere te whenua, a koinā. **I support most of the petroleum, from the Earth in my area, and due to the extraction of that petroleum from the Earth we know that problem increased due to the winds, the sea, and the land that is lost?**

Q. Koinā. Nō reira, kia anga whakamua pea tātou, ki a koe he aha ngā mea me mahi e koutou, e te Karauna ki te whakatū i tēnei tūāhuatanga kei te pā nei ki runga i a koe kia mutu te rironga o te whenua ki ngā wai o te moana? **So, moving forward, in your opinion, what are some of the things that need to be done by you, and by the Crown to settle this matter that is affecting the loss of land to the sea?**

A. Ki aku whakaaro, tuatahi he mea moumou te tangotanga o taua petroleum, taua hinu o tāku kuia Papatūānuku i roto ēnei tau rima tekau. Āhua ōrite ki te fire sail tēnā. Moumou te tukunga o ētehi o aua hinu ki tāwahi, tāku whakaaro o te hapū, waiho aua hinu mō te hapori o Aotearoa anake. Me hei aha ngā kaipāmu hoki mō rātou e ora ana i roto i a rātou nei whare, kia whakamahana te whare, kia tae rātou te tunu ā rātou nei kai kia ora ai te hapori o Aotearoa. Hei aha te tukuna ki wāhi kē kia balance ērā ahuatanga nō reira ka mihi. **To my view, firstly it's a waste to remove petroleum from the Earth over the past 50 years. It's like a fire sail. It's a waste to give away that petroleum to overseas, leave it to the hapū, for the community of New Zealand alone. Never mind the farmers to provide it for people to warm their homes, so they can cook their food, so they can thrive, the communities in this country.**

Never mind sending it to other areas, to other places and balance those sorts of things, so thank you.

Q. Tēnā koe e te matua. Kia tahuri taua ki te kaupapa tuatoru kua ahu mai i tō tuhinga, koia tēnei ko ngā tūāhuatanga o te hahu ake i te hinu, i te penehīni i te whenua i roto i tō takiwā, koia tēnei e te Taraipiunara, ko ngā kōwai tekau mā iwa ki te kōwai rua tekau mā whā. I roto i tēnei wāhanga o tō tuhinga, matua Hone, ka mea atu koe ko tō hapū ka kore e whakaae ki te hahunga ake o te hinu i roto i tō takiwā. Ka taea e koe te whakamārama te take a kāore koutou e whakaae ana ki tēnei tūāhuatanga i roto i te horopaki o te patunga o te taiao ki ō takiwā?

Thank you elder. Now let's turn our attention to the third matter that arose from your written brief, and that is the effects pertaining to extracting petroleum from the land in your district, so Tribunal there's a paragraph 19 to paragraph 24. In this part of your brief, elder Hone, you state that your hapū will never agree to the extraction of petroleum in your area. So, are your able to explain the reason as to why you do not agree with this within the concept of climate change in your district?

A. Te tuatahi, kia mōhio ai koutou taua pātaka hinu o Papatūānuku kei raro i tō mātou nei marae hoki, taua pātaka hinu, kei raro tō mātou nei marae tae noa ki Ngāti Manuhiakai tae noa ki Ngāti Tū, tae noa ki Ngāti Haua, te nuinga o ngā hapū o Ngāruahine. So, i roto i te tau rua mano i tae mai tētehi o ngā engineers ō Shell, tana kī ki a mātou, off the record, tana kī mēnā ka haere a Shell ki te Sultan o Brunei, tōna kī mōhio noa rātou ka tukuna rima tekau paihēneti ki te Sultan te tuatahi. Koinā te painga tuatahi ki te mana taketake o taua whenua, nā te – taua ture o tahi mano iwa rau toru tekau mā whitu i raupatuhia taua hinu mai tāku hapū, mai tāku iwi. I roto i te wa o te pakanga tuarua i raupatuhia te airports kei Raglan, i whawhai ai tāku kuia a Eva Rickard and i hoki mai tōna airfield ki a ia i te wā i ora ana. Kāore anō te kāwana i whakahokia tō tātou nei taonga, te hinu o Papatūānuku, ki a mātou. Āe, kāore mātou i hokona, kāore mātou i whakaae. Tō mātou nei whakaaro mana motuhake nā tātou tēnā. **Firstly, may I inform you that that petroleum from the Earth also lies under our marae, that petroleum, it's under our marae**

and it's at Manuhiakai and also including Ngāti Tū, Ngāti Haua, most of the hapū of Ngāruahine. In 2000, many engineers from Shell came and they told me, off the record, the person told us that if Shell goes to the Sultan of Brunei and he stated that they know that he will give 50% to the Sultan in the first place. And that is the first benefits to those who belong to that land. Through that law of 1937 the petroleum, oil, and gas was confiscated from my hapū and iwi. During the time of World War II, the airport was confiscated at Raglan, and my kuia Eva Rickard fought for, and the airfields were returned to her and her people during her lifetime. The government has not yet returned our treasure, oil, and gas from Papatūānuku the Earth to us. We did not sell it and we do not agree, and we adhere to our absolute autonomy.

Q. Ā kia pai noa ki ērā kōrero. Kei te marama i ō tuhinga, kei te marama pai koe, kei te hia tonu te karauna ki te keri i te takutai moana kia hahu ake i ēnei hinu i te wā tonu nei. Ana, he aronga tā koutou mō te wā nei, mō te āhuatanga ki te toha i ngā hua pūtea nei kia riro i a koutou te rima tekau paihēneti, e kōrero royalties nei ana au, mō te hahunga o ēnei hinu. Ki a koe, ko tērā te hua mō te wā paku nei, ki te whai tonu i te karauna i ēnei ahuatanga o te hahu i te hinu, i te pataka hinu, o tō takiwā? **Following on from what you just said, it's clear in your brief, you are clear that the Crown wants to extract oil and gas resources at this very time. You have focused, and this time, in terms of the distribution of these financial benefits from you to supply us 50% of the royalties from the extraction of oil and gas, these resources. To you, the short-term benefits, if the Crown follows on in extracting oil and gas resources from your district?**

A. Āe, ka pai, thank you. Mēnā ka tiro te tangata ki Norway. Mēnā ka tae koe ki Norway, āhua ōrite tā rātou nei wāwahi o te paenga mō te hinu. Haurua, ka tukuna ki te hapori o taua rohe o te hahu, koinā tō mātou nei hiahia hoki, waiho haurua o taua paenga kei te rohe. Kāore mātou ō Ōkahu me Ngaruahine te tino greedy ka taea mātou ki te wāwahi i ētahi mō Ngāti Wikitoria. Hei te mutunga o taua pataka hinu, a whakapaipai ai te whenua i te mutunga. Kaua hei aukati te kamupene and ngaro haere

tōna mana ki te whakatika, taua paru hei te mutunga o te tangotanga o te hinu. **That's a good question. If a person goes to Norway, there are quite similar their distribution of oil and gas resources. Half is given to the community of that area where the extraction takes place, and that's why we also want to leave half to the region and we Ōkahu and Ngaruahine are not really grieving, we want to share some with Ngāti Wikitoria. Once that's been extracted then you clean up the land, once that activity is finished, and to stop the loss of authority to address the damage that is left after the oil and gas is (inaudible 09:52:33)**.

Q. Tēnā koe i ērā kōrero. Kia tahuri tāua ki – otirā tātou e te Taraipiunara, ki tō kaupapa e whai ake ana, a koia tēnei ko te whakawhitiwhiti kōrero mō ngā tūāhuatanga o te alternative energy development. Ana mō te Taraipiunara, kei te aro atu tātou inaianei ki ngā kōwai rua tekau mā rima tae rawa atu ki te toru tekau mā waru. I roto i tēnei wāhanga kei te marama au he paku noa te wā ki a tāua inaianei e te matua. Engari ko tāku pātai ki a koe, i te kaupapa o te Kapuni Green Hydrogen Project, i tūhono atu rātou ki a koe, i tūhono rātou ngā kaiwhakahaere o te kaupapa rā ki a koutou, ki ō hapū, ki tō iwi? **Thank you for those responses. Now let's turn to – also the tribunal to your following matter which is the conversations in terms of alternative energy development. For the Tribunal, we now turn our attention to paragraph 25 to paragraph 38. Within this part I understand that we only have a short time left to us elder. But my question to you, in terms of the Kapuni Green Hydrogen Project, did they get in contact with you, those who were in charge of that matter, did they get in contact with you, your hapū, and iwi?**

A. Āe. I timata ai rātou pērā ai. I kōrero ki ngā hapū e rima, and ētehi o ngā hapū kāore rātou i te whakaae, ētehi – tahi āku i whakaae and te hapū taketake mō taua kaupapa ko Ngāti Tū, kei a rātou kē tokowhitu ngā kaupapa kōrero mō rātou. Āhua tūtuki ngā kōrero ki roto tokorima o aua kaupapa, tokorua kāore anō kia tūtuki. Atu ki tēnā, i tahuti ai a taua kamupene **(inaudible 09:54:32)** mā ki te tono haere ki te kāwana, uru ai ki roto te Fast Track. Tāku kōrero ki a rātou, mēnā ka tono tonu koutou

rua marama ki te hapū mana o taua kaupapa, Ngāti Tū, ka taea te tūtuki te kaupapa i roto i te pae. Kāore rātou i whakarongo ki ngā hapū and i riro rātou i roto i te Fast Track and i haere rātou ki ngā kōti ka tū ai. Ahakoa i toa ai rātou, kāore anō rātou pea kia timata – mōhio rātou ka haere tonu tāku hapū ki te whawhai ki a rātou. Tō mātou nei hiahia hei ture tā te iwi Māori, ā tō mātou nei hiahia, haere ki te marae o taua takiwā, kōrero kanohi ki te kanohi ki taua hapū, koirā ngā ture o te takiwā. Hei aha te Fast Track, hei aha ngā kaupapa atu. **Yes. It was like that at the beginning. They would talk to the five hapū, and they did not agree, some – one did agree but the original hapū in that matter was Ngāti Tū and they have seven matters that they want to share and talk about. Also five of those matters who have not been accomplished yet. But aside from that, the company make request of the government to make a Fast Track application. We told them that if they apply as Ngāti Tū will not be able to accomplish that satisfactorily. They did not listen to the hapū and they entered into the Fast Track contact and they went to court. Although they won, they were successful, they have not yet begun, they know that my hapū will continue to fight against them. Our desire is for a law for the Maori people and the desire to go to the marae of that district and speak to them face to face, at that hapū, and that is the laws of the district. Never mind the Fast Track process.**

Q. Tēnā koe. E marama ana. Kia whakarāpopoto i ērā kōrero, nō reira e whakaae ana koe ki te whakaaro he pakupaku noa ngā whakawhitinga kōrero i waenga i a koutou me ēnei kamupene e whakatūtū ana i ēnei pāmu puhi hau e tika ana tērā ki a koe? **Thank you. I understand. To summarise what you said, do you agree with the view that there has only been brief dialogue with these companies that want to establish these wind farms, is that right to you?**

A. Āe, ae. **Yes, yes.**

Q. Ka mutu, ki a koutou, ki te whakapai a koutou me nui ake, me tokatu ērā here ki runga i ngā kamupene kia whakawhiti kōrero atu ki a koutou, i raro tonu i ngā tikanga o koutou mā. Kei te whakaae koe ki tērā? **Furthermore, do you claim that those connections must be set in**

stone with those companies that they can have dialogue with them under your own tikanga. Do you agree with that?

A. Āe.

Q. Tēnā koe e te matua. Kia tahuri tātou, kotahi anō tāku pātai whakamutunga ki a koe, kei te anga whakamua tāua, koia tēnei mō te wāhanga o te – kia Pākehā pea au i tēnei wā – what partnership should look like in this context. Hei kōrero whakamutunga māku, ki a koe, i tēnei wā tonu, i te mea kei te keria tonutia te papa o Tangaroa kei te hahu ake tonu ngā hinu o roto i te pātaka hinu i tō takiwā kei te whakatūtū i ngā pāmu puhi hau i roto i tō takiwā. Me aha te Karauna, i roto i tērā horopaki, me aha te Karauna e pai ake ai tā rātou mahi tahi ki a koutou, ki ō hapū me tō iwi? **Thank you elder. Now I only have one final question for you, we move forward to – I will just speak English. Final question, do you, at this time, because the seabed has been mined, and also oil and gas resources have been extracted from your districts, and also wind farms are being established in your district. What must the Crown do, within that context, what must the Crown do to improve work in collaboration with your hapū and your iwi?**

Āe. Hei kōrero motuhake tēnā e te whanaunga. Tuatahi, ka whakaaro ake mō te Kupe field, i tae mai ngā rangatira e hiahia ana ki te ākiri ai taua pātaka hinu and i tae mai rātou ki tāku marae Aotearoa. Ā rātou nei kī, i taua wā, waiho kia mutu ai te pakari o ngā mihīni mō tēnā kia rite ai te hinu, kia whakakī ai ngā tankers kei runga a Tangaroa. And tā rātou kī, pātai ki a mātou a taua wā, so i tatari mātou mō te rerenga mai o te hinu, mō te kī ai ō rātou nei waka rahi, ā rātou nei tankers, and i tuku tono anō i taua wā and kāore e taea rātou te ariari ā rātou nei taringa and kore he hēneti tango kua riro ki tāku hapū mō aua hinu kua riro ki te motu, ki tāwahi. So, ināianei tō mātou nei whakaaro mō ngā windmills, a me tuku te paenga te tuatahi i mua i te hangaiatanga o aua mihīni. Kua rongo – mōhio anō mātou hei rōpū **(inaudible 09:59:40)** rātou, so inaianei tō mātou nei hiahia, tā rātou kī tekau mā tahi tau i mua i te tū o ngā windmills kei runga a Tangaroa. Tāku kī ki roto aua tau, me tuku ētahi painga ki ngā hapū taketake o Ngāruahine. Me pēnei, te tuatahi, hangaia ngā whare 10 ki roto ia takiwā o ngā hapū, Ōkanihi, Ōkanū, Manuhiakai,

Ngāti Tū, Ngāti Haua, Tamaahuroa. I roto aua tau, hangaia hoki ngā kura hou, hangaia hoki ngā kōhanga reo hou, hangaia ngā mea hou i mua i te tū o ā rātou nei mīhini windmills. Pērā ki ngā kaupapa mēnā ka tae koe ki ngā tangata taketake kei roto te USA. Koinā tā rātou kōrero ki a rātou te tuatahi. Horahia tō paenga ki a mātou te tuatahi, ka rua, ka hangaia tō kaupapa. Koinā tā mātou i tēnei wā. **Yes. That's a very special topic my relative. I must refer to Kupe, because the leaders came and they wanted to extract those resources, and they came to my marae. They said, at that time, leave until the time it's able to – to fill the tankers at sea. (inaudible 09:58:41) and so we analyse things to the extraction of oil and gas. They have their tankers, and they also made a request at that time, they weren't listening, they weren't listening clearly. That will be taken overseas, off-shore, and now our – in terms of the oil and gas that the benefits must be given first before you build those machines. For a long time, they have (inaudible 09:59:44) so at this time we want to – they said 11 years before the establishment of the windmills at sea. Over those years they must also benefit to the hapū of Ngāruahine, and firstly now building 10 homes in each hapū district of Ōkanihi, Manuhiakai, Ngāti Tū, Ngāti Haua, Tamaahuroa. Over those years build new schools, build new kōhanga reo, build new things before establishing your windmill turbine. So, those matters, if you go and speak to the Indigenous peoples in the USA and that's what they said to those companies there, first and foremost. Show us, what the benefits are first and foremost, and then secondly, then build your turbines. So, that's (inaudible 10:01:05).**

Q. Tēnā koe, e te matua. Ka mutu aku kōrero ki kō, engari hei whakairi ake ngā kōrero ki te tāhū o tō whare. Tēnei te hoki atu ngā whakaaro ki ngā whenua taurikura, ki a manawa pou, te orokohanga mai o te mana motuhake o tāua te Māori. Kite ana ngā tuāhuatanga o manawa pou e maringi mai iho ana ētahi o ngutu i te rangi nei, me te ataahua o ngā kōrero. Nō reira, kei tāku rangatira, tēnā koe i whakawātea mai ia koe i te rangi nei ki te whakapuakina i ērā whakaaro ki a tātou katoa. Kia manawa pou te tū, kia manawa pou ngā whakaaro. A kāti ake, e te

Taraipiunara, ka tuku te mauri kōrero ki tāku hoa mahi, ki a Mr Vincent, mānā e arahi i tō tātou kiritaki i te rangi nei. Tēnā rawa atu tātou. **Thank you, elder. Those are my questions, but to allude the kōrero to the rich pou of your house, and I also want to pay respects to the precious land, to manawa pou. The mana motuhake of Māori people, and we have seen the various aspects of mana pou, which you have said today. I want to acknowledge the beauty of what you have said, so to you, leader, I want to thank you for making yourself available today to express your views before all of us. To also be resilient. To the Tribunal, I will pass the mauri of the kōrero to my friend, Mr Vincent. Who will guide our witnesses today.**

HOUSEKEEPING – TIMING (10:02:22)

HEARING ADJOURNS: 10.02 AM

HEARING RESUMES: 10.09 AM

MR VINCENT CALLS

(10:09) ALISON ANITAWARU COLE: (#A039)

E mihi ana au ki te whare, ki te whenua, me ki a koutou Atua. **I want to acknowledge this house, the land, and you all.**

Tēnā koutou e āku rangatira me āku whanaunga. **Greetings to the leaders, to the relations.**

Tēnā koutou e ngā kaimahi o Te Rōpū Whakamana i te Tiriti o Waitangi me ngā rōia, me ngā iwi o te motu nei e mahi ana mō te kaupapa nei. **Greetings to the staff of the Waitangi Tribunal, the lawyers and iwi throughout the country who are working on this matter.**

Ko Taranaki te maunga e tū hirahira rā. **Taranaki is the mountain that stands proudly.**

Ko Waingongoro te wai ora. **Waingongoro is the life given rivers.**

Ko Ngāruahine te iwi ki te whenua. **Ngāruahine is the iwi.**

Ko Ōkahu te hapū ki Aotea pā. **Ōkahu is my hapū at Aotea pā.**

Ko Ngākaunui te piringa whare. **Ngākaunui is my meeting house.**

Ko au tēnei a Alison Anitawaru Cole e mihi ana ki a koutou. **And this is I, Alison Anitawaru Cole, greeting you all.**

Thank you all for this opportunity to korero today.

The key message that I wish to express is that I believe that tikanga is the world's greatest protection against climate change.

But for over 150 years, the Crown has prevented Māori from enacting the full extent of kaitiakitanga across the motu, including with respect to foreign relations on the world stage.

Based on my research, I truly believe that if tino rangatiratanga had been respected under te Tiriti and The Treaty of Waitangi, kaitiakitanga would have been central to the laws applying across the motu within Aotearoa and mitigating climate change would have been at the forefront of foreign policy such that Aotearoa would have been leading the world in advocating for ambition to reduce emissions and mitigate climate change.

With tikanga at the forefront, through true tino rangatiratanga, we may even have been in a position where Aotearoa could have changed the course of world history by advancing kaitiakitanga in the context of global policy on climate change, just like we did with our nuclear-free stance.

Instead, the Crown's repression of tikanga and the corresponding central organising principle of kaitiakitanga, and the continued onslaught of Crown attacks on Māori sovereignty, especially with respect to the Crown supporting the petroleum industry in Taranaki – this all represents one of the greatest breaches of te Tiriti, and indeed, one of the greatest hara of all time.

I spent over 15 years investigating war crimes and crimes against humanity within the United Nations, and nothing that I have witnessed in that mahi comes close to the Wai 3325, #A39(c) harms caused by planetary collapse as projected under current levels of emissions, not to mention the worsening future

projections as the Crown and other world governments continue fossil fuel use and extraction.

As we all know, under te Tiriti, the Crown has a duty to ensure that Māori retain sovereignty over our taonga katoa. How is that feasible when, for over 185 years, the Crown has forced the fossil fuel industry on us here in Taranaki by confiscating our whenua precisely for the purpose of extracting petroleum, then collaborating with international oil corporations, ignoring scientific research first published in 1894 warning of global warming from GhG, later confirmed by scientist within the fossil fuel industry itself since the 1950s, whilst the Crown to this day hires lawyers from the petroleum industry to fight judicial review applications launched against the Crown in an to attempt to block the Crown from issuing new petroleum permits in our rohe, which is currently before the Supreme Court.

How can the Crown be said to have upheld its obligations under te Tiriti regarding our taonga katoa (our taonga species, our wāhi tapu, our coastal marae, our Tauranga waka, our maara kai, our tamariki and mokopuna of future generations) – how, when we are in the midst of the Sixth Extinction, the first mass extinction event ever caused by a single species, the human race - and despite all the evidence that extracting fossil fuels is causing this Sixth Mass Extinction, how can the Crown be upholding its duties under te Tiriti with respect to taonga katoa whilst continuing to issue petroleum permits and not hastening a Māori-led just transition away from fossil fuels.

We are seeing this extinction of our taonga daily within our rohe. We have kaumātua who don't necessarily utilise the technical language of climate change policy, but who have been reporting the rapidly rising tide levels evident since the 1980s that are washing away our tauranga waka sites and wāhi tapu on our coast just as matua John said. We have tūpuna records and maps indicating pāua reefs that now are barren dead reefs where pāua haven't been found for over 20 years. And we have investigated this, working with mātauranga experts and marine biologists to confirm that the increased sediment from the more frequent cliff erosion due to the higher high tides due

to sea level rise due to climate change has killed off our pāua reef since this increased sediment is clogging up that clear rocky reef habitat that our taonga, pāua need to live.

I have personally witnessed our taonga species diminishing due to the marine heat wave, for example. Piharau and inanga migrations are starting earlier every year due to the warmer water but when their kai is not sufficient. I've seen kawau diving repeatedly into the moana and coming up with nothing off the coast of Ohawe where I live because fish are swimming deeper to find cooler water because of the marine heatwave, but the kawau cannot dive that deep, and I link this to the increased numbers of emaciated dead kawau I've found washed up on the beach at Ohawe. I personally witnessed the mass mortality events of our taonga species in our awa last summer when water temperatures reached over 27 degrees Celsius, normally it's no more than 17 in the summer - our kaumātua reported seeing our taonga species effectively committing suicide, jumping out of the awa onto the riverbanks in an attempt to escape the hot water.

E te whanau, we are all in hot water. We heard what matua John was saying, we are seeing the riri, we are seeing the anger of Tangaroa, we are hearing the riri, that anger of Tāwhirimātea. Look at the rivers and the sky that are coming down on us on this current extreme weather event. The Crown has not respected our sovereignty over our taonga and is complicit with the petroleum companies in creating climate change and causing this irreversible loss of our taonga which is increasing day by day. What could be a worse Treaty breach than the annihilation of our taonga through deliberate, intentional, and on-going Crown acts, knowingly, with the petroleum industry with full knowledge that this will hasten and worsen the imminent climatic collapse.

As I said earlier, I believe that if the Crown had properly respected tikanga, and upheld the tino rangatiratanga obligations under te Tiriti, we may never have been in this position. I believe I have a role to play in helping to appreciate the importance of tikanga because I am bi-racial and I grew up close to my Koro and his siblings as the first born mokopuna but I also spent time within my

Pakeha family and studied the greatest tool of neocolonialism, namely the English common law, in the epicentre of the British Empire, namely Cambridge University, then spent most of my early career with the United Nations in diverse cultural settings around the globe.

What I learnt from this lived experience, is that it is hard to achieve cross-cultural understandings by starting with surface-level equivalence. For example, for us living within the jurisdiction of the English common law, it is easy for everyday citizens to understand the basics of what constitutes a crime, (guilty acts and guilty mind), or what constitutes a tort (breach of a duty of care resulting in harm) because we function in society where the dominant culture enforcing these laws is reinforced through all daily interactions.

The challenge with understanding the extent of the Crown's harm under te Tiriti in the context of climate change is therefore to reach this level of appreciation of ao Māori, in other words, imagining what life is like when tikanga Māori forms the dominant culture and is reinforced through all daily interactions. Logically, such an exercise therefore cannot start at the surface-level equivalence because we need to appreciate the edifice of the world view which provides the inherent logic to what we see on the surface. This is precisely where the current dynamics within Aotearoa has gone awry. There might be a broad-based general understanding of kaitiakitanga on the surface level, wherein acting as a kaitiaki can be understood as protecting the environment, but this is insufficient when it comes to understanding tikanga and thus the fulsome ambit of kaitiakitanga wherein it may be possible to equate environmental crime and climate change with the most severe crime imaginable under law.

But without making an effort to appreciate the ao Māori worldview, we are left with egregious breaches of te Tiriti, wherein kaitiakitanga is relegated to areas of law which are palatable to the dominant culture such as temporary section 186 Rāhui or soft-law references in the preamble of Regional Council coastal plans whilst discharges remain permitted activities under both the RMA and EEZ Act.

It is necessary to appreciate that under tikanga, kaitiakitanga is the foundational legal norm and one of the central organising principles of tikanga, to the extent that breaches of rāhui in some historical contexts led to the death penalty, just as Crown law previously reserved for murder. This demonstrates the extent of the intergenerational ao Māori world view which understands that the taiao as the greatest arbiter of natural law, operating within the domains of ngā atua, with direct metaphysical ties to Te Kore and the origins of the universe.

This is evident within ao Māori from the very inception of the universe from Matua Te Kore, though the various stages of Te Pō, to ngā atua wherein Māori gods are embedded within the taiao. As matua John said, he gave reference to our taiao plan, with reference to each atua within te taiao. Thereby imbuing a sense of sacredness within the mauri of the natural environment which must be respected and protected by kaitiaki. There is a direct line connecting kaitiakitanga that we do here as mana whenua, from Te Kore, Te Pō **the darkness**, ngā atua, through to the origins of knowledge in the three kete which set out the foundations of what is tika and the distinction between right and wrong, thereby linking kaitiakitanga to the realm of ngā atua and the mauri emanating in te taiao since Te Kore.

For these reasons, the daily experience within ao Māori is comparatively more alive and embedded within an awareness of the mauri and the health of the natural world. For example, the mauri of our kai and activities in gathering mahinga kai are mediated through the mātauranga of the maramataka. Whānau hapu and iwi living within their takiwa, like Matua John and myself, we live within the cycles of our taonga species, monitoring spawning and migrations, assessing habitats, and advocating for protections of te taiao and ngā taonga katoa through our roles as kaitiaki. Mauri stones and pou whenua connect in with the universal mauri and the atua within each domain of the taiao, from the beginnings of the origins of te ao mārama and the separation of Rangi and Papa, right back to through the nights of Te Po to Te Kore. For scientists who work within the domain of astrophysics and study the Big Bang, it is often said that we humans are made of start dust, but I guess that most people on a day to day basis are probably unlikely to reflect on this as fundamental to their

daily life on earth. Within ao Māori however, every interaction within te taiao connects with atua and the origins of human life through the efforts of Tane, who also gathered the origins of knowledge in the three kete, and separated Rangi and Papa who had emerged out of Te Pō from Te Kore. The quantum physics of atoms and cellular electrodynamics is part of the daily life of kaitiaki engaging with mauri within ao Māori under tikanga.

For all these reasons, the operations of the natural world are central and front of mind in a manner under tikanga that never ever would have allowed such imbalance and planetary harm and human suffering as the catastrophic irreversible climate change, we are now facing.

What is necessary is what the Crown pledged to guarantee under te Tiriti, tino rangatiratanga. Through Māori led solutions and public servants deeply engaging with ao Māori from Te Kore, pūrakau, ngā atua, mauri, Māori led policy has the power to advance a view of societies, economics, global trade and foreign policy, based on the central organising of principle under tikanga of kaitiakitanga.

Indeed, Aotearoa is uniquely placed worldwide in that this approach is mandated through legislation, wherein section 5M(f) of the Climate Change Response Act sets out the mandatory consideration that all advice to the government must consider ao Māori and specific effects for iwi and Māori. This is an incredible opportunity – no other country in the world holds this unique mandate to advance indigenous policy within the mainstream public sector and this opens vast opportunities to represent an indigenous world view originating from pūkenga Māori for alternative indigenous-led responses to climate change.

At the very least, what I hope for is for the record to reflect two fundamental truths. If there is nothing that is done from this day forth to meaningfully stop climate change, I sincerely hope that these two truths are at least part of the historic record, through the kōrero that we are having now, so that it is always

known and that our mokopuna know there were fighting for truth and justice for the sake of our taiao.

The first of these two truths is that ao Māori and kaitiakitanga is antithetical to climate change. Under tikanga, we would never have seen Aotearoa contributing to the causes of climate change like we have seen in the last 150 years. Indeed, kaitiakitanga is what I believe, is the best solution to climate change, and we as Māori can be immensely proud of our culture. Under our watch, if tikanga was the law of the land, I believe that climate change would never have happened.

The second of these truths, is that the Crown's suppression of kaitiakitanga is inextricably linked with the causes of climate change. This is a breach of Te Tiriti. Sadly, us as Māori stood no chance in the face of the Crown's brutality and continued rape and pillage of te taiao. The Waitangi Tribunal found what happened in Taranaki to be a holocaust. Indeed, in the Petroleum Reports, the Waitangi Tribunal documented the links between the confiscation of land in Taranaki since the 1860s and the Crown's involvement in advancing petroleum extraction on that confiscated land. I do not believe this was a coincidence. The 1860s total confiscation of whenua in Taranaki, the place known at the time to have the most oil reserves in Aotearoa, and the immediate drilling for oil on that confiscated whenua – again, this was no coincidence. After this first wave of confiscation came the second wave of confiscation – by the Crown expropriating all petroleum in order to advance objectives of the British Empire in WW1 and 2.

Now we are in the third wave of whenua confiscations as all the coastal reserves our tūpuna were forced into in the first wave of whenua confiscations - are disappearing due to coast erosion. The Crown's ongoing advancement of petroleum permitting in the face of science linking greenhouse gases to global warming since 1896 is frankly disgusting, outrageous and the worse imaginable crime against humanity. Indeed, I have submitted a request to the International Criminal Court where I worked as an investigator for five years, to open an investigation into climate change on this basis.

It is my humble plea to this Waitangi Tribunal that your final Report also reflects these two fundamental truths. We may have already crossed the climate change tipping points, but there is still the chance to hold the Crown accountable. The Crowns actions in Taranaki committing a holocaust against our tūpuna whilst advancing the petroleum industry that is causing climate change, that shocks the conscious of humanity. There must not be impunity. May the historical record reflect we fought the Crown's breaches of Te Tiriti to uphold our kaitiakitanga, and the Crown must stop squandering the opportunity to be led by tikanga Māori within Aotearoa and on the world stage to advance kaitiaki-led solutions to climate change.

Ngā mihi.

JUDGE MILROY:

Thank you, Ms Cole, for that impassioned plea to the Tribunal, and your evidence.

HOUSEKEEPING (10:30:03)

(10:30) MR BENNION TO JOHN HOOKER AND ALISON COLE:

Q. Tēnā koutou. Can I just say first, thank you for the presentation, and can I just say the inside of that whare ataahua is known to me. I think from a petroleum inquiry, which you mentioned, Mr Hooker. I guess, can I go in sequence, I just have a question for our rangatira first, John. I looked at your hapū climate strategy, at 40(a), that's in the Tribunal record at 40(a). It's not a complicated question, so – I'm just going to a bullet point, I'm not sure what page it's on, but near the end you have: "Emissions reductions are achievable through enabling equitable and just transitions." And you say: "at a minimum, indigenous forests on Koro Taranaki to be included within the ETS and carbon credits are accrued to our hapū through planting indigenous forest corridors from the maunga to the moana **mountains to the sea**. I just wondered, have you undertaken any research on that or had a look at how that might be achieved?

A. [John Hooker] Tēnā koe, e te pāpā, Tame. Ki a mātou, kua tīmata aua whakaritenga. Kua tiro haere mātou ki te awa o Waingongoro. So, kei roto i te awa o Waingongoro, mai te ngutu awa, kei Tangaroa, tae noa ki te maunga, iti iho, wāhi – esplanade reserves, ētahi hoki, reserves kua hoki mai ki a Ngāruahine i roto te 2016 Ngāruahine Settlement Act. So, kua tīmata, and kua rangahau mātou ngā rangatira o ia momo whenua i roto te roa o te ritenga, o te Waingongoro, and kua whakaarohia ki a tīmata aua rohe, te rākau, ki roto aua whenua te tuatahi. Ko mātou nei hiahia ki a tīmata i roto i te tau e heke mai. Kua tīmata hoki ngā rangahautanga, kei hea ngā whenua i te tuatahi. Ka toru, kia kōrerohia mātou ki tētahi tohunga rākau, tangata Pākehā, but ka taea ia ki te awhi ia Ngāruahine i roto te hangaiatanga o tō tātou nei whare i runga a maunga Taranaki. Tō mātou nei hiahia, kia tū ai, kia whakatō ai ngā rākau mō te takiwā nei. Kua tīmata kē, āe. **Thank you, pāpā. To us, we have begun those arrangements, and we look at Waingongoro river. Within the Waingongoro river, from the river mouth to the mountains are some places – esplanade reserves. Also, reserves that have been returned to Ngāruahine in the 2016 Ngāruahine Settlement Act. So, to begin, we have researched the leaders of each piece of land at Waingongoro. Those areas begin within those lands first, and so we want to start in the next year and the research has already commenced as to where the land is. Thirdly, we will speak with an expert who is able to assist Ngāruahine in establishing, building our house on mount Taranaki. Our desire is to bring the trees together from there. So, that has begun.**

Q. Kia ora, thank you for that. Then I had a question for Alison, Ms Cole. But this may seem sort of pedestrian, but I just want to go through this carefully. I'm talking here about this question of New Zealand's ambition, and the speed at which New Zealand's ambition in reducing emissions and how we might have a global impact on that. It's something that you have touched on. So, I just want to step through this carefully. Now you are saying that New Zealand, in your experience, is seen as a leader in indigenous rights in international forums?

A. [Alison Cole] Āe.

Q. And as far as we know, there are hundreds of millions of indigenous people, and they are spread across the globe?

A. [Alison Cole] Āe.

Q. So, they are located across many nations, all continents except Antarctica, I think?

A. [Alison Cole] Āe.

Q. Those indigenous peoples are of concern to different governments across the globe because those populations are located across the globe.

A. Āe.

Q. Now, I think you have given a couple of instances in your evidence and I'm thinking about paragraphs 15 and 16, in particular, of your evidence. You have said, for example, New Zealand's approach to Treaty settlements was of interest, I think you said in paragraph 16.

A. Aroha mai, I was looking at page 16. Kōrero anō, could you please ask me that pātai again.

Q. You have suggested that New Zealand's approach to Treaty settlements is of interest around the world?

A. Yes. For example, when I attended COP26, amongst the indigenous communities who participated in the site event that I was co-convening. There was deep curiosity, actually, with the Waitangi Tribunal and the process within which grievances are mediated. But also, the process through which the Treaty settlements are managed, financial transfers. Because under the Paris Agreement Article 6 is setting something up similar to the ETF, so there will need to be similar funding streams considered direct to indigenous populations just like the settlement process in Aotearoa.

Q. Āe, thank you. Do I understand all of this to mean that the Crowns actions and relationship with Māori over climate mitigation and adaptation might have international significance for the approach to mitigation and adaptation with indigenous people on all those other continents and countries?

A. Absolutely. In fact, I would assert that we as Māori and our mana motuhake necessitates that if its – tino rangatiratanga necessitates that

that kōrero also happens to the representation of Māori under rangatiratanga and te Tiriti. So, I would contest a little bit, the premise of your question. That the Crown is leading those negotiations and then the Crown can be representing Māori positions that are of interest of other Indigenous populations. Kāore, it should be of course that Māori indigenous representatives are those kōrero directly on the world stage.

Q. But if the Crown's relationship with Māori is poor, and around climate issues, that has a resonance or significance beyond Aotearoa because of all these other indigenous populations and world governments are looking at the New Zealand example. Is that a fair way to think about it?

A. Yes, and I would say that the biggest symptoms of that relationship break down is when there is not co-governance and co-representation leading that kōrero.

Q. Then just lastly on this, is it your understanding that the demands from indigenous populations for mitigation. So that's reductions and emissions, and for adaptation are generally more radical than the policies of the nations in which they are located. In other words, they seek much more ambitious greenhouse gas reductions than the nation states within which they sit. Generally, their demands are more radical, is that fair?

A. Again, radical is a contextual term, so sorry again to kind of just get the premise of your pātai. But just to say, this is why, like, I'm really inviting the Tribunal and I would hope actually, everyone up and down the motu to really make an effort to understand ao Māori that is centralised on tikanga. For which kaitiakitanga is such a central organising principle that like, it's not radical at all. It wouldn't be radical at all to be pushing for ambition because the very notion of the most severe harm that you can do that deserves in some historical records in my PHD research. Like the instant death penalty on the spot was crimes against the environment. So, what I'm saying is, there is no greater threat to the environment than climate change, so this question on ambition is almost like an oxymoron within our Māori thinking. It is the ambition. It is the central organising principle.

Q. I guess lastly on this then, from your perspective, what the Tribunal says in Aotearoa about Māori views about te taiao and emissions reductions

and how the government ought to act potentially has some much broader implications internationally?

A. Yes, absolutely. I had a section in my speaking notes today, took it out in the interest of time, that delved into that a little bit more. Where I try to illustrate that to some extents, some of those nations that you are referring to are picking up indigenous solutions like nature based solutions. They are utilising indigenous homelands as carbon sinks such as the Amazon rainforest, such as the Pacific Ocean ecology. So there's not only uptake in other countries, in fact I almost am getting to the point that it's a little bit shameful within Aotearoa to see how far we are lagging behind in terms of our central government policy on an ambition. Because we are seeing so many other nations with indigenous populations that previously would look to us, like, they are now surpassing us.

Q. Kei te pai. Thank you, those are my questions, and thank you again. Kia ora.

HOUSEKEEPING (10:42:26)

HEARING ADJOURNS: 10.42 AM

HEARING RESUMES: 10.59 AM

(10:59) MR SHARP TO JOHN HOOKER AND ALISON COLE:

Q. I just have some questions for Ms Cole.

A. [Alison Cole] Ka pai.

Q. Tēnā koe, Ms Cole, and ngā mihi mō tō kōrero **thank you for your evidence**. I'm finding your law experience in these issues gives some very valuable insight. I just wanted to, have you read the evidence of one of the witnesses who are my clients in this hearing, Wayne Ngata.

A. [Alison Cole] Kāo **no**.

Q. I just raised it because he adopts a very similar Te Ao Māori view of viewing climate change policy. Kaitiakitanga based, and in addressing

an extractive western approach to the environment of taking without balancing the ecosystems.

A. [Alison Cole] Rawe, I'd like to read that, ngā mihi.

Q. He will be giving evidence on Wednesday. Now, just next, I want to just move on to, if you break down what you say is a Te Ao Māori approach and Crown obligations. You are clearly saying that the Crown has approach under te Tiriti, specifically Article 2, to take and support a kaitiakitanga approach to climate change policy. Is that correct?

A. Āe **yes**.

Q. If we break it down further, you say this approach and the Crown's obligations can be broken down as a matter of tikanga as well?

A. Āe **yes**.

Q. Now my clients in this inquiry have made the submission that these tikanga based approaches and obligations on the Crown can be seen as being recognised at common law to the extent that it recognises that tikanga. Now, given that you have legal qualifications or very pre-eminently, qualifications, I just wondered whether you would like to comment on that?

A. Āe, ka pai. This is a really – he pātai pai tērā **that's a good question**.

TECHNICAL DIFFICULTIES (11:02:52 – 11:03:00)

MR SHARP TO JOHN HOOKER AND ALISON COLE: (CONTINUES)

A. [Alison Cole] Yes, there are some sections that I look into that a little briefly in the exhibit attached to my affidavit. But if I could make just a really quick comment. I do recognise that there have been some pretty powerful advances, particularly in the *Alice* case in the Supreme Court. Which was acknowledging Aotearoa as a bi-jury jurisdiction. I'm mindful I'm speaking to a room of lawyers, so I don't want to go into things that we are all like super aware of. But I really take to heart the caution that Moana Jackson indicated where inside his research and some of his published pages. He issued warnings about effectively, coopting Māori concepts within Crown settings. What I find most at risk is basically when we are looking at a legal system that's utilising kaitiakitanga as a central

organising principle, we can't really talk about a bi-jury approach. Because the taiao is holistic, so the problem is if the Crown were progressing on one track, that's issuing oil permits and allowing high emissions industries to progress, and eventually causing climate change. The fact that in another legal system, that would be considered the worst crime ever imaginable in the whole planet, is rendered null and void because the taiao doesn't work in two separate spheres. So, if like, if we are being utterly dictated to by the Crown, that in taking their jurisdiction within the taiao space. That of course can't be demarcated and separated from in our Māori space. So they have broken te Tiriti as a matter of first principles, like ipso facto, they have created all this pollution in the taiao. Which is totally against our central organising principle of kaitiakitanga under our law and tikanga. So, it's ipso facto a breach of te Tiriti.

Q. I understand what you are saying there, trying to set a tikanga into a legal box. But given if it's in the context of non-legislation within the common law which is more flexibility. I just wonder what your comment, and what is the potential for common law recognition of these concepts?

A. [Alison Cole] That is so fascinating because part of my PHD thesis research is trying to pursue that hypothetical. If we take a criminal code for example, instead of an administrative law pathway trying to pursue a judicial review against oil permits that have already been issued. Could I perhaps be in a citizen's prosecution under the criminal code in the High Court against the minister who is issuing those permits, because under tikanga this is the greatest crime that you could be committing. So, I think if we were looking at the current common law of tikanga, it's definitely, I believe, reflecting the concerns that matua Moana Jackson expressed. But I agree with you that tikanga is, as well recognised, including by the Supreme Court in *Alice,* the law of the lands. Therefore, I believe logical conclusion, which I plead is kind of imbedded in your pātai there, the logical conclusion is climate change and any Crown actions associated with increasing emissions. That's a crime under tikanga. That's the greatest crime you can imagine.

Q. Just one last final question and you just raised in the answers you gave to Mr Bennion, about Article 6 of the Paris Agreement, and the negotiations for a carbon trading scheme. Given your background knowledge, if you could tell the Tribunal, where is that at? Those negotiations, and what if any prospects are there of New Zealand being able to utilise it?

A. [Alison Cole] Goodness, I would say at this stage, it's anyone's guess given that the last two conferences of the parties under the United Nations Framework Conventional Climate Change. Which administers Article 6 of the Paris Agreement. The last two of those COPs were held in petrostates, and we now have been to a new petrostate, which is Brazil. I think the comment I would share with you in that regard is that innately, the concept of carbon trading is not a high end ambition policy. It doesn't reflect the kaitiakitanga that I have understood through my research, which would tend more towards a pro submissions, and not like stopping completely and working towards societies and economies that are grossed zero emission societies. In a way, and any kind of carbon market is problematic and antithetical to the notions of kaitiakitanga, I think, in its purest sense.

Q. Kia ora, ngā mihi, Ms Cole.

(11:09) MR PREBBLE TO JOHN HOOKER AND ALISON COLE:

Q. Tēnā koe Ms Cole. Ko Jeremy Prebble tōku ingoa. Kei konei ahau mō te Karauna. **Greetings Ms Cole. My name is Jeremy Prebble. I am appearing for the Crown.** I have some questions for you and my colleague, Mr Fong, he is going to ask some questions for Mr Hooker after me. So, just picking up on your evidence first and your statement at paragraph 9, that climate change is causing a third wave of land confiscations by the Crown. You're not holding yourself out in this setting as an expert in climate science, are you?

A. [Alison Cole] Kāo, although I am sure that you, as a representative of the Crown, would recognise that mātauranga is science.

Q. Yes, I'm just asking whether or not you are holding yourself out as a climate scientist and I understand the answer is no. Thank you for that.

You would accept, I assume, in terms of the climate science from organisations such as NIWA, that they would be prepared and able to speak on how much New Zealand contributes on the global scale, to emissions?

A. [Alison Cole] You know what, something that I want to challenge again within the premise of your question, and frankly the way that you kind of dismissed and the ignored the asserting that I was trying to make. That mātauranga is a valid forum of science under the laws of this land. I would say, you know what, there's many different mechanisms, mātauranga based assessments of the impacts of climate change. Both myself and matua John have already given examples based on our kōrero. You probably heard something that's also recognised within the western scientific realm known as shifting baselines. Shifting baselines is when, after the centuries of paru have destroyed our taonga and destroyed our taiao. We now look at the current state of paru and we take that as the baseline standard that we measure what is positive environmental policies and what is identified as proper climate action. If you look at Professor Kura Paul-Burke and other mātauranga experts who analyse, basically, the mere colonial effect of these shifting baselines. We totally refute that, and we would refute the efforts that NIWA is purporting too, establishes the sole source of scientific research. Including for the respective post deliberations. Because we work under what we call a tūpuna baseline. You would have seen that, I'm sure, when you reviewed, carefully, the evidence submitted by matua John. When written in the taiao frame and climate strategy, there's a very clear refuting that takes the current state of paru as the baseline. Because we look at what our tūpuna had. You heard matua speaking about our coastal marae, pā, and urupā. Okay, I literally live at the foot of Rangatapu and Te (inaudible 11:12:38) that he was speaking. Just over the course of the last year, let's say, that rate of coastal erosion has been increasing to the point that now you can see petrified rākau pointing vertically out of the side of the side of the cliff. And you can see the absolute decimation of the reefs as a result of the settlement. We know from all the research that we have done through talking with our tūpuna, gathering oral histories, we know

exactly the mauri stones that mark the points where the cliff used to reach out to. And I'm talking about, like within matua John's generation. So we totally refute that NIWA is the sole source of scientific research, and we look to our mātauranga, and we look at our tūpuna baselines. We stand confident in our own assessments of the impact of climate change.

Q. Thank you for that, I wasn't suggesting that NIWA is the sole source of, I guess, expert information on climate science. Including dismissing, I want suggesting that we should dismiss mātauranga Māori as well, as an important source. But I understand your points, thank you for those. Putting to one side, perhaps that question, just to be clear on your evidence, I didn't see that you had held yourself as an expert. But are you suggesting that your evidence is expert evidence provided on mātauranga Māori?

A. [Alison Cole] I'm presenting as a tangata whenua witness.

Q. But not providing expert evidence, is that correct? Just so I understand from your comments.

A. Āe, like I'm providing you the results of my research as set out very clearly in my affidavit.

Q. Thank you. Just coming back, I guess, to perhaps putting to one side, the Crowns contribution, if you like, on the global scale. Because I think you would agree, first off, that climate change is a global issue, correct?

A. I would say, local to us, that I'm speaking on behalf of myself as an uri, as Ngāruahine. The extent of the hara is the cumulative impacts from every local community.

Q. Yes. That is a problem at a global scale, correct?

A. Local and a global scale.

Q. Thank you. I guess just putting to one side, as I say, how you look at – because I understand your point. Every single part of, therefore the globe is contributing to it. But I understand you to say, effectively, that the Crown has an obligation to put in place adaptation and mitigation and work in partnership with Māori for those two core aspects. Is that fair?

A. Can you point specifically to what part of my affidavit you are speaking to there. Because as I understood, like the kōrero that I just shared this morning, I was really trying to shine a light on the power of tikanga in the

role of kaitiakitanga as a central organising principle. Then contrasting that with the actions of the Crown in advancing the petroleum industry. So, I'm a bit confused as to what you are trying to get at.

Q. I'm just trying to ask whether you see a core role that the Crown has as to essentially work with Māori to mitigate, obviously to reduce the nations emissions. Where I understand, as a broad proposition, that's what you are suggesting needs to happen because there's places in your evidence where you say, emissions must cease effectively on some of the core emitters. And that because of the, I guess you might say, the risks, and the impacts from climate change, that both the Crown and local government, as I understood your evidence broadly. Have a role to work with Māori to protect and mitigate Māori from those effects. That's all I'm asking. Those are things which I think you are saying, need to occur and that the Crown needs to work in partnership with Māori over those two core things. Which is mitigation and adaptation, so reducing emissions. Whether or not you might say, the Crown and New Zealand is moving fast enough, is definitely a point of contention as I pick up. But fundamentally, you'd agree that we need to reduce our emissions and adapt and start to plan and mitigate for the effects that are coming from climate change. Is that there or do you take issue with that?

A. Again, within my affidavit, I did a collection of recommendations. I would be very mindful to ensure that all the time today, specify Māori lens. Make sure that when you understand my recommendations, the notion of Māori leading these processes, because the Crown is like given a central role moving forward. Because another thing that I would (inaudible 11:18:10) in Crown, Māori relationships, is there is a power differential, because of over nearly 200 years of breaches of te Tiriti. The mechanisms in which Māori are able to collaborate and advance, mitigation and adaptation solutions for example with the Crown is severely hindered by that lack of equity that has accumulated in a trench over the hundreds of years.

Q. Thank you for that, I understand your points. Obviously, you have your recommendations that you have just referred to, which are at paragraph 12 of your affidavit where you set out a number of recommendations. Including just for example, the first one, the Crown

must immediately cease enabling high emission industries. I guess, coming back to this point, that it sounds, very much, from what you have said, and your work, and your experience, that you are obviously very familiar with Climate Change Response Act machinery and regime. Is that fair?

A. Yes.

Q. Indeed, I understood you spoke earlier about some of the mandatory considerations that are imbedded in that regime. Including Te Ao Māori which I understood, you were supportive of, is that fair? In section 5M.

A. 5M(f), yes.

Q. So, in addition to those mandatory considerations, I assume you would know and are aware of the fact that this regime, at least, provides. Whether or not you might say it goes far enough, but it provides a target that we are to aim to, out to 2050.

A. Okay, so that's Crown law. Within section 5M(f), you must consider that provision that you just referred to, with regards to ao Māori. Now, frankly, I think within ao Māori, the notion of net zero, as I said earlier is potentially something that is not reconcilable with the most ambitious implementation of kaitiakitanga under tikanga. I don't want to get drawn into any other provisions of the Climate Change Response Act, because that's Crown law. That is not necessarily a reflection of mana motuhake or tino rangatiratanga. So, I again, would refer you to section 5M(f), and we need to look at the fact that this speaks to the mandatory consideration regarding ao Māori and specific effects for iwi and Māori.

Q. Thank you, I'm not trying to draw out some concession here. I'm just asking for your familiarity with it. But just speaking about this regime, obviously you are familiar that it does set in place an independent body. Which is the climate change commission to guide and provide advice to decision-makers. You would be aware of that?

A. Yes.

Q. You are familiar with that target that I spoke about, the one that obviously, you know, you take issue with to some extent. That is something that can be reviewed, and indeed is currently being reviewed. There has been a

recommendation to change it by that independent body, you are aware of that?

A. I am.

Q. In addition to that again, and I'm not trying to draw out any kind of concession here, just really touching on the mechanics of this regime. You would be aware of the fact that while there is the end target, the regime sets in place budgets. Which are often commonly called the stepping stones to try and track us down towards that end target. You are aware of that too?

A. Yes, the emission budget.

Q. I guess, your point is that, while that machinery is there, you would, I guess if I'm listening to what you are saying, you would suggest that that needs to move in a more Te Ao Māori consistent or faster way, right? So the machinery, you are not necessarily taking issue with, or maybe you are. But I understand the machinery is not so much the issue, it's whether or not it is consistent with enough in your expertise with Te Ao Māori.

A. One of the things that really fascinates me about tikanga, having been trained, as I said, within the epicentre of neocolonialism, looking at the common law at Cambridge University. Is tikanga is very powerful and perhaps a little bit of a foreign concept in terms of common law in trained lawyers. Because it encompasses both procedural law and substantive law. And I'm sure you fully are aware of what I am meaning when I reference those two mechanisms. So for me to be able to understand it or respond definitively to your question, it is itself, potentially a breach of tikanga. Because within the mechanisms of in the kaitiakitanga framework and a way that there is, I guess, in critique or delve into aspects. I mean, the whole thing is almost too ridiculous to speak of because we need to work together within the community of ao Māori, within hapū, like John has indicated. Ōkahu hapū have already front footed and written up their climate change strategy, so these are the mechanisms under tikanga as a process, as a procedure. And you can't put the car before the wars, you can't come to substantive conclusions about mechanisms. Such as those that the Crown has itemised in great detail through the Climate Change Response Act without first going

through the process. Everyone knows how important whakawhanaungatanga is within tikanga and ao Māori. That is because it's enacting those procedural mechanisms that enable coming to the substantive law outcomes. So, I think this is where we are starting to mix oranges with apples a wee bit. If there is some way that you could give a bit of a **(inaudible 11:24:21)** point to the pātai that you have, that would help me thank you.

Q. Thank you. I might leave it there, on that particular note. I guess, I would like, perhaps, just to talk some more about some of the practical considerations that you have made. For example, at paragraph 12, you talk about recommending the Crown work with Māori to expand insurance frameworks and protect Māori infrastructure. Just a question I had when reading that, what are you referring to when you say, “expand insurance frameworks”?

A. Okay, so, the national insurance scheme, I believe it's under the National Hazards Commission. That sets out in, like a back stopper in providing insurance to any residential structures. To make sure that the **(inaudible 11:25:13)** Aotearoa, and not effectively wiped out of home, where hazards such as those caused by extreme weather events under climate change hit them, destroy their whānau home. Then they have nowhere to live. The marae are excluded under that Crown legislation and that again, is another classic example of a breach of te Tiriti, and this understanding of ao Māori and not adopting the mechanisms of tikanga within the core legislation that is in place to protect us when we do get smashed by climate change.

Q. Thank you for that. Broadly speaking, you are suggesting that the current insurance frameworks, which you sound fairly knowledgeable about. Need to be expiated to cover things that effectively are not able to or not currently insured like marae and alike. Is that fair, what you are saying?

A. Yes, ka pai. Āe.

Q. I guess I had a question about some of your recommendations there, including that one. Have you, or indeed, others that you have been working with. Have you considered the fiscal financial implications of some of the recommendations you are putting forward?

A. I am certainly aware of them.

Q. Sorry, I was just asking, have you actually considered the financial implications of them, or have you had somebody who is in a position to cost and provide some information on that?

A. There is a lot of information that has been generated by the just transition unit that is based out in Ngāmotu.

Q. You yourself haven't done or considered any of that work in putting forward these recommendations?

A. Yes, this is my PHD thesis. I spent two years at the Climate Change Commission.

Q. So sorry, you have considered the financial implications of these recommendations? Is that what you are saying?

A. That's what I said, yes. That I considered them.

Q. Right, and can you provide some, like describe what the financial fiscal implications of them might be then. It's just that it's not in your evidence.

A. No, I'm not an expert in financial or numbers.

Q. Okay, thank you. Just a separate topic and I'm sure you are familiar with this. Are you aware of the NFE work that has been going on with Māori in terms of the Māori climate platform?

A. I believe that was disestablished.

Q. It's been brought in house into NFE. Are you familiar with the details of that?

A. Yes, if it's brought in house, it now has become a Crown entity. Which means that the Māori climate platform has been disestablished.

Q. In terms of this, and again, the Ministry will be providing some evidence. my understanding is that NFE is working collaboratively with Pou Take Āhurangi to identify climate resilient pilot projects that could be funded by the platform. Are you familiar with that?

A. I'm aware of it, yes. But as I said if it's working within the Ministry for environment, it's a Crown entity. The Māori climate platform, which was intended to be independent and connected within ao Māori, as is mandated under the Climate Change Response Act, that has now been disestablished.

Q. You are referring to the national adaptation plan where it refers to setting it up? Is that why you say mandated by the legislation?

A. The section 5M(f), as I mentioned under the Climate Change Response Act. It necessitates that any advice to the Crown must consider ao Māori. So if the Māori unit is within a Crown agency, by definition, it cannot speak for ao Māori.

Q. Okay, thank you for that, I understand your perspective on it. In terms of the detail about what it's currently doing, as I say, the Crown will provide some evidence in due course from NFE about that. But you are not involved or are working with the Crown on that Māori climate platform at the current moment. Is that fair?

A. I'm aware of that, but I'm not working with them. As I said, it's a Crown entity.

Q. Yes, yes, understand. You also refer at paragraph 12 v, and then x, to more work being needed by the Crown to protect marae and papakāinga, and work with Māori on green energy systems. Again, this is something that has been run through **(inaudible 11:30:10)** but are you familiar with the Māori and public housing renewable energy fund?

A. Yes, and that they haven't been taking submissions for quite some time.

Q. Well, I understand, and again, this is something that I'm speaking in advance of evidence, so that’s a bit unhelpful. But I understand that that is allocated a total of 28 million funding over four years to trialling small scale renewable energy technologies across the country. Does that sound right, or are you familiar with that at all?

A. I think you need to double check that, because we actually reached out to them for the very wharenui that we are in right now, and they said that funding had been discontinued.

Q. Well, I understand that building off that, that there's been a public housing renewable energy fund that’s been established for community renewal. Which is the community renewable energy fund, are you familiar with that fund?

A. The community renewable energy fund?

Q. Yes. Apparently, it's been built off the Māori and public housing renewable energy fund, and so the government has established a further

fund, which is named, the community renewable energy fund. Are you familiar with that?

LEGAL DISCUSSION – PROVIDE MATERIALS TO BE PUT TO WITNESS TO CLARIFY QUESTIONING (11:31:14)

LEGAL DISCUSSION – QUESTIONS IN WRITING (11:33:35)

MR PREBBLE TO JOHN HOOKER AND ALISON COLE: (CONTINUES)

Q. Just a couple of final questions where you talk about your experience working in 2021 at COP. That's at paragraphs 17 and 18, and your role as the iwi chairs forum rep. Which you talk about there and you say that, while you were funded to be there, you state you were excluded from the kōrero regarding the scope of negotiations and the terms of the negotiation mandate. I've heard and understood your points about the need for, if you like, rangatiratanga to be at the table, so I wasn't intending to go there with these questions. More just clarification in relation to how those negotiations are undertaken. And so, as a matter of clarity, in terms of what happens, would you agree that the negotiation team at MFAT determines the negotiations strategy and tactics for the negotiation. Is that fair?

A. Āe, and as far as I'm aware, yes there's no Māori representative meeting them at that table.

Q. Thank you for that. That, as I understand it, that is in order to implement the mandate which is being passed down form Cabinet, and I'm assuming you'd agree with that too?

A. Yes.

Q. Thank you. Those were really the questions I had on that. Just, I was testing that the implementation of the mandate is what is being as part of the negotiation rather than working out the mandate itself. Which is something that Cabinet is in charge of. Those were my questions, thank you Ms Cole.

HEARING ADJOURNS: 11.36 AM

HEARING RESUMES: 11.40 AM

(11:40) MR NIXON FONG TO JOHN HOOKER AND ALISON COLE:

Q. Kia ora. Before I begin, can I just check two things with you. The first is that you can hear me clearly?

A. [John Hooker] Yes.

Q. Thank you. Secondly, you have a copy of your brief of evidence either before you or close to you?

A. [John Hooker] Yes.

Q. Thank you. Can I just begin in the section at paragraph 19 to 24 of your brief of evidence. Where you talk about the ongoing fossil fuel extraction.

A. [John Hooker] Āe.

Q. I'll just start with some basic questions. In terms of the relevant government agency, you understand that it is the Ministry of Business, Innovation Employment that administers the Crown Minerals Act on behalf of the government?

A. Correct.

Q. It does this under the brand name of New Zealand petroleum and minerals. Are you familiar with that?

A. That's correct.

Q. It regulates the right to prospect, explore and mine minerals, including petroleum?

A. Yes – taihoa, I would like to preface there as well. During presentations from various ministers of that there, and one of them is the minister from the East Coast, the Māori Minister. She came and attended us here, Minister Hekia. As part of that there, she said, it was quite important that any of those prospectors coming into the rohe needed to have a relationship with tangata whenua, hapū, and iwi. So she actually spoke about that there when she presented that there to us, at a meeting here in Taranaki. Yes, carry on.

Q. Thank you for that. Before I go on, can I also thank you for answering my questions in English rather than your preferred language, in te reo. I'm

really grateful for that. Back to my line of questioning. Would you agree with me that one form of regulation done by MBIE is through enforcing the requirements imposed on applicants who are holders of permits under the Act? That's one way of regulation?

A. Yes, but it's an imperfect method of controlling them. For example, our hapū right now is busy challenging the current holders of the Kupe field, about an ongoing leak from oils offshore. And we are trying to hold them to account, and they're saying that even though our OIA inquiries are coming back, large areas are redacted material. But yes, the thrusters, but the carrying out isn't.

Q. Thank you. Just in terms of the regulations themselves and I'm talking about the architecture of the Crown Minerals Act. I just want to see if you understand that or petroleum permit holders are required to provide and I quote from the section, "an annual report on their engagement with iwi and hapū whose rohe includes part of their permit area or who may be directly affected by the permit." Are you aware of this requirement on applicants, or holders?

A. That is something that Minister Hekia advised us when she came to talk to us. But we are finding that it's lip service. They had quite a good liaison person that came out and did negotiate. But we are yet to see that person again in about the last four years. Now that I'm thinking about it, **(inaudible 11:45:33)**, he was one of our liaison folk about 10 years ago, but they're not sending anyone else to talk face to face with the mana whenua, recently.

Q. Thank you, I'll come back to that service. You mentioned the idea of tokenism in your summary as well, but I'll come back to that. Just in terms of the requirement that I mentioned and for the benefit of the Tribunal, I'm looking at section 33(c) of the Crown Minerals Act. Now, Mr Hooker, on MBIEs website it provides a rationale for this engagement requirement, and their website says, it serves two amin purposes. The first is that it says this requirement would encourages permit holders to engage with iwi and hapū in a positive and constructive manner. But would you agree that that's a good objective, that the law is trying to **(inaudible 11:46:38)**?

A. It's an aspirational directive. But I think close analysis from a tangata whenua viewpoint would find that, from a report card point of view, they have a significant amount of work to complete.

Q. In terms of the second objective and I assume you might give me the same answer. But can I just put this to you, the second objective that you can find from MBIEs website for this requirement, is to enable a New Zealand petroleum and minerals, their regulated and one of the progress of the engagement between applicants and iwi and hapū. Again, do you say that's at least, in theory, that's a sensible objective for the law to achieve?

A. Yes, and it does depend on which particular minister is in charge of that area from time to time. Some ministers give it a strong emphasise and others tend to downplay it.

Q. Now, just turning to sections 33 and this is not a test, Mr Hooker, I'm just giving some references, so my friends and the Tribunal know what I'm talking about. I understand, under this section, permit holders are also required to share a draft report of their iwi engagement report with relevant iwi and hapū for comments before submitting them to the minister. Are you aware of this requirement?

A. Yes, I'm aware of that requirement, as outlined by Minister Hekia Parata. But for example, as I was alluding to before, the large Kupe field, which is offshore, Ngāruahine. It's offshore, our hapū, the field is actually in our hapū area, and the current licensee has gone from Origin to Beach Energy. Beach Energy refuse to come to our pā to talk to us about it. They are withdrawing significant amounts of resource from that petroleum field which is situated right within our hapū of Ngāruahine.

Q. Just staying on the requirement that I just mentioned though. Are you also aware that part of the requirement is that iwi and hapū must be given a reasonable opportunity to provide comments on the draft report. That the iwi and hapū comments must be included in the final report as submitted to New Zealand petroleum and minerals?

A. Yes, I'm aware of that there, but in that example that I have given you, it still hasn't happened. For example, a community of Ngāruahine hapū asked the current Kupe licensee, which is Beach Energy to refer to us in

their community of consultation and refuse to recognise us. They recognise our neighbour next door, another hapū, I won't mention them though. But they refuse to engage with us because the field is actually in our backyard. This has been ongoing for about three years.

Q. Yes, and I might come back to some of these points, but just to complete my train of thought. I mentioned that the section requires applicants to provide a reason opportunity and that's word for word from the section itself, for iwi and hapū to comment on the engagement process. Would you agree with me that the rationale for this requirement to provide a reasonable opportunity is to prevent a rushed engagement process?

A. That's the aspiration. I would agree, but the implementation is severely flawed in the case of this particular large field, the Kupe field. We get assistance from our PSGE, which is Te Korowai o Ngāruahine, who are insisting to bench that they need to consult and interact with the mana whenua hapū for that field. They're still ignoring them.

Q. I'm just looking at the section itself, it talks about, applicants must engage with iwi and hapū who are directly affected by the application. And I guess, based on the answers you have given me, have you ever tried to liaise with Beach Energy, for example. To make the case that your hapū is a hapū that is directly affected by the permit itself?

A. Yes, we have over the last three to four years, sent significant amounts of correspondence to Beach. I can supply that to the Tribunal if it so wishes.

Q. I'm just asking out of curiosity, Mr Hooker, what was Beach Energy's response to your case that your hapū was directly affected by the permit?

A. A resounding, deafening silence.

Q. Would you say that that's the fault of any, like lays with the company itself, rather than the Crowns own actions?

A. I lay it at both doors, I lay at the corresponding minister in charge of that particular area right now and I also lay it at the feet of the Beach Energy Company.

Q. Just finishing off the point about the statutory regime itself. I understand that iwi and hapū who are directly affected by the permit, not only can they contribute to the yearly engagement report itself. They can also

request a meeting with the New Zealand petrol and minerals, and the permit holder to discuss the report and quality of the permit holder's engagement. Is that your understanding as well?

A. That was the aspiration as given to us by Minister Hekia. But the lukewarm responses at Ministry level and a resounding, no response from the current permit holder.

Q. I guess, assuming the aspiration works, which I understand, you might not agree. But assuming that it works, would you say this statutory mechanism will allow opportunity for iwi and hapū to discuss any shortcomings in the engagement process, including if they consider the process was very rushed or perfunctory?

A. Yes, if that is the high level aspiration, I would agree. For example, when the field installation was finally opened, that was before Beach, it was then, Origin. We actually had the Prime Minister, that was a National Minister then, present at the opening. Origin was very keen to assist tangata whenua, but in defeat didn't follow their kōrero.

Q. Now, another requirement under the Act, as I understand, is that any feedback received in the yearly iwi, hapū, engagement reports. And any feedback from any review meetings about the quality of the permit holder's engagement, is a factor that a decision-maker must consider before granting a new permit application. Are you aware of this requirement?

A. Yes.

Q. Just stepping back, would you agree that all the requirements that I've mentioned, and I acknowledge your views about the aspirational character of them. Would you say the purpose of these requirements is to incentivise permit holders to engage regularly, and engage properly, with the relevant iwi and hapū?

A. Aspirationally, yes. We do get that there to a certain extent, with the likes of Todd shell field, which is now the Todd field at Kapuni. some of the smaller ones that come in from time to time. But a resounding destain from the current permit holders for the Kupe field, Beach.

Q. So, if these were to work practically, would you agree that the statutory measures would provide a reasonable level of protection for the iwi and hapū interest in the area?

A. I think, evidence of the cake is in the eating, and there's no cake to eat before our hapū from the Kupe field. In fact, there's crumbs on the plate, but one of my sister hapū eat those crumbs, and our plate is empty.

Q. So, based on that answer, am I right in saying that your complaint is not so much with the design of the statutory regime, it's more with the practical implementation of it. So you're not disputing the recipe for the cake, but the actual baking of it. Is that right?

A. Yes. The current bakers, from the point of view of the Crown, that senior departmental personnel, and the current recipient of that license.

Q. Just to finish my final question on this particular topic, and in no way am I encouraging litigation. But I'm just curious that the statute says that an applicant must consult any iwi or hapū (inaudible 11:59:03 – 11:59:07) effected by the permit. Would you say, in theory at least, it's open for your hapū to challenge Beach Energy for their perceived failings to consult with your hapū?

A. One would assume that in theory, it is open. But the response that we got is a resounding silence.

Q. Yes, and I understand you have been engaging them and from your perspective, they have been silent. But I guess my question is, would you say the law at least allows you a mechanism, to, for example, going to the Courts and enforce the obligation against Beach Energy if you wanted to?

A. Well, we have another rule arbiter of the law, which is the EPA. We are currently challenging the EPA about a continued oil leak on one of the well heads in the Kupe field. EPA have been ignoring us for a while, but they have finally agreed to a meeting that we are going to have in two weeks' time. So even their rule arbiters need to be challenged from a point of view of tangata whenua.

Q. Thank you, Mr Hooker. Those are the questions I wanted to ask on that particular topic. Can I now turn to paragraphs 25 to 38 of your evidence. about the Green Hydrogen Project.

A. Āe **yes**.

Q. Just in terms of the opening clarifying question, the case you mentioned in these paragraphs, that involved a challenge to a decision by an expert consenting panel under the COVID 19 Recovery (Fast-track Consenting) Act, is that correct?

A. That is correct.

Q. So, it's not a challenge to the decision of the Crown, by which I mean a minister, an official, or a Crown or government agency. Would you be prepared to accept that?

A. Possibly not but carry on.

Q. And I suppose from your answer, I guess, you would see the Crown as encompassing the expert handle as well. I'm just saying, possibly, the rationale.

A. Yes.

Q. I think you have quite fairly, and appropriately accepted in your evidence, that the challenge was dismissed by the Court of Appeal, correct?

A. Yes.

Q. Did you have a chance to read the Court of Appeal's judgment, or has somebody explained the effect to you after the judgment?

A. In great detail, yes.

Q. Am I right in thinking that part of the challenge, at least, and so far, as the interested hapū are concerned, was about whether the panel's decision in granting the consent for the turbines, subject to conditions. Meant the obligation under section 6 of the relevant Act, which is that the panel must act in a manner consistently with the principles of The Treaty of Waitangi. Was that kind of the big issue from your perspective in that case?

LEGAL DISCUSSION – LINE OF QUESTIONING (12:02:59)

MR FONG TO JOHN HOOKER AND ALISON COLE: (CONTINUES)

Q. If I could just return to the lines of questioning. As I understand from the judgment, from paragraph 139, Ōkahu-Inuawai was opposed to the project of building the turbines due to the visual and noise effects of the turbines. Is that right, Mr Hooker?

A. [John Hooker] That is correct. Visual, but also, when we first asked Te Hiringa to give us an engineer's visualisation of the windmills as viewed from Aotearoa pā. We actually asked them, some three years prior, we asked them at a hui held by our iwi, Te Korowai o Ngāruahine. In that period there, they ignored that requirement and they spent resource on other experts. But it wasn't until we pushed them three more times that they invested that money in the engineers report just to show what it would look like. Because prior to our hapū seeing that visualisation, our hapū was in support. But once we saw the visualisation as prepared by an engineer, we just said, no, this is going to threaten our relationship with our tupuna maunga, a Taranaki. So, yes, we felt that Hiringa was using a different priority list for utilising their resource.

Q. Thank you. I think that aligns quite nicely with the Court of Appeal's comment at 139. That Ōkahu-Inuawai withdrew completely from further engagement on the project after several initial hui with the developers.

A. [John Hooker] Because at that stage there, once we saw the effect of those windmills on our line of sight, line of appreciation for our tupuna maunga, our hapū was absolutely against. The entire hapū was unanimous.

Q. If I could now turn to paragraph 30 of your brief of evidence. You said the consultation process was (inaudible 12:06:36). I'm only asking this question because you have said that you have read judgment in great detail. Does that comment about the inadequacy of the consultation, would you also have that knowledge that the Court of Appeal said the consultation processes that was adopted met the requirements of natural justice in this case?

A. [John Hooker] I would agree that that did not meet, one, concepts of natural justice, and two, did not meet tikanga Māori. Tikanga Māori, we required Te Hiringa to come and visit each of our hapū on our marae and talk kanohi ki kanohi. They did that there, with a range of our hapū, and we also required them to do that there with the likes of Ngāti Tu. They did that there, there were about seven issues that they were working on. However, before completing the last two issues, they decided to break tikanga Māori, break Māori law and go to fast-track. All they had to do

was just spend another two months dealing with it under tikanga Māori and it would have been satisfactorily concluded. But they chose to break tikanga Māori too.

THE COURT ADDRESSES MR FONG – LINE OF QUESTIONING (12:08:12)

MS SYKES ADDRESSES THE COURT – LINE OF QUESTIONING (12:11:14)

MR FONG TO JOHN HOOKER AND ALISON COLE: (CONTINUES)

Q. Mr Hooker, the Court of Appeal decided, at paragraph 211, and I'm quoting here from the Court of Appeal. Which is a factual observation that that, and I quote: "All relevant parties had the opportunity to be heard through the respondent's early engagement with them, followed by the opportunity to make written comments on the application and subsequently, on the draft conditions." My question is this, Mr Hooker, would you say that comment by the Court of Appeal sits a bit uneasily with your comment that the consultation process was inadequate?

THE COURT ADDRESSES MR FONG – LINE OF QUESTIONING (12:09:25)

MR FONG TO JOHN HOOKER AND ALISON COLE:

Q. Now, Mr Hooker, the Court of Appeal also recorded that the opportunities of consultation as a result of which the panel had a full spectrum of views on the project ranging from strong opposition to being supportive. Now, would you say Ōkahu Inuāwai was on the strong opposition side of the spectrum?

A. [John Hooker] That would be correct.

Q. And would you say Ngāti Manuhiakai was on the supportive side?

A. [John Hooker] Well, I cannot comment on that. Yes, I will just say that some of the submitters were supportive.

Q. Now, would you say, just stepping back, where there are differing views between iwi or hapū, you would agree that a balance has to be struck?

A. [John Hooker] Āe, our role within Ngāruahine requires, okay**,** we've all got mana, all of our hapū have got mana, but the mana whenua which is

Ngāti Tū needed to be heard by the rest of us. That never happened. That interaction with Ngāti Tū, who are the mana whenua for that particular area, needed to be concluded before anything was binding on the rest of us.

Q. And do you recall making that argument to the Court of Appeal?

A. Well, I can't recall on that there, I'm sorry, yes.

THE COURT ADDRESSES MR FONG – LINE OF QUESTIONING (12:14:47)

LEGAL DISCUSSION – TIMETABLING (12:15:51)

(12:19) KEVIN PRIME TO JOHN HOOKER AND ALISON COLE:

Q. Yes, I have a question for Ms Cole. You referred to, in one of your recommendations in paragraph 14, you were suggesting that a Māori ambassador be appointed along with the ministry ambassador. My question is, what is the role of the ministry's ambassador?

A. [Alison Cole] As I understand, within MFAT, all negotiations that happen within those contents parties every year under the United Nations Framework Convention on Climate Change, that's effectively their mandate, that negotiation mandate. It's shepherded by the climate ambassador, which is a role within MFAT.

Q. And what would be the role of the Māori ambassador?

A. [Alison Cole] My hope is that that would actualise the mana motuhake, coming from that kaitiakitanga perspective to feed into those negotiations. I don't believe that the negotiation mandate, as a Crown Law representative said, is the purview of Cabinet only. I think it should also be reflective, of course, of ao Māori and tikanga, so I don't think that a Crown representative solely through the climate ambassador is appropriate under te Tiriti. I think that needs to be matched with a Māori climate ambassador.

Q. Thank you. I have a quick question. Towards the end of your oral presentation this morning, you mentioned being close to the tipping point. Do you think we are close, or we are past it?

A. [Alison Cole] Yes, from my understanding of climate science, it does look like we may have passed it.

Q. Okay. Thank you. Kia ora. Thank you.

(12:21) PRUE KAPUA TO JOHN HOOKER AND ALISON COLE:

Q. Kia ora, Ms Cole. Ngā mihi ki a koe mō tō reo. **Thank you for your…** I just had a couple of questions I wanted to – I think most have been asked, but in paragraph 16 when you talked about having your travel and accommodation paid by MFAT when you went to – in terms of the role there with the Iwi Chairs Forum, was anybody else paid for by MFAT to attend?

A. [Alison Cole] I believe so – well, I'm not actually too sure. But I was the only representative under the Iwi Chairs Forum. There may have been some rangatahi reps, and there may have been some industry reps also, but I'm afraid I wasn't privy. But that is a very good pātai **questions**.

Q. But none of those, presumably, were part of any kind of discussions or negotiations?

A. [Alison Cole] Yes, correct. We were all, including the Iwi Chairs rep, we were all put in that bucket of civil society, although there were some instances where some of those corporate representatives – I mean, that's more on the hearsay side, but perhaps something to verify for the court if these proceedings are matters of interest, but there was talk that certain industry representatives were working, like attending sessions, but again, that's just what I heard.

Q. Thank you. The last – the other question relates to your references to the climate response Act, and you talked about section 5M(f). I just wanted to ask you whether you consider that the requirements in section 5M(f) were a recognition of Te Tiriti o Waitangi.

A. [Alison Cole] The first part of section 5M(f) is mandating that all advice must recognise the Crown-Māori relationship. My understanding is that's the modality wherein the Treaty relationship was brought into the analysis, through climate advice, and because the legislation was speaking specifically to an independent entity, that entity was therefore

technically outside of that Treaty relationship, since it was classed as independent from the Crown.

Q. Right. Okay. So you would see – is that the reason that section 5M(f), in your opinion, is not referred to in section 3A?

A. Yes, exactly. Because in section 3A, that's where it points specifically to the minister and puts those Treaty principle obligations on the minister as the representative of the Crown. But what I find most powerful in section 5, I guess, is regardless, almost, and everything that is analysed and assessed as evidence to feed into that advice must consider ao Māori.

Q. Right. Thank you. And so, if under a review of the Treaty provision, section 3A went, you would still see the section 5M(f) as having a significant role in terms of the decisions that it relates to.

A. Yes. It is explicitly crafted as a mandatory consideration, and I think it goes without saying that within ao Māori are all aspects of tikanga and kaitiakitanga, and the indications that has the protection of te taiao and what we discussed earlier about the effects of the petroleum industry, the impacts on coast erosion and coastal marae, wāhi tapu, et cetera.

Q. Kia ora. Thank you. Thank you, Ms Cole.

(12:26) PROFESSOR DAVID WILLIAMS TO JOHN HOOKER AND ALISON COLE:

Q. E ngā rangatira o ngā hapū o Ngāruahine, tēnā koutou katoa. My questions are in te reo tuarua o te motu. First, two questions. First one relates to the comment in paragraph 24 of Mr Hooker's very good evidence. It speaks of the active recognition of our tangata whenua petroleum right, as outlined in Waitangi Tribunal reports, the previous Tribunal reports on petroleum, where of course the Tribunal rejected the idea of legal ownership of petroleum assets and came up with this concept of Treaty interests. But I am just wondering whether Ngāruahine now is wanting this Tribunal panel to move beyond that, because you are asking for a Māori-led transition away from fossil fuels, so any thoughts from either of the kaikōrero on the possibility that you want to move away from the Treaty interest that has been recognised in the past to something more substantial?

A. [John Hooker] Kia ora. First off, on one hand, yes, we definitely want to expand on that petroleum interest that the Tribunal recognised, and even though it seems counterproductive to our challenge in the climate arena, but our main premise was if our interest was recognised accordingly, we would not have expended all of that resource quite so – in the laissez-faire approach that has been done to date. We would have made sure that it was used sparingly, just to look after our local market, our Aotearoa market, without selling it off overseas, because if you look at our current energy requirements right now, we are having to import petroleum products and to a certain extent even import coal, which is counterproductive, so on the one hand, yes, we would still like to expand upon that Ngāruahine petroleum interest, but by the same breath, we still want to really enshroud our kaitiaki bond in utilising that resource and protecting our wider environment. For example, I've actually seen that coastline on all those wāhi tapu erode in my lifetime as well. It happened well before I was born, but I've seen, for some of them, there's only about five metres left (inaudible 12:30:15), which is like Te Kawau. So, a bit of both there.

Q. Yes, thank you. Can I also put a question into Ms Cole hopefully soon, Doctor. So, on paragraph 12(xi): "The Crown should work with Māori to secure equitable transitions to economies achieving real growth zero emissions based on degrowth." Now, this is a very small question, but if you use the word 'degrowth', you are really challenging the whole financial capitalist system, are you not? What do you mean by degrowth there?

A. [Alison Cole] I'm really mindful of time constraints, but I think in the most simplest form we need to reduce consumption to the extent of any form of fossil fuel extraction as we've seen from all the analysis in the reports from the United Nations. Since years ago we've been told that it needs to stay in the ground. So, that necessitates a revolution of how we approach the economy, and I suggest that the endless growth model is not sustainable in a finite climate, it is the point of planetary boundaries. So that's just a brief overview of how I perceive degrowth.

Q. Kia ora, thank you. Thank you all of you for your submissions.

QUESTIONS ARISING FROM MR VINCENT – NIL

JUDGE MILROY:

Thank you to you both for your evidence and most of the questions have been asked, but I would value – I am sorry that time has become so constrained. But I would value from you Ms Cole and Mr Hooker a little further evidence about what our system, I suppose, would look like in terms of that degrowth aspect of things. Because as you say we have a finite planet with finite resources, and we can't carry on expecting that we're going to expand and use all those resources infinitely. And we have had an example from Mr Bennion's witness Ms Bailey about what they would see as steps, which I think form part of the degrowth concept. So, if I can just say that it would be helpful to have. If you could have a look at that evidence from Ms Bailey and perhaps give us your views about aspects of it that you would agree with or want to expand on and so on. But we won't ask you for that now, but if we could look at having something like that in the future.

LEGAL DISCUSSION – TIMEFRAMES FOR QUESTIONS IN WRITING (12:33:43)

HOUSEKEEPING – TIMETABLING (12:34:12)

HEARING ADJOURNS: 12.35 PM

HEARING RESUMES: 12.35 PM

LEGAL DISCUSSION – TIMETABLING (12:58:58)

(13:00) MR LYALL: (#3.3.015)

Your Honour, I am going to begin by presenting opening submissions for the Wai 3279 claim. I will be presenting them jointly with Ms Swedlund, so I will say my part and then pass to her to finish the submissions, and we will be working from document #3.3.015. I should signal that our witnesses aren't currently in the room, but I understand they are on their way, and I am hoping

that by the time we reach the end of our opening submissions we will just sail neatly into presentation of evidence.

So, your Honour, ngā mema.

REFERS TO OPENING SUBMISSIONS #3.3.015

These opening submissions are presented for the claimants in the Wai 3279 Te Upokorehe Future Generations Climate Change Claim.

Te Upokorehe are an iwi who hold mana in the North-eastern Bay of Plenty. There rohe extends from Maraetotara in the west, across to the east through the Ōhiwa Harbour, to the Waiotahe and then to the Waioeka river, and there's a point in the centre of that river called Pākihikura which marks the eastern extent of their bounds. Their rohe extends inland into the bush country of the upper Waiotahe Valley.

You will hear that Te Upokorehe hold intergenerational relationships with their whenua, moana, and awa. Their kaitiakitanga is expressed through daily practice, whether that be monitoring pipi beds, restoring native habitats, protection of wāhi tapu, or teaching the next generation to live respectfully with te taiao. Simply put, Te Upokorehe walk the walk.

Now, it is accepted that everyone contributes to climate change in some way. But the effects of climate change and the burdens of mitigation and adaptation disproportionately affect Māori.

Crown responses to climate change reach deep into the rohe, the awa, the wāhi tapu, the pipi beds and the kāinga of Te Upokorehe whānau. Yet rather than working alongside Te Upokorehe to address the harm being caused to them, the claimants say that the Crown has actively undermined them and their role as kaitiaki. It has repeatedly failed to engage with them as a Tiriti partner in environmental and climate-related decision-making. Funding and decision-making authority is directed elsewhere, while those with lived, inherited connections to the Te Upokorehe rohe are marginalised and

under-resourced. And that is by local and regional government and by central government.

The Tribunal will hear that the effects of climate change are already being felt in Te Upokorehe's rohe. The Ōhiwa Harbour is silting up. Shellfish beds are at risk as sea temperatures rise. Taonga species are at risk. Sacred sites and urupā are crumbling under coastal erosion. Runoff from farming and slash from forestry pollutes the waterways. Traditional sources of kai and resources are disappearing.

And your Honour, ngā mema, it is no exaggeration to say that for Te Upokorehe, they consider that their very way of life is under threat from the challenges that climate change will bring.

At a macro level, the Crown has taken steps to address climate change and establish a legislative and policy framework. The evidence shows that these measures fall short of what is required.

At our paragraph 12 of our opening submission, we discuss several of those, that's certainly not an exhaustive list, but very briefly we say:

The Crown has failed to take meaningful action to reduce emissions at source. Transport and agriculture remain largely untouched by their framework. The Crown relies heavily on exotic forestry offsets, delaying the required structural transformation and compounding the risk to Te Upokorehe.

They say that the ETS system itself is not working. And briefings to Ministers have confirmed that the ETS is "largely incentivising forestry removals (mainly exotic afforestation)" and that is expected to continue, contributing to a long-term decline in the emissions price and weakening incentives for real decarbonisation in the energy and transport sector. Those papers say that under the current settings, the ETS will continue to drive land-use change without reducing gross emissions at source.

Now, as far as the emissions reduction plans are concerned, the claimants say that the ERP2 Plan, and I am at subparagraph (3) of paragraph 12 here, does not set out a credible pathway to meet emissions budgets. It relies on offshore mitigation or the promise of some future technology to save the day.

Your Honour, I am reminded of an analogy of someone who smokes a pack of cigarettes a day and does so just hoping or relying on the off chance that a cure for cancer might be developed in the future. Why quit if you will be saved by future technological interventions.

The claimants say that ERP2 weakens ambition, was not developed with the level of consultation with Māori that the Act demands.

Now, the Panel this morning has heard some kōrero on the National Adaptation Plan. The claims say it contains few binding commitments and lacks alignment with the lived experiences of Māori communities like Te Upokorehe. Now, it does reference a platform for Māori climate action. In our submissions, we have said thet platform appears to be un-or under-funded and inactive.

We have heard this morning that there will be evidence on this from the Crown. We welcome that and we will test that evidence when the time comes, but from the claimants' perspective it may as well not exist. They see it as a broken promise.

Turning to subparagraph (e) of paragraph 12. The Second Nationally Determined Contribution or NDC, the claimants say that they are dismayed that the level of ambition is set at the minimum possible level, it has been referred to as being "'below expectations' for a developed country and unlikely to meet the expectations of key partners and the international community".

This uncertainty sends a troubling signal. To Te Upokorehe, already living with the impacts of climate change in their rohe, it signals a lack of urgency. And to those who would prefer to delay or avoid real emissions reductions, it risks

suggesting that inaction, or further pollution, will ultimately be excused by the Crown.

In addition, the claimants say that the Crown has taken a series of steps which don't address climate change, in fact they actively undermine climate action. This includes lifting the ban on oil and gas exploration, delaying the introduction of agricultural emissions pricing, promotion of expanded mining activities, and introduction of major cuts to climate action projects.

While the Crown maintains that it wants to address climate harm, it is difficult to view this as more than performative institutional speech.

Now, your Honour, one of the witnesses this morning was taken to the kōrero that's on that governmental website as evidence of Government policy and asked whether they agree with it. Te Upokorehe would say that that is performative institutional speech where the Crown professes commitment, recognition, prioritisation, but it does not act. In these circumstances, the laws and policies the Crown creates and disseminates do not provide support; instead, they are experienced by Te Upokorehe as a continuation of long-standing structural violence. A modern extension of the harm that began with colonisation.

For Te Upokorehe, the macro and the micro are inseparable here. The health of the global climate system depends on the health of places like the Ōhiwa Harbour and the Waiotahe. And yet, while the Crown fails to take robust and ambitious action, Te Upokorehe are shut out of decision-making, denied the resources and authority to lead in their own place, and made to bear the consequences of a crisis that they have not created.

Now, to be clear, Te Upokorehe are not seeking control over technical climate policy or a veto on legislation. Their evidence is not about emissions modelling or regulatory design. It is about place-based knowledge, lived experience, and generation upon generation of kaitiakitanga. But they do say that when climate policy reaches into their sphere, they do expect a seat at the table designing it.

The recommendations sought in this claim will support Te Upokorehe to build the institutional knowledge and capability needed to participate in that space on their own terms, while continuing to uphold their role as kaitiaki in their own rohe.

Your Honour, on those recommendations, the first, I will touch on principles and then move back to those. But moving to my paragraph 19.

Te Upokorehe have set out the principles that they say are relevant to this inquiry in their Statement of Claim dated 11 July 2024. And first and foremost, for Te Upokorehe is te mātāpono o te tino rangatiratanga. They say it is fundamental to the development of effective and appropriate responses to climate change.

Beyond that, they say that the Crown owes a duty to protect the environment as a whole.

At my paragraph 22 we address the same that in the past, the Crown has resisted arguments that it owes a duty to protect the environment as a whole. Rather, it has argued that duty under Te Tiriti is limited to the protection of specific taonga, and that it does not have a general obligation to prevent broader environmental harm.

We obviously don't know if that's the position the Crown will ultimately take in this inquiry, being where we are. But Te Upokorehe say that the very nature of climate change shows the flaws in the Crown's previous reasoning. Climate change is not a conventional environmental issue. It is a crisis of global, intergenerational scope. And so much so that new ways of conceptualising problems have been required to address it.

In my paragraph 24 I refer to the concept of 'hyperobjects' or 'superwicked' problems as ways of grasping with this crisis.

Simply put, we say that despite the Crown's view, they must have a duty to protect te taiao as a whole, and the Waitangi Tribunal has in the past agreed. In *The Interim Report on the MV Rena and Motiti Island Claims*, the Tribunal said that the fundamental relationship created by the Treaty means that the Crown has a duty to protect both the environment itself, and to protect Māori in their exercise of rangatiratanga over their taonga. And that would be supported here.

Te Upokorehe say that the Tribunal should find that in the context of climate change, a threat of unprecedented scale and complexity, the environment must be recognised as a taonga in its entirety, and that the Crown owes a duty of active protection not only to specific features of the environment, but to te taiao as an interconnected whole.

We have set out the recommendations sought at paragraph 29. We will return to this in closing submissions, but I did want to really stress that the recommendations sought are practical for Te Upokorehe. They seek to be able to develop their institutional capacity, to gather information, produce maps, and to be provided the resources that they need to protect their people from the effects of climate change.

We'd also say that by Te Upokorehe, they mean the people who are there walking the walk, doing the mahi on the ground. Now, it's not enough to provide, for instance, funding to a post-settlement governance entity and for the Crown to say, "we've ticked that Te Upokorehe box".

Your Honour, I am going to pass to Ms Swedlund to address the evidence that you are about to hear and then she will lead the first witness.

(13:14) MS HANNAH SWEDLUND: (#3.3.015)

Tēnā koe e te Kaiwhakawā, otirā koutou e ngā mema. **Thank you, your Honour, and the members.**

So, as to the evidence that will be presented today, this is outlined from paragraph 17 of the opening submissions. I will just briefly go through these.

REFERS TO OPENING SUBMISSIONS #3.3.015 FROM PARA 17

Initially, Wallace Aramoana and Maude Edwards will present evidence about who Te Upokorehe are, and of the loss and erosion of wāhi tapu, pā sites, and identity markers due to climate change. This evidence shows that climate change is not only a threat to the environment, but also a threat to whakapapa, identity, and survival.

Trevor Ransfield will then describe the environmental issues facing Te Upokorehe and the wide range of work they are doing to protect their rohe.

Gaylene Kohunui will then explain the tikanga, kawa, and environmental knowledge passed down within Te Upokorehe. Her evidence will demonstrate the role of kaitiaki as protectors and show how climate change threatens the ecological balance that kaitiaki maintain.

We will then hear from three rangatahi. Thus, Te Mauri Keno will give evidence of growing up in the rohe, surrounded by stories and lessons from his koro and wider whānau. Suzette Klock will provide evidence of how she came to understand climate change and kaitiakitanga through her upbringing in Upokorehe. Larian Tuari will speak about community clean-ups, environmental monitoring, and educational programmes in which he and the other tamariki are involved.

The evidence of these rangatahi warns that inaction today will inevitably leave future generations without the resources to continue as kaitiaki.

Tomorrow we will hear from Kahukore Baker who will provide evidence of the stranding of pilot whales in the Ōhiwa Harbour in 2014. She will explain Te Upokorehe's fear that climate change—through rising ocean temperatures, algal blooms, and disrupted food chains—will further harm these taonga species.

Ngaire Ngamoki will give evidence of the direct effects of climate change in the rohe, and she will explain her work in community resilience and emergency response, and detail Te Upokorehe planning for disaster management.

Christine Martin will provide evidence about the relationship of Te Upokorehe to the wai and to the whenua, drawn from kōrero tuku iho and hui amongst kaumātua.

Aroha Wikotu will then give evidence from the perspective of Rongopopoia Hapū about the impacts of climate change within their rohe.

Your Honour, you will be hearing a lot of this on the ground type of evidence from those who walk the whenua. Later on in the inquiry, to note, you will hear the scientific evidence which accords with these observations from kaitiaki.

We have filed the evidence of Dr Brendon Deplhy entitled *The Impact of Climate Change within Coastal and Intertidal Areas of Aotearoa New Zealand* which can be found at #A51(a). We had hoped to have him present alongside Te Upokorehe but just to flag the Tribunal we will be hearing this evidence later.

In addition to evidence from Te Upokorehe members, Dr James Every-Palmer KC will present expert evidence examining the level of ambition and adequacy of the Crown's climate change response, including the Crown's continued overreliance on removals—particularly forestry offsets—rather than achieving emissions reductions at source.

These are the opening submissions for Wai 3279. If the panel has any questions, we are more than happy to answer these, otherwise we will move to evidence. Tēnā koutou. **Thank you all.**

QUESTIONS FROM WAITANGI TRIBUNAL PANEL – NIL

MS SWEDLUND:

We now call Wallace Aramoana and Maude Edwards for the Wai 3279 claim. These witnesses will be speaking to the brief #A46 and #A46(a).

MS SWEDLUND CALLS

WALLACE ARAMOANA AND MAUDE EDWARDS (SWORN)

Q. Could you please confirm your full names for the Tribunal?

A. [Wallace Aramoana] Wallace Aramoana. He kaumātua o Te Upokorehe. Kaumātua o te marae a Roimata. He kaumātua anō i tipu mai i roto, i whānau i runga – i roto i te moana, i runga i tētahi o ngā motu. Ko Hiwarau te maunga. Ko Te Karaka te awa. Ko Ōhiwa te whanga. Ko Roimata te marae. Ko Te Umutao Noa a Tairongo te wharekai. Ko Raumoa te haki. Ko Te Ao Marama te wharenui. Nō reira, huri noa, tēnā, mihi atu ana ki a koutou. **An elder who was born at the harbour on one of the islands. Hiwarau is the mountain. Te Karaka is the river. Ōhiwa is the harbour. Roimata is the marae. Te Umutao Noa a Tairongo is the dining room. Te Ao Marama is the wharenui. And so greetings to you all.**

[Maude Edwards] Tēnā koutou. Ko Maude Edwards tōku ingoa. He uri o Te Upokorehe. Āe, kia ora. **Greetings to you. My name is Maude Edwards. I'm a descendent of Te Upokorehe. Thank you.**

Q. And you filed a joint brief of evidence for Wai 3279 dated 26 March 2025, is that correct?

A. [Maude Edwards and Wallace Aramoana] Āe. **Yes.**

Q. Āe, and you filed speaking notes dated 4 April 2025, that's correct?

A. Āe.

Q. And you can confirm that the contents of these documents remain true and correct?

A. Āe.

Q. So, you have your speaking notes in front of you and I will just hand over to you to take the Tribunal through your kōrero. Tēnā kōrua.

(13:21) WALLACE ARAMOANA: (#A046, #A046(a))

Kia ora e te Kaiwhakawā. Tū noa iho tēnei, ehara kau i te takahi i te mana o te tohunga, engari e mihi tonu atu ki te tohunga nāna nei i whakatuwhera i tō tātou rā i te karakia i tēnei ata, nō reira e mihi kau atu ana ki te rangatira. Ka mihi atu anō ki a koe, ki te Karauna, me ngā kaiāwhina, ngā rōia hoki, e mihi kau ana ki a koutou katoa i runga i te whakahaere o ngā kaupapa. **Greetings, your Honour. I stand not to trample upon the mana of the tohunga, but I want to acknowledge the tohunga who opened our day with a karakia, and so I want to thank the chief very much. I also wish to acknowledge the Crown and those assisting, greetings to you all before we proceed.**

Nō reira, huri noa, me mihi anō ki ā tātou nā mate, rātou kua whetūrangihia, haere, okioki mai. Ka hoki mai anō ki a tātou anō te hunga ora, ko tātou anō te hunga ora ki te hunga ora. Kāre e tōroahia ngā kōrero, e mihi whānui ana ki a tātou katoa, nō reira tēnā koutou, tēnā koutou, tēnā tātou katoa. E tau ana. **And so, to everyone, I must also acknowledge our dead, those who have joined the stars, farewell, farewell, rest. Returning to we the living, we pay respect to the living. I won't prolong these sentiments, but I just want to acknowledge everyone, so thank you, thank you, thank you one and all. I resume my seat.**

MS SWEDLUND:

Kia ora. Just to note e te Kaiwhakawā, Ms Edwards will be reading the brief.

(13:23) MAUDE EDWARDS: (#A046, #A046(a))

Kia ora, tēnā koutou. **Thank you, greetings.** So, I will be reading the brief on behalf of Wallace Aramoana and myself. So, without further ado, I will start that so we can get, I guess, some value out of the time that we're in front of the Tribunal.

READS SPEAKING NOTES #A046(b)

I, Wallace Aramoana, am a Kaumatua of Te Upokorehe Iwi and a Kaumatua of Roimata marae. I am our Kaitiaki and historian for our wāhi tapu, whenua, takutai moana, and taiao **environment**. I live on a papakainga on Hiwarau

Road right near the marae and the Ōhiwa Harbour. I have spent my whole life on the Harbour.

Right at the front I want to say that for us climate change has the power to turn us into ghosts in our own rohe. For example, when we give our pepeha we give our maunga and our sites of significance such as Pukenui. Raetoka is another site which is at the face of Te Hiwarau maunga, the forehead to the mountain. This points straight out to Whakaari **White Island**. It could guide you back form the roughest sea along with other rock faces and pā sites, yet now it's slipping away, being covered by rockfalls, and eroded.

As these slip away, erode, or are blown away in the winds we cannot point to them any longer—that part of our identity is changed or erased.

And now I go on to my introduction.

I was born in Ōpōtiki. I come from a large whānau, raised in the rohe of Te Upokorehe. Dad would always start the day with a karakia – Dad is Wallace Aramoana's brother, so it's all whānau that live around the harbour at Ōhiwa – as was traditionally practiced by his Dad (our grandfather) Patrick Tehema Aramoana and our great-grandfather Henare Rako Aramoana. He taught us not to moumou kai (be wasteful), and how to only take what you needed, ensuring the sustainability of the resources in our rohe. In this way we seek to leave behind a better world for those that will follow us.

I want to restate that my Dad (Charles Aramoana) would say: that after the raupatu all the Māori people were returned to the damp swamp lands. All the Pākehā got the high-quality whenua. Te Upokorehe therefore had to survive in areas that were more difficult to live in and are now going to be more damaged by the effects of climate change. The Crown took away high quality whenua that belonged to our tīpuna, and that breach of Te Tiriti will continue to undermine our adaptation efforts.

I agree with Wallace about the potential climate change has to rewrite who we are as it changes the contour of the land. The other thing that has an effect on our identity is the impact on our burial sites. Oparaoa is an example, where we see bones emerging from the erosion. We have to go across and reinter those bodies, but we are concerned that the whole area is at risk of loss.

Te Upokorehe Iwi

Te Upokorehe Iwi hold ahi kā in the area surrounding the Ōhiwa Harbour in the Bay of Plenty, to the west of Ōpōtiki. Our rohe stretches from the Maraetotara river in the west to the Waioweka River in the east, a spot in the middle of the river called Pakihikura. Our rohe runs inland to the site of Rongopopoia Marae.

Our primary waka are the Rangimatoru and Ōtūrereao waka. Our eponymous ancestors are Hape ki Tuarangi and Tairongo.

One of the distinct principal descent lines of Te Upokorehe is that of Te Hapu Oneone. In Te Upokorehe tradition Te Hapu Oneone are a people distinct from Te Tini o Toi and welcomed Toi when he arrived.

Our rohe has been lived in, the resources used and cared for, since the 1300s. Evidence of our occupation was found at an archaeological site named by Te Upokorehe as Tokitoki, which was excavated with the assistance and blessing of Te Upokorehe. We have known this site as Tokitoki mai rā anō **time immemorial**—we made the scientists aware of the name and site when a road was being cut through the area and we allowed one site to be excavated so the world could see it.

Maps produced by Te Upokorehe tīpuna show an intimate knowledge of the rohe, and the available resources. For example, the map below at paragraph [27] was produced for our application under the Marine and Coastal Area (Takutai Moana) Act 2011. This map shows some of the wāhi tapu that Te Upokorehe are kaitiaki for within the Ōhiwa Harbour. But really that is just scratching the surface.

What we do

We are a small iwi, but a very active one. We do not have much funding but are used to making a little do a lot. Among other things, Te Upokorehe has around 20 kaitiaki working day to day within the rohe of Upokorehe, and has a dedicated resource management team that conducts site visits for the RMA consenting purposes, and have a memorandum of understanding with New Zealand Transport Authority about proposed earthworks, we are active partners in the Sustainable Seas research project, Awhi Mai Awhi Atu, and have a very good working relationship with the Department of Conservation, going back almost a generation.

Historically, Te Upokorehe have acted to protect the health and wellbeing of key sites, species, people and practices in our rohe for future generations. We have also attached to this brief drone footage showing some of the rohe moana of Te Upokorehe and a translation of the kōrero that is played with the drone footage.

Te Upokorehe and Climate Change

When people are asking whether climate change is a myth we say kāo **no**, it is here—we see the effects of climate change in our rohe already.

For example, the Te Upokorehe wāhi tapu, Tokitoki, dates back 700 years. Te Upokorehe have acted as guardians of this site mai rā anō **time immemorial**. This site borders the Harbour, and as the sea rises and storms become worse and more frequent sites like this may just disappear. So where the original line might be about a couple of metres out from view, out into the sea, we want to put a wall of rocks, big rocks and cement some of them together so they won't scatter. We've got no pūtea but we rely on partnership to take us to where we want to be.

As kaitiaki, we are involved in mussel research in the Ōhiwa Harbour and in attempts to preserve the mussel from predation by starfish. We are concerned that as the Ōhiwa Harbour warms, starfish will take over as the conditions

become more favourable to them, and our taonga and kai species either die off, or move south in search of colder waters.

I would just like to pause there and talk a little about their project, and that was a research project that was undertaken by Dr Kura Paulburk, and the mātauranga of Te Upokorehe was used to initiate that project. Te Upokorehe named the project, and they also provided their IP to guide I guess the outcomes of that project. So, as a, I guess, a rōpū that's still going through our Treaty settlements, through our Treaty settlement and having iwi on either side of us that have settled, we have – we're actually caught in a vacuum where our mātauranga and IP must sit underneath a post-settled iwi.

So, while we're actually feeling the effects of climate change, the Crown is coming over the top of us and tying our hands from actually participating in really important mahi that depends on the livelihood of not just our taiao but the people, our people, who will suffer the consequences of any development, of any post-settlement iwi driven project, because our voice and our mana has been given by the Crown to groups that have no relationship, no mātauranga **knowledge** and no idea about our rohe.

So, that there, when Whakatōhea settled, that was on the table as well. All our taonga, everything that we have a relationship and that is precious and inherent by us from our tūpuna has actually been parcelled up and given to entities or given to post-settlement entities that actually only want us because of what we have. So, it's very, very, in our mind, a breach at the highest level, disguised under a flawed process that captures, and I guess captures innocent people that have already had Treaty grievances, existing Treaty grievances that have not been addressed. So, the mussel farm is one of those projects that Upokorehe has experienced where their IP was used, and we're hardly really mentioned in any of the reports. The kudos has gone to post-settlement iwi. And I won't name them, but there's not many to choose from. So yes, I will carry on with the rest of our brief.

CONTINUES READING #A046(b) FROM PARA 17

We also already place rāhui for the monitoring and sustainable management of the entire ecosystem within our rohe. It is difficult for our rāhui to be notified as signage takes money, and there is a lack of collaboration and support from local and central Government.

I would just like to pause there and just add in there as well that earlier on I spoke about Upokorehe being a very active Resource Management rōpū for as far back as I can remember. My great grandparents and grandparents, the relationship they had with the whenua, they didn't really need scientists to tell them how we need to care for things in our rohe because of their existence there. They read the weather patterns and everything else within our rohe. So, I guess I just wanted to really touch on, on how post-settlement entities may have written in to their settlement package how they will provide for hapū, but that is not actually how it happens on the ground. We are currently going through a process where prior to the settlement I was actually a member on the Whakatōhea Māori Trust Board since 2009 to 2019 representing Upokorehe. Within those 10 years, that 10-year period, Whakatōhea was not at all in the business of environmental management. The iwi as a whole did not take care of environmental management, they had no environmental management arm and they did not know anything about each individual hapū's rohe. The significance, their wāhi tapu, all of that, all of those significant kaupapa were looked after by the hapū. Again, Whakatōhea could not put pressure on to the hapū to bring their taiao kaupapa to the tēpu because they had no mātauranga about that rohe.

And I guess what I'm saying here is the post-settlement entity is exactly the same. We've got a group of people sitting around a table that are trying to find a process on how they're going to capture the mātauranga of hapū who do not want to give their IP or their mātauranga because then a post-settlement entity will take the very last thing they have left, which is their haukāinga, their papakāinga, their environment which all comes back to their tikanga. Their tikanga, their culture, their history, and that was done through collusion with the Crown and sealing – a settlement that's going to come back and take the last thing from Māoridom, from Upokorehe in this case, but I'm sure there are many

cases. As we heard earlier, the previous speakers from Taranaki, they are going through exactly the same experience. So, it's very serious and the Crown has enabled another grievance to happen. And worse still, they have more or less bound our arms and forced us to be part of that breach, because they will not, they will not allow us to have our own voice, you know. They might set up a little environmental forum, but we will always be the minority voice at that table. So, that is the real story about what's happening on the ground.

We have been captured as prisoners by Crown entities colluding with post-settlement entities to actually try and strip us of our mātauranga and IP. Once they get that, well, our mana in the hapū will be gone. But I guess herein lies the bigger picture. We will not be giving it to then. So, how then, how then does – how then is the Crown going to solve that, and how then is the post-settlement entity going to move forward if they don't have that mātauranga or relationship, and actually they will not be impacted by the impacts of any projects that they collectively, through majority vote to outvote the minority who are the people, the hapū that have to live with a power coming over the top of them trying to extract our mātauranga, but at the same time they won't have to deal with the impacts or effects from it. They will be sitting around a boardroom, around a table where all their fees are paid for and what have you by those hapū that are struggling, and they won't care about what the impact is on us who are living in that rohe that they're making decisions for.

So, I really don't know how the Crown is going to fix that, and I can actually foresee, like the previous speakers were speaking, decisions have been made for them, decisions that may not be the best decisions for our hapū, for the people that have to live in those areas and take the impact of those decisions, not just for us here now but for our future generations. So, yes, I just thought I'd elaborate on that. So, what paragraph am I? 18.

CONTINUES READING #A046(b), PARA 18

We also do not consider that there has been engagement or consultation on the ways in which the Crown is planning for adaptation or mitigation. An example is the emissions reduction plans. The Crown seems to go away and

speak to settled groups, the usual suspects, and does not come and speak to those in the rohe. In any case more than just speaking to us is needed. If you read through the ERP-2 document you see only very high level things, or nice reassuring language about recognising Te Tiriti and building Māori capacity. In our view the Crown wants to work at this from the top up when the grass roots are equally as important. If not more important, because they are the ones that will have to deal with the impacts.

The use of specific customary harvesting practices has also been traditionally employed for example, Upokorehe traditionally managed the over population of the black gull / Karoro by taking their eggs as a form of resource management and conservation. DOC introduced a new method of culling the karoro but it was not as effective as our customary practice. Upokorehe consulted with DOC to phase out the DOC practices and continue with our customary culling practice. This was agreed by DOC. This is just one small example for the Tribunal of where traditional knowledge can be better used than modern approaches.

Upokorehe have traditionally gathered and sustainably managed many flora and fauna species for building, carving, weapons, weaving, ropemaking, rongoa, kai, making dyes and a host of other uses. Some of these gathering sites are at risk through sea level rises.

Where the Upokorehe rohe overlaps with the takutai, rongoa species grow all around. The species listed below at paragraph [43], for which Upokorehe are Kaitiaki, have a myriad of cultural uses and are harvested all year round. They show that Upokorehe know and use all the species here directly for their health and wellbeing. As the effects of climate change are felt we see these species moving from the places where we would have found them, and we consider that the Rongoa properties of some of them may lessen where they can no longer grow in the mix of fresh and salty water.

We also monitor whitebait in our rohe, where they run to the sea and are caught in streams and waterways in and around the Ōhiwa harbour, which are listed at

paragraph [45]. As Ōhiwa and surrounds warm we are concerned that we may see whitebait and other smaller species, which support entire ecosystems, disappear.

We have already seen many of the species that we grew up with either much diminished in number or disappear altogether. Some issues that we have directly observed in our rohe moana include:

a. Tuangi (cockles) are greatly diminished and the silt covers them and they cannot get the food they need to grow;
b. Titiko (we called them the Māori Pāuā) are no longer around in the harbour;
c. We also see changes to the seaweed (Rimurimu) and sea grasses. As there were sources of food for fish species, such as the Parore, both the weed and the fish decline. This was also habitat for the cockles, and this is being lost. For us, this was healthy food packed with vitamins and now it's going as the Harbour changes.

We are also concerned about marine mammals, and the effect that climate change may have on them. We are concerned that we will see more strandings because of the effects of climate change. We are also concerned that with warmer waters these mammals will either not visit us or may die through events such as algal blooms.

It is not just species that we worry about. There are a number of Upokorehe urupā (ancestral burial grounds) within the takutai moana area. At times, koiwi from these burial grounds have fallen into the harbour, and Upokorehe has carried out customary recoveries to re-bury the koiwi **human remains**. The customary recovery process requires rāhui to be put in place. We expect to see this more and more as climate change worsens.

Many of our wāhi tapu are also fragile and are very susceptible to erosion. Examples of these sites, in addition to Tokitoki, within our rohe are:

a. Te Kopua o Te Pu is a pari taha taha (cliff bank), that extends into the moana. This site has already suffered from pollution and erosion, which climate change will only make worse.

b. Te Mika. This is a wāhi tapu site where breeding birds would traditionally alert Te Upokorehe/Hapuoneone ancestors living in Tokitoki and other pā sites to invaders. This site is being threatened by rising waters and storms, and the birds are seen less and less there.

c. The cave Te Ana Pokia was used as a place to conceal Upokorehe War Chief Te Rupe's cloaks including his war cloak, weaponry and taonga. Today, through erosion, the entrance to this cave is covered by water at high tide.

d. Another cave is Te Ana o Muru-te-kaka, also associated with Te Upokorehe tīpuna Tonukino and Maruiwi. The cave and its surrounds are being eroded.

e. Te Tawai is a historic papakāinga which was occupied by Te Upokorehe. It has been in use since the time of Hape ki Tuarangi. Adjacent to the landing and launch pad on the foreshore is an ana known by Upokorehe as Te Karamea (Red Ochre) a place where we still collect the red clay to treat and preserve koiwi **human remains**, as well as to dye our traditional kete **baskets**, whāriki **mats**, piu piu, pare harakeke and other traditional dresswear. This area is being affected by erosion.

f. Paripari Pā is an ancient pā site and an urupā. This site is being affected by erosion and pollution.

g. At the Hukutaia Domain there is 4.5 hectares of native bush. In this domain stands Taketakerau – an Upokorehe ancient burial tree – dating back 2,000 years. This is where the bones of Upokorehe ancestors were secured in the trunk of the tree. We are concerned that this last remnant ngāhere in our rohe may be wiped out through climate change.

h. On the Waiotahe Awa in addition to Pa sites, there are the twin stones that represent tipuna to Te Upokorehe: Rangiataura and Rangiatamea—sisters of Kahuki. Those two stones are now buried by gravel, however this has only happened in living memory. We are seeing more and more damage to our mahinga kai and wāhi tapu through gravel, silt, slash and

sediment being washed down the valleys into the moana. The damage can be seen. This will only get worse.

Lastly for this part of the evidence, we need to look to our people now and in the future. The North-eastern Bay of Plenty is an area which is already seeing more severe weather and seeing it more often. Wallace points to Cyclone Bola as a turning point. There, Upokorehe went around in the middle of the night and all the next day saving the elderly. Crops were ruined, and animals were drowned. From then on it has just been happening more and more. Each time there is more slash, more silt, more damage. As an example, the Matekerepu used to be a river you could take barges up, and is now barely a creek, this is all the siltage from deforestation and storm events.

When we have meetings at council people come out, and they have a study or present us a plan and we are concerned that it makes things worse. The knowledge of what is required is held by Te Upokorehe, and we need to lead that mahi.

When these events occur, Te Upokorehe, and our RMT, are at the front lines arranging for people to be taken out of harm's way. We know the people who live in the danger zones, and they trust Te Upokorehe to look after their best interests. A Governmental organisation coming in and saying you need to leave will just not have that level of trust.

What we want

What we would like to see from the Crown is them providing us funding and getting out of the way. We have been protecting our area mai rā anō **time immemorial**, but we cannot protect our rohe without access to the best information— this means funding for us to carry out research, surveys and mapping of our rohe. Information is going to be vital in allowing us to respond to the changes that climate change will bring.

We also need funding and technical support to work through evacuation procedures, and civil defence and emergency planning to make sure that we

can keep our people safe in severe weather events. It's been a long plan and recently we have a Civil Defence container located on the papakāinga **village** adjacent to the marae.

I would like to just pause there and just give a little brief about how our community managed to secure that Civil Defence bunker – yes, okay. My cousin Ngaire will cover it more in detail when she speaks. But I guess the point I wanted to make is for us a Upokorehe, it's hit and miss, hit and miss on what kind of resources we can access, and we just happened upon that application and decided to submit our application because of the history of dealing with Civil Defence, as I've just earlier described, helping our community, and there is no structured focus on having support available for us. I think that's the key point I wanted to make about that. We actually have to, if we're lucky to happen to get told by someone there's funding coming up or did you know this and that was available, otherwise we're unaware of what the Government is doing or what the post-settlement entities are doing. So, that's a key thing for us. Yet, we're at the forefront suffering and taking the impact.

CONTINUES READING #A046(b), PARA 32

We also need to develop a better understanding of the health needs of Te Upokorehe members now, and in the future. Funding is needed.

Funding is needed for that to take place. On that note, we also have, and I think this is really overlooked by the Crown, we actually have capable people within our communities, some of them that have moved back from living and working for the Crown and who have the expertise and some knowledge on how to access things, but from a Crown perspective we're just looked at as one of many other hapū groups, and so they try to give a remedy that's one-size-fits-all, but it's not actually the case. Inside each hapū they're different, their dynamics are different. And whether the Crown or post-settlement entities will even be able to identify that because their priorities are different to the hapū, yes, we're hoping to see some change in that area.

CONTINUES READING #A046(b), PARA 33

We want to work in with central and local Government, not have them dictate funding or projects. We want to work with industry and post-settled groups, but not be swallowed up or ignored by them. We are still going through a settlement and see that the Crown has given the funding and mana to those with no knowledge of our rohe, the species, or our history. When power or funding is given to others in our rohe our climate is at risk. As well as our people.

We want to do this under our own mana for those that are here and those of Te Upokorehe still to come. All we want at the end of the day is to find an even balance so that all our taonga species and resources can live in balance, be used, and are protected. We are not all about having development at any cost. Before we develop, we need to take care of what is suffering already.

Nō reira tēnā koutou, tēnā koutou katoa. **And so, thank you, thank you all.**

HOUSEKEEPING – TIMING (14:02:39)

HEARING ADJOURNS: 2.02 PM

HEARING RESUMES: 2.09 PM

HOUSEKEEPING (14:09:56)

(14:10) MR FONG TO WALLACE ARAMOANA AND MAUDE EDWARDS:

Q. Tēnā kōrua, Ms Edwards and Mr Aramoana. **Thank you, Ms Edwards, and Mr Aramoana.** Thank you for your very clearly expressed evidence. I only have brief questions for you, but before I go into my questions, can I just check you have your brief of evidence in front of you, not the summarised version, but the full copy of it.

A. [Maude Edwards] Yes.

Q. Can I take you straight to paragraph 37 of your evidence. At paragraph 37, you made a kind of a sweeping statement that we also do not consider –

TECHNICAL DIFFICULTIES (14:11:35)

MR FONG TO WALLACE ARAMOANA AND MAUDE EDWARDS: (CONTINUES)

Q. You begin that paragraph by noting that you don't consider there has been engagement of consultation on the ways in which the Crown is planning for adaptive or mitigation. Just based on the paragraph as a whole and hearing your helpful summary earlier. Can I just clarify that, you are not saying that the Crown hasn't engaged or consulted with Māori groups at all. What you are really saying or complaining, is that the Crown has be too narrow in its consultation and engagement with Māori and hasn't been engaging with some of the relevant groups like Upokorehe. Is that a fair way to summarise your evidence?

A. [Maude Edwards] No, what we have put there is exactly what we mean. Because it doesn't really matter, as I said, when I gave our evidence earlier. Is that we are the little people at the end, so the constructs and the legislation, and everything that sits in front of us, is what the Crown has put there. So that needs to be navigated before we get to be heard. Whatever the Crown has put in through a settlement, take for instance, and I can give you a real life example of that. We have, since 20112, had a live, acknowledged, iwi management plan lodged with local council and regional council. Recently, we applied to have that reviewed and we were turned down and told that we must go through the post-settlement entity to actually have it approved, now, this is Crown. Regional council had acknowledged our plan and worked with us from 2012 onwards, and suddenly in 2025, we get no voice. We have to go through the post-settlement entity. So that is what I mean in that particular paragraph.

Q. And so, would it be fair to say that you are taking issue with the concept of the post-settlement governance entity itself, as part of your claim?

A. [Maude Edwards] No. Not recognising took two parties to reach that settlement, and in this case, it was the iwi of Whakatōhea and the Crown. Now we raised issues about not being heard throughout the whole entire process of that settlement and our voice was not heard. And these are the very reasons why, because when it comes to the taiao, a post-

settlement iwi structure does not hold the mātauranga or mauri, or knowledge, or history. They, the tīpuna, do not belong to them, that inherent right belongs to the hapū. So, the Crown settlement legislation has breached the Treaty by taking that right from us.

Q. Thank you, I think I understand. Sorry, I didn't mean to cut you off, Ms Edwards. Was there something else you wanted to add?

A. [Maude Edwards] Kao, that was it. Thank you.

Q. Thank you, I think I understand your perspective better now. If I could turn now to the emissions reduction plan. As you say, the Crown did some engagement with the post-settlement governance entities. But if we put that aside, my understanding is that MFE, which is the Ministry for the Environment. They also ran a specific workshop called Māori rights and interests which was online back in August 2024. I was wondering if you or any members of your hapū took part in that workshop?

A. I can't recall, but what I will say to that question is again, it's such a miss in terms consulting with the real people on the ground. So, you know, I guess an iwi construct has priorities and all the things that they need to achieve within a certain timeframe within the year. Hapū don't work like that, hapū actually tend to whatever issues come to them there and then. I guess, they don't have as structured workplans as an iwi post-settlement iwi has. So the other issue there is about capability or human resource to be able to be here there and everywhere. Because normally, the Crown throws at us, 1000 things. But we only have very little resource to be able to sit and have meaningful discussion, meaningful input and actually be able to understand. What is this thing that they are presenting to us because it's the first time we have heard about it. If I could be as bold to say, whatever they have to present to us, it's not enough for us to fully understand.

Q. Thank you. Can I take it from this answer, you will answer my next question in a similar way, which is that MFE also held a range of other online events during the public consultation process. That was open for anyone to register. Did you or other members of your hapū take advantage of those opportunities?

A. Well, what I can say to that, for hapū, tangi take priority, and things that happen on the marae take priority. So, again, we don't have a clear channel of communication from local government that keeps us up to play on what their priorities are. They never come out to see us at the marae. They may on invitation, or if there are some cultural assessment, or some other council type kaupapa. But they never come to have meaningful discussion with hapū at the marae.

Q. Thank you. Final question on the ERP consultation. Did you or the hapū make any formal submissions to the ministry or in the public consultation period?

A. At the top of my head, I can't respond to that question.

Q. Thank you for that. Turning away from the ERP to the adaptation issues. Are you familiar with the national adaptation plan? Or are you aware that there is an instrument called the national adaptation plan?

A. I guess, what I've already said earlier is that we are not familiar with a lot of things that's happening at a higher level. And if we do get presented anything it's generally high level statements that aren't really articulated into what that means for people on the ground with the hapū and whānau that live within that environment.

Q. I understand, thank you. The questions that I'm about to ask you, it's not a quiz on your knowledge. But can I just put the proposed evidence forward in terms of some of the steps that the ministry has taken. Can I just invite your comment, whether you agree with them, disagree with them, or if you have any other responses to them. You are welcome to respond in a way you wish. So, in preparation of the national adaptation plan, the Ministry for the Environment contracted a group called Irirangi to develop an indigenous worldview for the national adaptation plan. Now, would you agree at a level of generality, that that's a good thing for the Crown to do when trying to work out what an indigenous worldview might be and how that could feed into any national adaptation plans?

A. Well, if I knew what the content of that adaption plan was then I would be able to give you an agreement or a non-agreement. But because we haven't heard it, I'm reluctant to give any comment on that.

Q. That's very fair. Would that change your answer if I were to say that that report itself is publicly available online?

A. Well, no, no change, because I don't know about it and people don't know about it, so I guess, could I answer your question –

LEGAL DISCUSSION – LINE OF QUESTIONING (14:23:27)

MR FONG TO WALLACE ARAMOANA AND MAUDE EDWARDS:

Q. Ms Edwards, my understanding from the Ministry is that updates about adaptation issues including opportunities to be involved, to contribute to those issues were set up in regular newsletters like He Pānui. Are you aware of that?

A. [Maude Edwards] Kao, we are not aware of that, and I guess that comes back to, do they know who we are, do they know the contacts of the people within our hapū. Do they, have they, a database that identifies who they need to be talking to. Because I can tell you, and I'm very active along with the rest of our whānau in Upokorehe, that a lot of things go over our heads. We don't get to hear about it until after the fact, because there has been no communication. And we normally inquiry as a reactive response, rather than proactive. So, you know, it's either, what, is that happening, we didn't hear about that, so we are always in a reactive mode, rather than proactive. If that can kind of describe to you how so out of touch we are with, like I said, there are a lot of things that the government have an army force behind them to carry out on a daily basis. But hapū don't have that resource to keep up with you. I guess, if that puts it in a perspective, and it doesn't really matter how busy the army is. In the case of the taiao, the hapū hold the mātauranga. You can bring along scientific evidence in that, but the mātauranga of Māori has been there mai rā anō **forever**. I guess there is no equivalence to scientific and mātauranga Māori. They are both processes and tikanga that are applied by different sets of people and the hapū work according to their tikanga, and their mātauranga **knowledge**. So, you can understand there's a big mismatch on the mentality of a running government, or Crown, matched with what hapū and how they run their taiao. You know,

there's an imbalance, but I guess, in our view, Upokorehe's view is that Crown has government priorities to meet. So their priority doesn't really trickle down to what our priorities are to keep our taiao safe. Their priorities as a whole government approach on how they apply their reasons is in that. If we are going to miss out of that bucket of pūtea at the end of the day, we just have to handle that. So, our priorities get lost, or not even acknowledged, because government has their own priorities, and taiao, just is not at the top of that list. Whereas for us, it's at the very top of the list for us, because that is our livelihood.

Q. Thank you. My final question relates to paragraph 43 to 44 of your evidence. There, you listed a long list of species, if I can recall, in 43. Then going on to paragraph 44, you make the comment in the second sentence that as the effects of climate change are felt, we see these species moving from places where we would have found them. I'm not necessarily disagreeing with you, but I just wanted to clarify whether this is based purely on observation, instinct, or is that corroborated by some research that you are aware of?

A. Thank you. With that question, I guess, I don't expect you to understand because we live it. Our intergenerational diet tells us there are changes. Our intergenerational access to rongoā tell us there's no longer more there. So, when you talk research, we are going back 700 years of research. That's probably the best way I can respond to that question.

[Aramoana Wallace] Pūtaiao.

[Maude Edwards] Āe. So, we have researched through living the changes.

Q. Thank you again for your very clear evidence.

HOUSEKEEPING – TIMING (14:31:31)

HEARING ADJOURNS: 2.31 PM

HEARING RESUMES: 2.37 PM

(14:37) JUDGE MILROY TO WALLACE ARAMOANA AND MAUDE EDWARDS:

Q. I have checked with the Tribunal panel members, and I am the only one with questions. Just a couple of questions, just so that I know that I have understood what you have said correctly. Could I take you to paragraph 33 of your main affidavit or brief. There, you are talking about the archaeological site Tokitoki, and you are in the process of working with the Ōpotiki District Council to strengthen the protections. You say about five lines up from the end of that paragraph: "So where the original line might be about a couple of metres out from view, out into the sea, we want to put a wall of rocks, big rocks and cement some of them together." It is going to be like a sea wall protection for that site. I just needed to understand what the original line in that sentence meant. Do you mean, as the sea rises, you are going to put the sea wall where the sea used to be?

A. [Maude Edwards] Yes, thank you. The original line is out where the land was. With the erosion of the tides, it's starting to eat away the site, the area. So the original line was actually further into the harbour. But with the tides washing it away and that, well it's getting lesser and lesser.

Q. Yes, right. You have seen that erosion happening over a number of years. I am just wondering how that process, the working with the Ōpotiki District Council is going. How much progress you have made towards getting that sea wall in place?

A. [Wallace Aramoana] Working with the council is under – we had progress by them bringing along some rocks and putting them there. But with the king tide coming in, the sea has risen so much, but it split one of the islands in half. The current coming from the mouth. These are the things that are happening. You're getting higher tides and it's splitting, Mangakopikopiko is cut in half, which was the whole island. Adjacent to that is this Tokitoki, and it's getting the aftereffects of the big waves coming in and washing. We are getting more king tides, high level water, and the council has come and put some rocks there. But with the tides and king tide coming in, they are rolling away again with the surge of the tide coming in and knocking them off. We need to cement them together,

so they won't. The erosion is still happening, but we need to solidify it a bit more. We are in the processes of growing natives along the edges to hold that and putting some paths in and yes, the (inaudible 14:41:27) of putting a waka up on top. To put stones on there, on that, so history going back 700 odd years. Yes, we want to preserve it like that, because it is the only island, one of the oldest ones in the Bay of Plenty.

Q. That's very troubling to hear that you are having so much difficulty in trying to protect that site. It may be with even higher sea level rise predicted for the future, that it becomes almost impossible. You mentioned that you are putting a waka up on the hill site to hold the stories.

A. [Wallace Aramoana] Yes, yes. But we have referred doing that with DOC and the councils. The foundation is laid, the arch is there, ready to hold those sort of things on there. But with the limited amount of resources, we have to sort of wait until DOC gets a bit more funding and then we move on a bit more. But each time we (inaudible 14:42:51), the damages are still getting done, it's not continuous where the port is low, it's still causing the wash.

[Maude Edwards] I guess, our relationship with DOC has been great because they are the ones that are overseeing that protection of that site. We haven't had much real support from the local councils, and you know, that funding is an issue. But I guess, I would welcome it to, if that was an army, old ancient army site or something of significance to the Crown, they probably would have had the best remedy to protect all that place. Because of the value that it held within the eyes of the Crown. However, it is a very significant site that is probably one of the most significant sites in our rohe. And we are really putting our hands out for crumbs to put in a meniscal attempt to saving our wāhi tapu, and also, that's the front end of the wāhi tapu. But it actually goes across the road and up on to the maunga, but it's all significant even though it has been washed away, we are trying to just stop it. But I thought it was worthwhile putting in the comparison of you know, you would probably have more of a show getting funding for something that was held in high regard by the Crown than something that's held in high regard by our people.

Q. Thank you for that expansion of what you have there, that has been very interesting to me. Now, could I also ask you to turn to paragraph 57. There you have said that, “We know the people who live in the danger zones, and they trust Te Upokorehe to look after their best interests. A Governmental organisation coming in and saying you need to leave will just not have that level of trust.” So, first of all, I just need to ask, has there been a government organisation that has come to your people and said you might have to look at leaving at some stage? Given sea level rise.

A. [Maude Edwards] Well, I think there was an attempt. From memory, we have had resources being dished out to the community through COVID and through other storms and that, that we have had. But they are never long term solutions, it's just you know, drop off a parcel of food and then go. So, in terms of evacuation and that, we’ve never really had outside organisations coming in to do that. It's always been done internally because, well number one, we know off the top of our heads, who the most vulnerable are. Who the elderly are, we know the, I guess, logistics of the area, so we try really hard or if we have to, we would give details to either the police or whoever came in. But we’ve not really had real support from government agencies except dropping off food parcels and stuff like that. So internally, we have started to develop our own planning based on our knowledge internally, and who we are.

Q. I'm just wondering, in this morning’s witnesses, one of the questions was asked as to whether the world had reached a tipping point in terms of the effects of climate change. I believe it was our witness, Ms Cole, who said she thought we had. That would mean that we could expect worse conditions in future, and more frequent bad storms and so forth. I'm just wondering about the resilience of the community. What would be your assessment about how much the community could stand and there are only so many resources that the act of people in the community can put in to dealing with those things. I am just wondering where you would assess your community’s resilience and its own self sufficiency for that sort of work.

A. [Maude Edwards] I believe that without government support, we would survive. We would be resilient. So, currently, I think we are in a position there. You know, we don't want a pile of money thrown at us, we want real solutions, long term solutions, and to get that we need to be talking and having meaningful discussion on what that might look like. If we had an emergency, we would survive. But what it would mean is we may have to break current legislation or whatever rules have been put over that part of the rohe, or whatever. To get food to feed our people because we know the lay of the land, so I guess that's where – we just know that we would be able to sustain our people with whatever food or kai sources that come from the whenua or the moana. And also, we make do with the resources we have, I'm not sure for how long. But I guess when you look at the bigger picture it's all of that legislative stuff that has stopped us from being able to fully utilise the resources that we have to care for our people. So you know, I did want to make a comment that it's not just out in the rohe where our people have suffered. It's also within the cities and away from home, and our whānau, our people at home are already forward thinking about utilising our papakāinga and that. To provide for our whānau that may come against climate change which impacts may have impacts on how government deals with our whānau in the cities or away from home. So it's about us preparing n all measures with disasters hitting our homeland at the papakāinga level within our rohe. But also, disasters that impact our whānau outside of our rohe that need to return home. It's the bigger picture for us.

Q. Thank you very much for that and that does remind me of what people did, you know, just prior to the lockdowns and COVID in terms of getting back to their home bases. Since part of climate change includes the possibility that we will have more and different kinds of diseases coming to New Zealand. That is certainly forward thinking to be considering their situation, as well as those within your rohe. Those were my questions and thank you very for your presentation today. It has been a pleasure to hear you and thank you very much.

QUESTIONS ARISING FROM MS SWEDLUND – NIL

LEGAL DISCUSSION – CLARIFICATION (14:53:03)

HOUSEKEEPING (14:53:55)

MR LYALL CALLS

TREVOR TIRA TAYLOR RANSFIELD (SWORN)

Q. Tēnā koe, Mr Ransfield. Could you please confirm your full name for the Tribunal.

A. Kia ora, ko Trevor Teira Taylor Ransfiled tōku ingoa. **Trevor Tira Taylor Ransfiled is my name.**

Q. And you have prepared a brief of evidence some time ago for the Te Upokorehe Future Generations claim. That is the #A001 document we just described and speaking of more recently. Can you confirm that those are true and correct as of todays date?

A. They are true and correct as to date.

Q. Ka pai, now I will pass it over to you to work through your speaking notes and anything else that you might like to tell the Tribunal today.

A. Thank you, Mr Lyall.

(14:56) TREVOR RANSFIELD: (#A001)

E tū ana ahau ki ōku maunga tapu o Tirotiro-Whetū. **I stand on my sacred mountain, Tirotiro-Whetū.**

Ka titiro ki raro ki te kakahō, te awa o Kutārere, tīhei mauriora. **I look down towards the river of Kutārere. Behold the breathe of life.**

Ngā mihi ki a koe e te Kaiwhakawā, te Taraipiunara, te Karauna, ngā rōia katoa, ngā kaimahi, ka nui ngā mihi ki a koutou. **I want to acknowledge, your Honour, the Tribunal, the Crown, and all the lawyers, the staff. Greetings to you all.**

I would like to start off with reading from my speaking notes, dated the 3rd of March 2025.

Ko Trevor Tira Taylor Ransfield tōku ingoa. I whakapapa to Te Upokorehe.

Growing up I lived on the Ōhiwa Harbour and have lived here for the last 30 years.

Amongst other roles I am the treasurer and member of Te Upokorehe Resource Management Team. The representative on the Ōhiwa Harbour Iwi Forum. Te Upokorehe representative on the Ōhiwa Harbour strategy co-ordination group.

This brief of evidence outlines the mahi undertaken by Te Upokorehe as kaitiaki of our rohe and the impacts of climate change.

BEGINS SPEAKING TO #A001, PARA 11

The Upokorehe rohe commences at Maraetōtara at Ōhope, turning inland southward to Puhikoko, carrying on to Pukemoremore, then to Mapouriki, then following the Waimana Stream to Tautautahi in a straight line to Kaharoa to Waioeka River, following the river to the sea. From the mouth of the river follow the shoreline east back to Ōhiwa Harbour back to Maraetōtara. This boundary also takes in parts of the Tahora Block.

I have attached an amp at "**A**", which shows our rohe and five marae.

We have developed an iwi management plan, which I have attached as "**C**". This has been provided to the Bay of Plenty Regional Council, Whakatāne District Council, the Ōpotiki District Council, and the Department of Conservation.

Pilot whales

In 2014, forty pilot whales from a pod of seventy stranded and died in the Ōhiwa harbour. Roimata Marae was turned into a labratory, a science and research lab for two years under the Tohunga Tohara Ramari Stewart of Ngāti Awa, and four researchers from the Otago University.

We are concerned there will be more strandings of marine mammals because of the effects of climate change.

Pipi and dotterel monitoring

During three to four months of the summer holidays, our kaitiaki are down at Ōhiwa harbour monitoring the pipi. The kaitiaki monitor twice daily in the morning and the evening and it's all voluntary.

Kaitiaki also protect the dotterels that nest around Whangakopikopiko. These are the New Zealand dotterels. The kaitiaki keep vehicles and horses and dogs off the mudflats.

Climate change has the potential to reshape our beaches, erode our wāhi tapu and sites of significance, and to ruin our pipi and other kai resources.

Mangrove removal

Te Upokorehe has a resource consent to remove mangroves from Ōhiwa harbour. We have a team of about 12 that work on that project. We are about to begin on this mahi again, and normally the team goes for about 3-4 months a year.

Onekawa Te Mawhai Regional Park

Te Upokorehe have a memorandum of understanding with the Bay of Plenty Regional Council over Onekawa Te Mawhai Regional Park

A significant pā site, the area is fragile and eroding. We are concerned that bigger storms and higher rainfall will damage the area and the wāhi tapu.

Solar panel farm

We have been involved with Lodestone Energy on a solar panel farm, for solar energy. It is being developed on private land on the Waiotahe valley road and is around 180 hectares.

We see huge potential there for clean energy for the rohe. It will also hopefully bring more employment into the region.

Blue Carbon. We already practice kaitikitanga over mangroves, sea grasses and tidal marshes and repo, which all lock in carbon. I have asked why there is not more funding and assistance in place to help us maintain and expand these areas.

Mokopuna role

Our mokopuna play an important kaitiaki role in the Ōhiwa harbour. I remember when I was growing up, we were taken to the harbour by my Nanny and Koro Wiremu, who taught us the practices of Te Upokorehe. We now pass these down to our mokopuna.

Te Kohanga Reo o Te Huinga a Te Ao is located on Kutarere Marae. Upokorehetanga is an important part of the education of our mokopuna. Our mokopuna have the opportunities to observe the rituals of karanga, whaikorero and waiata specific to Te Upokorehe.

The first Monday of the school holidays, we take our mokopuna, give them a vest, and we go through the environmental rohe of Upokorehe. We do a clean-up, starting at Waiotahe beach and back to Kutarere.

They are also involved in learning and doing water testing and pipi monitoring. In this way we can be certain that they will be able to carry on after this generation has gone.

We also need the tools and funding to make sure that there are spaces for our younger generation to step up, be involved, and be heard.

Upokorehe Kiwi Project

I first want to acknowledge Richard Wikotu who passed and did a lot of mahi for Rongopopoia.

This is a 260 hectare project in the Waiotahe valley. Around 80 kiwi have already gone out of there and have laid eggs and are nesting. We have a team of about six that go around and rebait the bait stations for pest control. There is something like 120 to do in the circuit. It's huge mahi. I have attached a map of the traplines as "**E**".

We are concerned that this project may be affected by climate change, in particular erosion, fires, and changing tree cover.

Wāhi Tapu

As a part of the Marine and Coastal Area Act application, we travelled our whenua by foot and by boat and mapped out where our wāhi tapu. I have attached as "F" one of our maps which shows the locations of some of the wāhi tapu that we want to protect.

These are all in the Ōhiwa Harbour, and are all being damaged by sedimentation, storms, and rainfall.

Effects on Kutarere Marae

Flooding has a huge impact in Kutarere, especially Te Kakaho stream. Lately the flood water can't escape at the entrance as it is clogged up with mangroves and slit coming from the whenua above. These flood the homes and also the Kutarere marae.

These effects are only going to get worse as climate change gets worse. I have attached as "G" a newspaper article from September 2022 referring to the danger that climate change holds for Kutarere. Te Upokorehe RMT, Resource Management Team and Kutarere have received some funding to lead an adaptation project. This needs to be done at a much larger scale.

Conclusions and Recommendations

What we don't get is good information from the Crown about how we can be sorting out some of the issues that climate change is causing. Without that we can't lead education on the kaupapa.

I would also like to see Te Upokorehe being given the tools to take action where we see people taking action that is polluting or affecting the environment in our rohe. Our Resource Management Team would be perfect to carry out this mahi—we are already out there. During Cyclone Gabrielle we were the ones doing the mahi evacuating our people.

We need that information, and we need funding. That way we can make sure that what we have will be passed down to our mokopuna, and we can continue our mahi in our rohe.

Thank you very much.

HOUSEKEEPING – TIMING (15:06:28)

HEARING ADJOURNS: 3.06 PM

HEARING RESUMES: 3.29 PM

JUDGE MILROY:

Welcome back again. I just note that the Registrar has advised that presently, Mr Ransfield's brief is on the Wai 3279 and is numbered #A001 in that claim, but it will be transferred over to the 3325 Climate Change Enquiry and be given a number.

So, we are now at the point of cross-examination, and only the Crown has asked to cross-examine.

(15:30) MS SEELEY TO TREVOR RANSFIELD:

Q. Thank you, your Honour. It's Ms Seeley.

Tēnā koe, Mr Ransfield. Ko Grace Seeley tōku ingoa. He rōia o te Karauna ahau. **Greetings, Mr Ransfield. My name is Grace Seeley, and I am a lawyer for the Crown.** Do you have a copy of your brief in front of you?

A. The notes I have.

Q. Right, thank you. Can I take you to paragraph 5, please? At paragraph 5, you say that you are the Te Upokorehe Resource Management Act contact for the purposes of Te Kāhui Māngai. Could you please provide some more detail about the work you do in this role?

A. Te Kāhui Māngai, I've been on there for probably now the last ten, twelve years. I'm the contact person for Te Upokorehe resource management. My kaumātua responsibilities for the moana go **(inaudible 15:31:17)** on that, Te Kāhui Māngai.

TECHNICAL DIFFICULTIES (15:31:23 – 15:32:39)

MS SEELEY TO TREVOR RANSFIELD: (CONTINUES)

Q. Thank you for your answer, Mr Ransfield.

A. I've got a bit more on that. I've just been updated, probably just last month.

Q. Sure. Are you able to –?

A. I am the representative for Te Upokorehe, and I've been there for over ten years. Kia ora.

Q. Kia ora, and as a representative, can you tell me more about what the work that that representative role entails?

A. Well, for me, they just contact me, just to make sure that I am the right person for Te Upokorehe; representative.

Q. Kei te pai. So you are like a liaison between Te Upokorehe and the local authority?

A. Yes.

Q. Āe. Okay. Kei te mārama au. And do you think that Te Kāhui Māngai, with you as the liaison point, do you think that's an effective form of communication between the local authorities and Te Upokorehe?

A. Well, to me, I'm the spokesperson for Te Upokorehe on there, but they like to put us underneath Whakatōhea, and kāo, we're not under there.

Q. I understand. Do you have any further comments about the engagements under Te Kāhui Māngai?

A. No, I don't.

Q. Ngā mihi. So moving to paragraph 7 now, and you say in that paragraph, in the second sentence, that you do not get enough support from the Crown for the work that you do, and that the Crown makes a lot of decisions without coming to you first.

A. Yes.

Q. From that evidence, I took it that in some situations, you have received some support from the Crown, and you have had some engagement with the Crown. Is that fair?

A. Kāo.

Q. No. Not at all.

A. 'Cos at the moment, we just talked about our evidence, Te Kakaho stream that goes out to the Ōhiwa, into the harbour. That stream and that awa needs cleaning up and that, and we've been over and over and over with the environmental Bay of Plenty Regional Council to get that fixed, 'cos that's the one that the water backs up. If it doesn't get out, it backs up back to the community, and it floods our people's – our whānau houses, and back into the marae. So we're playing on deaf ears here, and that's coming from the Crown, regional council side. We've had many, many site visits on State Highway 2 and that awa.

Q. Kia ora. Thank you. Moving to paragraph 14, you say in your rohe, you have a lot of fragile areas, and just a clarification question –

A. So I can talk about the Waiotahe Beach?

MR LYALL TO TREVOR RANSFIELD:

Q. Just let her ask her question first, and then –

A. Oh yes, well, she was just asking me.

Q. She just didn't quite to the end of it.

MS SEELEY TO TREVOR RANSFIELD: (CONTINUES)

Q. Kia ora. So when you say you have a lot of fragile areas in your rohe, has that always been the case?

A. Yes, it has, due to climate change. I look at – around Ōhiwa Harbour, all the slipping's, erosions, that are coming down. We lost one house. One person died in that whare. And at the Waiotahe Beach, all the erosions

that's coming down, going from Ōpōtiki – sorry, from Kutarere into Ōpōtiki. All the erosions that are coming down on that pōhutukawa, on State Highway 2 where those pou whenua are. Everybody has to go around through Paerata to get to Whakatāne and that. Heaps of erosions and that. And I'm talking now just around by Te Ahiaua, round by those pipi beds, around that corner there. For the last two years, it's been phenomenal, the erosion there. You can get all the reports from the council.

Q. Thank you. And another clarification question. At paragraph 15 of your brief –

A. Yes.

Q. – you say that climate change is having a big impact on the fisheries in the Ōhiwa Harbour. Could you provide some more detail as to the impacts that you consider climate change is having on those fisheries?

A. Yes. Due to the sedimentation that's coming into the harbour, the fish and that, their habitats and that, their kai has gone. Instead of fish, we're getting these crabs and that that the sediment brings in there. The sediment is quite thick, and that used to be all the flounders and that; pātiki. You are lucky if you can get a feed of those flounders. Before, that used to be the food, one of the many foods.

Fish, snapper and that, their habitats are gone, because of the sedimentation.

Our mussels and that, they've been threatened by the sedimentation. You get the reports from the regional council. That will show you.

Q. Thank you. So the issue –

A. Our pipi beds, our cockle beds are gone, due to sedimentation, climate change. Oysters, gone. Tītiko, periwinkles, gone.

Q. So the issue in your view is sedimentation.

A. Say again, please?

Q. The issue in your view that is causing the damage to the fisheries in Ōhiwa Harbour is sedimentation.

A. Yes. That's why we have these Mai i Ngā Kuri a Wharei ki Tihirau customary fishery huis.

Q. And what is this –

A. **(inaudible 15:40:01)** your reports and all that.

Q. Āe, and what is the source of the sedimentation?

A. From the whenua, from the rainfall as we shared, because of the climate change, deforestation, even spraying and that from the airplanes and all that, those – all goes into the harbour. If you've got 90 kilometres, all that has got to go somewhere, and it's going in there. It's just like a big basin washed up in there.

Q. **(inaudible 15:40:43)** Moving to paragraph 27.

A. Yes.

Q. I was interested to know more about the mangrove removal work that you do in the harbour.

A. From 2011 to 2018, removed 23 to 26 hectares of mangroves under the Bay of Plenty Regional Council. We have a party of 12, and all of them are sitting in here right next to me or behind me, listening. So 2011 to 2018, with that memorandum of understanding, MOU, with the Bay of Plenty Regional Council gave us the permission to remove those mangroves. And it wasn't just removing any mangroves, it was removing the mangroves that were way up by the channel. They were clogging up the channel and all that. The main channel became a risk and that.

Q. Thank you. So the reason for the mangrove removal work was to unblock the channel, or were there other reasons as well?

A. No. There were other reasons and that. It was giving a chance so that the kaimoana can grow, get back in there, like our shellfish and all that, what we just talked about.

Q. Āe. Moving forward to paragraph 33.

A. Yes.

Q. You say that you were interested in any way that you could act as kaitiaki, and you mentioned blue carbon in that paragraph?

A. Yes.

Q. I understand blue carbon to mean carbon storage in coastal and marine ecosystems. Does that align with your understanding?

A. Yes. Our blue carbon we're talking about is the mangroves, the repo, the – what's those other ones? – the marshes and all that that are in there, yes.

Q. Āe.

A. The ecosystem of that harbour relies on that.

Q. So, my question for you is do you consider that the mangrove removal work that you do is contrary to some of your aspirations for blue carbon storage?

A. Yes.

Q. Okay.

A. Yes.

TECHNICAL DIFFICULTIES (15:43:37 – 15:43:43)

MS SEELEY TO TREVOR RANSFIELD: (CONTINUES)

Q. Thank you. And just going back slightly in your brief to paragraph 29, just talk about Onekawa Te Mawhai regional park.

A. Yes.

Q. Are you able to provide some more details about the relationship you have with the Bay of Plenty Regional Council in respect of the park?

A. Yes. The regional council manages the regional park. That's Te Upokorehe tūturu whenua up there, those two pā sites, the whakapapa in there. We've been custodians for that regional park since it's been there since we've had the opening with the regional council about 2010 or something. We had a big opening day working with the regional council and Te Upokorehe for that memorandum of understanding, and it was signed off between the regional council and Upokorehe.

Q. Thank you. Do you consider that that relationship is a good relationship in respect of the park?

A. Yes and no. Well, sometimes I think they'd like to take over.

Q. And when do you think it's a good relationship?

A. Like ignoring the wāhi tapu. They want to put this up, they want to put that up, and it doesn't go with our tikanga.

Q. And in what situations do you think the relationship goes well, is going well?

A. Going well? I think what's going well is we have a yearly inspection up there with the regional council. They've got what they call it, farmers that are leasing, they lease the area out or the property to keep the place clean and that. They fix up any erosions or anything that are up there, anything that's to be fixed. The regional council fixes that up, and the roads was one of them, going up there, 'cos of the slipping and that, so they had to re-road that road. The farmers look after the property up there.

And we also become involved with the yearly inspection.

Q. Thank you. At paragraph 31, you talk about the solar farm project with Lodestone Energy.

A. Lodestone, yes.

Q. It was not clear to me what the Te Upokorehe role in that project was. Are you able to –

A. Our role as tangata whenua, and I just put it that as tangata whenua of the rohe.

Q. Āe.

A. Yes.

Q. Ka pai. Just a couple of further questions. At paragraph 48, you say that Te Upokorehe and Kutarere Marae have received some funds for an adaptation project.

A. Yes.

Q. What was that – what was or what is that project?

A. We had two meetings with the community of Kutarere, 'cos they all live along that roadside, State Highway 2. There were meetings with – I forgot who it was. They gave us some funding to run two hui and that. Those community hui were run at Kutarere Marae. It was meetings, not projects and that.

Q. And when you say "they", who do you mean?

A. Say again?

Q. You said they organised some meetings. When you say "they", who are you talking about?

A. Well, they just need to – that came from the regional council. Tim Senior was part of that, so if you can ask Tim Senior, he probably can answer that question better, 'cos he was one of the organisers that organised that

for the community of Kutarere. It wasn't for the marae. It was for the people of the community of Kutarere.

Q. Thank you. And the funding involved, that funding, did that also come from the regional council?

A. **(inaudible 15:49:27)** for the kai we had for lunch?

Q. Okay. Kei te pai. And my final question: in the conclusion of your evidence, from paragraph 49, you say that Te Upokorehe should be given tools and funding to take action on climate change issues.

A. Yes. I will stick to that because we're in an area –

HOUSEKEEPING (15:50:04)

MS SEELEY TO TREVOR RANSFIELD: (CONTINUES)

Q. Ngā mihi. **Thank you.** So, from that statement, I take it that you think a decentralised approach is the best way to approach climate change for Te Upokorehe?

A. Yes.

Q. And would you agree that that is already happening to some extent through local authorities like, for example, the Bay of Plenty Regional Council?

A. Yes and no.

Q. Can you expound on that a little bit for me, please?

A. Well, if you have only one meeting, you need to carry on to finish off that kaupapa. One meeting's not going to solve the problem of flooding in Kutarere. It has to carry on. Or even two meetings. It needs to continue. 'Cos if you see the damage, once we are cut off, you've cut off Whakatāne, you've cut off the East Coast, Gisborne. People can't get through. And we've seen that before, many a time.

Q. Thank you very much, Mr Ransfield. E mihi ana au ki a koe mō tō kōrero i tēnei rā. **Thank you for your testimony today.**

Thank you, your Honour. I have no further questions.

(15:52) KEVIN PRIME TO TREVOR RANSFIELD:

Q. Tēnā koe, e te rangatira. **Thank you, chief.** My question is, where you refer to the solar energy –

A. Āe.

Q. – what is the expected – how many megawatts is it supposed to be putting out?

A. I can't answer that. I don't know.

Q. When you say that – when you mentioned that there would be employment, is that only during the establishment, the construction stage? Is that what you are envisaging?

A. That was only for the construction, yes, that employment. Yes. They've finished that now. They've moved up to the Coromandel.

Q. Okay. Yes. Ka nui tēnā. Kia ora. **That's enough. Thank you.**

A. Ngā mihi, pāpā. Āe.

QUESTIONS ARISING FROM MR LYALL – NIL

JUDGE MILROY:

Thank you very much, Mr Ransfield, for attending today, and giving your evidence. It has been very interesting to hear what you are trying to do at Ōhiwa, and what might be missing in terms of further assistance. So, thank you very much for your evidence.

TREVOR RANSFIELD:

Ngā mihi ki a koe, e te Kaiwhakawā. **Thank you, Judge.** Kia ora koe.

HOUSEKEEPING – TIMING (15:54:00)

HEARING ADJOURNS: 3.54 PM

HEARING RESUMES: 4.01 PM

MR LYALL CALLS

LARIAN TUARI:

My name is Larian Tuari.

SUZETTE ROWENA TE AOMARAMA KLOCK GRIFFITH:

I am Suzette Klock.

TE MAURI KENO:

I am Te Mauri Keno.

MR LYALL:

Kia ora. Mr Tuari is going to give his evidence first. I am going to try to make the technology work and bring up your PowerPoint and then you can start when you are ready.

(16:02) LARIAN TUARI: (#A048(a))

BEGINS SPEAKING TO PRESENTATION #A048(a)

Tēnā koutou katoa. **Greetings all.**

Ko te mihi Tuatahi ki te Atua. **Firstly, I acknowledge god.**

Ko ia te timatanga me te whakamutunga ō ngā mea katoa. **Who is the beginning and ending of all things.**

Me whakakorōria ki tōna ingoa tapu. **Glorify his wholy name, amene.**

Ko te mihi Tuarua ki ngā whanau o te Upokorehe iwi, kia ora koutou. **Secondly, I acknowledge the whānau of Te Upokorehe iwi.**

Ko wai au? **Who am I?**

Ko Hiwarau te Maunga. **Hiwarau is the mountain.**

Ko Oturereao me Rangimatoru nga waka. **Oturereao and Rangimatoru are my waka.**

Ko Ōhiwa te moana. **Ōhiwa is my harbour.**

Ko Te Karaka te Awa. **Te Karaka is the river.**

Ko Roimata te Marae. **Roimata is the marae.**

Ko Te Ao Marama te Whare Tipuna. **Te Aomara is the ancestral house.**
Ko Te Upokorehe te Iwi, ano hoki **Te Upokorehe is the iwi, and**
Ko Upokorehe te hapu **Te Upokorehe is the hapū.**
Ko Larian Tuari ahau. **My name is Larian Tuari.**
Ko Teurikore rāua ko Wini oku tipuna. **Teurikore and Wini are my grandparents.**
Ko Graham rāua ko Kelly ōku matua. **Graham and Kelly are my parents.**
No reira tēnā koutou, tēnā koutou, tēnā tatou katoa. **So, greetings, greetings, greetings all.**

My name is Larian Tuari. I live on Hiwarau maunga with my Mum, Dad and 2 Sisters. I have 2 older Brothers and four older Sisters. I also have a younger Sister. I am an Uncle to 4 Nieces and two Nephews.

My home is on a papakainga and looks over my marae, Roimata and Ohiwa harbour. My little sister and I go to Kutarere School.

I am 12 years old now and I am here to tell my story.

Rārangi Take

Today I am talking about climate change and what we do to help look after our taonga as Kaitiaki. I have made a presentation, and it is attached as "**A**".

When I was younger, I didn't know what climate change means. Everything was just normal to me. All I wanted to do is play, swim, and eat.

I didn't know the mussels and cockles in the harbour were gone, or why there were hardly any fish and birds. Why are birds dying on the beach? Why do whales come into the harbour and die? Why are there so many starfish? Why are people burning fires on our maunga. Is this climate change?

I am 12 years old now and know a lot more than before. I now know something is happening to our weather, and it is hurting our animals, trees, harbour, rivers, and our whenua.

The weather is changing, some days in summer its wet and cold, other times like winter it's really freezing and there is always lots of rain. My family down in Kutarere always get flooded. I feel really sorry for them. I hear stories that the ice caps are melting. That too much gas from fires, cars and factories are polluting our air. I don't know much about the ozone layer, but I do know it's something about a big hole and it's letting more and more sun through.

What makes me sad is that my whānau have tried to look after our taonga for many years and things are just getting worse. They do all this mahi because they care. They do it for us mokopuna.

I know now that it is people that are hurting our planet and everything that lives on it. We need to do something about changing our habits, and now.

Kaitiakitanga

What are we doing to help our planet?

My family have holiday programmes for us kids. But we do more work than play.

We walk around the harbour to pick up people's rubbish.

We go down to the mudflats and the awa to do water testing to see what bugs or fish were still in the water.

We went to learn about the solar farm at Waiotahe and how this can use the sun to make cheaper cleaner energy. I am proud of my Upokorehe iwi whānau because they named the solar farm, Te Herenga o Te Rā.

My koro and nans would go to lots and lots of meetings to see how farmers are doing their part to keep the rivers clean. I found out that when cows fart or burp they let gas into the air.

At school we would go and help adults plant native trees and plants along Waiotahe river and Waiotahe beach. We would learn about mangroves in the harbour and why they are important. Why are we doing all these things? There is so much to learn.

I know now that if we are to save our planet, we must learn more and be hard working kaitiaki like our Tīpuna.

Our planet

Our planet is dying.

My whānau cannot do all this work alone. They need help. They need tools and we need more education at school around climate change.

Whakatāuaki

I finish my korero with this Whakatāuaki which was done my koro David Tuari. It's about been a good kaitiaki and making sure there is enough kaimoana in Ōhiwa to feed the people:

If people don't change what they are doing, then there will be less kai to feed us all.

Kaitiakitanga

Kia kikorua ake te Kaimoana I ngā manuhiri.

Let the shellfish outnumber the visitors.

No reira, tēnā koutou, tēnā koutou, tēnā tatou katoa. **So thank you, thank you, thank you all.**

MR LYALL:

Do you have anything else that you want to say before you finish your presentation? All good if you don't, kei te pai.

Ms Klock Griffith, first of all, there is an error at the end of brief of evidence isn't there? So let's put that right. If you could take us to that paragraph.

SUZETTE KLOCK:

Paragraph 17, it's not Suzette Jeanette, it's Suzette Rowena Te Aomarama Klock Griffith.

HOUSEKEEPING (16:08:31)

(16:13) SUZETTE ROWENA TE AOMARAMA KLOCK GRIFFITH: (#A049(a))

BEGINS SPEAKING TO PRESENTATION #A049(a)

Ko Hiwarau te maunga. **Hiwarau is the mountain.**
Ko te Kakaho te awa. **Kakaho is the river.**
Ko Ōhiwa te moana. **Ohiwa is my harbour.**
Ko Otureareao me Mataatua te waka. **Otureareao and Mataatua are my waka.**
Ko Te Umutao Noa a Tairongo te wharekai. **Te Umutao Noa a Tairongo is the dining hall.**
Ko Te Aomarama te whare tipuna. **Te Aomarama is the ancestral house.**
Ko Roimata te marae. **Roimata is the marae.**
Ko Upokorehe te iwi. **Upokorehe is the iwi.**
Ko Upokorehe te hapū. **Upokorehe is the hapū.**
Ko Suzette tōku ingoa. **My name is Suzette.**

My name is Suzette Klock, and I am 11 years old and the youngest of two. My parents are Stevie and Jono. My Nan and Koro raised me with my Mum.

I am the 6th generation of a long line of Upokorehe iwi Kaitiaki.

My korero today is about what Climate Change means to me and how it affects my rohe **area**, whenua **land**, moana **sea**, awa **river**, and whānau **family**.

I will also talk about what has been done by all my nanny and koro to help look after these and why we need help.

My nan asked me one day, what do I know about climate change.

Climate change is like the ozone, and what it does to our land and sea. There is a big hole in the ozone. I learned at my school that pollution is destroying the ozone and the sun's rays are getting stronger, warming up our waters and affecting our land and hurting the animals and insects that rely on these.

My nan asked me what a Kaitiaki is. I didn't know what that meant. She asked me, what do you do to look after your home and family. I told her, I clean, I cook, I put rubbish in the bin, and I help look after my little cousins. She said, that is what a Kaitiaki is.

I was a bit shocked because I thought that was what we do anyway. Thinking about it some more, I said people, and what people do to our land and sea, are like the ozone hole, people are like that, they leave a big hole for others to fix. Sometimes the hole can't be fixed.

My view of a Kaitiaki is, like me, I take care of my dog, I take care of my nieces and nephews, I take care of my cousins, what I've learned is that they take after their parents, so, if their parents were raised to be strict, or raised to be kind and caring, then that's how their children will be. I was raised by my grandmother, Nanny Sue, I was raised to be caring and independent. I was also raised by my mother and grandfather, and that's who I am today.

For me, climate change is like people, everything is connected, like whakapapa, the land to the rivers and the rivers to the sea. But as humans, we like to destroy things.

It's not the climate that's changing how our environment is, its humans. I was told a story about a farmer who didn't like how his water was going through his land, so he cut it off and made a new way for the water to go. Those animals that lived in there, like fish, eels, and bugs, had to adapt to a new way of living. And sometimes by mistake, other animals and insects move to those areas and

again they must adapt, changing nature. That's what humans have done for many years. It's not strange and it's not new, it's normal, everything just keeps repeating itself over and over again.

Our native plants and trees are cut down, not all, but they must make space for pine trees. Our native birds and animals like kiwi, kereru, ruru and tuatara, even insects have to adapt.

Changes and damages to our environment has a domino effect. If you care for it and love it, then it will be fine. But if you change or damage it for your own benefit, then you are destroying it.

Climate change is warming up the waters, so animals have to adapt or move to cooler waters to live or to eat. Fish and shellfish need to keep moving to survive from climate change. Some can't move, like cockles, because of all the mud that has trapped them, so they die. If they die, or can't move, they cannot reproduce. I have never seen a live cockle in our harbour. But I have seen heaps of shells, and sometimes I see cockles in the shops. My grandmother said, when she was younger, she used to see cockles and mussels everywhere in the harbour, they were the size of footballs. She said Pipi are important also because they help to clean the water. What is happening is that we won't be able to get kai from our waters if they die from climate change or by the hand of greedy humans. Trees are falling down, our water is polluted, and I feel like no one is doing enough to fix it.

Upokorehe Iwi Kaitiaki and What are we doing to Help

My nannies and koro are Kaitiaki and have been for a very long time. They try so hard to protect our land and harbour for us. They teach us things like respect for ourselves and others, respect for the land and sea. They take us out to learn lots of things like, looking after the pipi beds and how much pipi people can take, I used the word gluttony coz some people are greedy, the birds on the little sand islands, putting signs up so cars don't run the eggs or chicks over, even the fish and crabs. Don't leave rubbish lying around, put the rock back where you found it, animals live under them.

Who needs to help us and Why

We need help from people in high places, more education on climate change, maybe someone coming to our marae and school to talk to us kids, we need to know this stuff, and things we can do to help, money to help our Kaitiaki to buy tools and stuff so they can keep doing the mahi.

My name is Suzette Rowena Te Aomarama Klock Griffith, and I am a Kaitiaki. If nothing is done to help my people look after the environment, then there will be nothing left for me and all future generations.

Before I end, after my cousin has done speaking, we will be having a waiata, e noho ana ahau. Tēnā koutou, tēnā koutou, tēnā koutou katoa. **Thank you, thank you, thank you all.**

(16:16) TE MAURI KENO: (#A050(a))

BEGINS SPEAKING TO PRSENTATION #A050(a)

Those three girls on the left, they are my three younger sisters. The two people in the middle are my mum and my dad. The boy on the right is me.

MR LYALL ADDRESSES TE MAURI KENO – CLARIFICATION OF PRESENTATION AND BRIEF (16:16:57)

TE MAURI KENO: (CONTINUES SPEAKING TO #A050, PARA 14)

I have no idea what climate change is. What I do know is that my koro Pop and Koro Lance tells me stories. When my koro Pop was young and working on the farm next to our house, he said everything was beautiful. There were lots of tuna, whitebait, shrimp, and even kokopu in the awa. They used to fish at the old wharf and catch so many different ika and share it to the whanau. There were birds everywhere he said, seagulls, shag, heron and many more. At Hiwarau there use to be a lot of manuka and kanuka, Pohutukawa and lots of birds in the trees, like Tui, Kereru, Fantail, and I forgot the rest, but he said there were heaps of them. My koro Pop is old now and can't take me to do the things

I love to do, but that's ok, I learn heaps off him. He still likes to mow lawns and clean up. He said a clean home is a happy home.

Who Should Clean Up The Mess?

The people that are responsible for doing the mess.

MR LYALL:

Something that all three of you have spoken to really well is about your future. Did you want to speak to that while you are here? Like what you would like to see the government doing or what you see in the future? I know your evidence talks about, you are worried that the things that your grandfather saw, you may not get the chance to. If you wanted to kōrero on that, or we can just move on in the slides. It's all good.

TE MAURI KENO: (CONTINUES SPEAKING TO #A050(a))

This is a video my aunty was taking. What's happening is that Te Kakaho awa is right next to my house. That's where I put my hīnaki and my lines to catch kai for our whānau.

TECHNICAL DIFFICULTIES (16:22:44 – 16:23:04)

MR LYALL:

Did you have anything else that you wanted to tell the Tribunal while you have their ears?

TE MAURI KENO:

No.

WAIATA – TE KOKO KI ŌHIWA

QUESTIONS FROM WAITANGI TRIBUNAL PANEL – NIL

JUDGE MILROY:

Tēnā koutou katoa. Aku mihi nui ki a koutou mō tō koutou kōrero ki a mātou. Thank you very much for you presentation today. It is our young rangatahi and

future generations that we have to bear in mind when we are considering what we need to put in our report and what to say to the government. So, what you have presented to us today and your presence is a reminder to us that you are the ones that we should be bearing in mind the most. Tēnā koutou katoa. Thank you.

HEARING ADJOURNS: 4.27 PM

HEARING RESUMES: 4.33 PM

MR LYALL CALLS

GAYLENE KOHUNUI (SWORN)

Q. Ms Kohunui, you have filed a brief of evidence which is, #A053 on the record of inquiry?

A. Āe.

Q. That is not currently dated or signed, your Honour. But we are going to attend to that today and submit a signed brief with our apologies. Before we do, Ms Kohunui, I under at paragraph 4 there is a correction you would like to make?

A. Āe, just the spelling on the second line. BJ Reha, it is actually Vera Reha, that was all.

Q. Apart from that correction to the best of your knowledge is the brief true and correct?

A. Āe.

LEGAL DISCUSSION – CLARIFICATION FOR PRESENTATION AND BRIEF (16:34:20)

(16:34) GAYLENE KOHUNUI: (#A053)

Kia ora koutou katoa.

Ko wai au? **Who am I?**

Ko Hiwarau te maunga tapu e tū whakahirahira ana. **Hiwarau is the mountain that stands proudly.**

Kei raro iho te awa o Te Karaka e rere ana ki te moana tairongo. **Below is Te Karaka stream that flows into the Ōhiwa harbour.**

Ko Rangimatoru, ko Oturereao, ko Mataatua hoki ngā waka o neherā. **Rangimatoru, Oturereao, and Mataatua are my waka.**

Ko Upokorehe te iwi. **Upokorehe is my iwi.**

Ko Upokorehe anō hoki te hapū. **Upokorehe is also my hapū.**

Ko Roimata te marae, a, kei reira te mauri o Te Upokorehe. **Roimata is my marae, and that is where the mauri of Te Upokorehe lays.**

Ko Te Aomarama te whare tipuna. **Te Aomarama is my ancestral house.**

Ko Te Umutao Noa a Tairongo te whare manaaki. **Te Umutao Noa a Tairongo is the dining hall.**

Ko Gaylene Kohunui tōku ingoa. **My name is Gaylene Kohunui.**

He uri ahau o Te Upokorehe. **I am a descendant of Te Upokorehe.**

Ko tāku mahi i tēnei wā, ki te whakapiri ētahi atu kōrero ki tērā o tōku pāpā. Hei whakatū tō mātou hononga ki te whenua, me te moana, ngā awa o tō mātou rohe. E ai ki ngā kōrero e heke mai i a mātou tīpuna. Nō reira, kia ora koutou katoa. **My role at this time is to add some other kōrero alongside the evidence of my father establish our link to the land, sea, and the rivers in our area in accordance with the old traditions that were passed down from our ancestors. So, thank you all.**

The purpose of my evidence is to provide the Tribunal with insight into the role of Te Upokorehe as kaitiaki in our rohe. To do this I will speak to some of those who are in turn the kaitiaki to show the Tribunal how they relate to us and to our rohe. Without this understanding, the Tribunal cannot fully appreciate our relationship with our whenua and moana. This relationship is central to our efforts to protect our rohe from climate change and to safeguard our people.

I would first like to acknowledge my grandfather, Patrick Tehema Ihaia Aramoana son of Henare Rako Aramoana and Wharenikau Collier. Our Pāpā as we called him, played a huge role including

teaching his children the roles and responsibilities of being responsible kaitiaki to the whenua, to the moana, to tangata. He also embedded knowledge in pūrākau, hītori stories, history and whakapapa relating to Upokorehe handed down to him from his father Henare Rako Aramoana.

Our mother, Te Araiwini and her sister that I grew up with. My aunty Eva was a tohunga for Upokorehe. Her sisters, Curly, Yvonne, BJ Reha, and our aunty Puti. Who all played a very integral part in my life and in that of my siblings.

They taught us the tikanga and kawa around gathering kaimoana. Just as important we would all sit at the marae and over a few laughs they would point out across the harbour the most significant points to harvest kuku, pipi, tuangi, tio, mussels, cockles, oysters and tipa (scallops). As well as the fishing grounds, and all the endemic shellfish to Ōhiwa. I thank them all for their knowledge and their guidance.

As children, my father, Te Urikore Tuari, who is here to my left. And our uncle, Mike Reha, would tell us about the abundance of kaimoana, sites of significance, and the hītori and pūrākau of the harbour. Dad would always remind us of tikanga and kawa, whether we were gathering kaimoana or out fishing on the boat. These are the times when we would hear the kōrero of our kaitiaki o taniwha as they were referred to.

Finally, before I start my kōrero, I want to thank my cousin Lance Reha, my sister Suzzanne Glock and Sandra Aramoana for supporting me through my degree in kaitiakitanga, custodianship, for sharing the wisdom and knowledge, true scholars in their own right. Ngā mihi. Thank you.

Throughout my life I began to appreciate pūrākau as stories of time memorial relating to taniwha or kaitiaki guardians as we refer to them. These were the things I grew up with and these are the learnings that I pass on to my tamariki and mokopuna.

I want to explain what kaitiaki or tipua mean to Te Upokorehe. For us kaitiaki are our guardians . They are protectors of specific areas of cultural, spiritual, and historical importance, they provide a framework for conservation at tikanga. They have their roots embedded in te ao wairua, the spiritual realm, the spiritual world, and are manifestation of te ao tūroa (the natural world, the physical world). They take the form of a shark, tuna, eel, rākau tree and other natural elements and they are responsible for maintaining and protecting the mauri of a certain area.

Our kaitiaki provide balance within the taiao, environment and the people. Our kaitiaki act as a natural regulator between people and their rawa or resources. They are a reminder for us to behave in a certain manner when we enter their domain. Furthermore, our kaitiaki are shrouded in the mysticism and sacredness that contributed to our traditional world view, our Iho Matua or philosophical belief and values. Our kaitiaki are a connection to our tīpuna, our history and our whakapapa.

Our people thrived long before we were affected by the real 'STDs'— the 'socially transmitted diseases' of colonisation, embedded in an education system designed to assimilate Māori and discredit our mātauranga. A system that mocked the possibility of kaitiaki having the ability to change forms while at the same time indoctrinating our people about the Messiah (no disrespect to anybody here today) who can change water to wine and even make food to feed the masses out of very little.

In responding to a potential cataclysm like climate change, mātauranga Māori and our kaitiaki are more crucial than ever. Any response must be led by the kaitiaki, with mātauranga Māori and kaitiakitanga interwoven throughout.

From this point I begin with a brief introduction to some of the 5 more well-known kaitiaki of Upokorehe, iwi as it is the basis of my kōrero today. I wish to point out that these are our kōrero tuku iho handed down through generations by our Roimata Marae, Te Upokorehe iwi tipuna. I turn to my PowerPoint presentation, I describe:

a. Ngā taonga o Te Upokorehe
b. Hinetahi
c. Ururoa
d. Ruahine

BEGINS SPEAKING TO PRESENTATION

Hinetahi refers to a mako, shark, who protects the waters within Ōhiwa domain. I guess for those of us that understand our kaitiaki, it's a little bit deeper than what I'm about to say and it's about the kōrero that possibly, my uncles and my father would better explain. But they are the guardians of our realms.

I look at Ururoa, the hammer head shark. Who is also a protector of our waters. Again, and without going into too much detail. I think we all understand, as humans, what kaitiaki really means. They are guardians, they are protectors, and this is what these two kaitiaki are about.

Ruahine is a tuna who also protects the waterways of our awa. These photographs are not the true kaitiaki of Upokorehe. They are just to provide a visual representation of our kaitiaki.

I would like to conclude by talking about what we are leaving for our mokopuna, and if I can just stray off. I would just like to say that I am very proud of my mokopuna and nephew that spoke before me. Their passion came through so strong that, I guess, for me, this is why we do what we do. We don't think at the time that we are providing the mātauranga to our mokopuna until we hear them talk about it like this. So, I would just like to acknowledge our babies for standing strong and representing your iwi and hapū.

CONTINUES SPEAKING TO #A053, PARA 15

I also see the impacts of over development, deforestation, earthworks, and farming have destroyed our awa and turned them into streams suffering from asphyxiation. Our wāhi tapu are under assault by development, an invasion of herbivores, and erosion made worse by the effects of climate change.

Our kaitiaki with their last gasp are begging for our help. That is why I am here today. I am a reminder that they have not been forgotten. Te Upokorehe are the conscious voice for Papatūānuku, for the taiao and for our kaitiaki. We are here to do right by them, Te Upokorehe must be recognised by the Crown as a responsible iwi in our rohe, so we can continue to address the issues that have had—and will continue to have—a devastating impact on our taonga. We urgently need funding, resources, and information so that we can address the effects of climate change, plan for the future, and protect our people and our taonga.

Our tamariki and mokopuna are our next generation—kaitiaki of the future. For once, let's get this right for their sake as well as those to come after.

Nō reira, e te whānau, tēnā koutou, tēnā koutou, kia ora tātou katoa. **So, whānau, thank you, thank you, thank you all.**

QUESTIONS FROM THE CROWN – NIL

QUESTIONS FROM WAITANGI TRIBUNAL PANEL – NIL

QUESTIONS ARISING FROM MR LYALL – NIL

JUDGE MILROY:

I just need to thank you very much for your presentation today and we could see you in the background with your rangatahi and you can be rightfully proud of them. Thank you very much for your time. Mr Lyall, you can correct me, I think that is all for today?

MR LYALL:

Your Honour, we would like to make best use of the time that we have until 5.00 to put the drone footage on if that is accepted?

JUDGE MILROY:

Yes, if you have got that going that would be good.

HOUSEKEEPING – MR LYALL SETS UP VIDEO EVIDENCE (16:47:40)

VIDEO EVIDENCE PRESENTED – (16:49:10 – 16:55:17)

HOUSEKEEPING (16:57:09)

KARAKIA WHAKAMUTUNGA – KEVIN PRIME

HEARING ADJOURNS: 4.57 PM

HEARING RESUMES ON TUESDAY 8 APRIL 2025 AT 9.00 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

JUDGE MILROY: (MIHI)

Tēnā koe mō tō tātou karakia. Mōrena tātou. **Thank you for our karakia. Good morning.** We are resuming today with Te Upokorehe evidence, so I will without further ado hand over to you, Mr Lyall, or Ms Swedlund perhaps.

MS SWEDLUND OPENS

Tēnā koe e te Kaiwhakawā, anō hoki ki a koutou ngā mema o te Rōpū Whakamana i te Tiriti o Waitangi. **Thank you, Judge, and thank you to the members of the Waitangi Tribunal.** Today we will be hearing from three more witnesses for Te Upokorehe. I now call Ngaire Ngamoki. Ms Ngamoki will be speaking to her brief #A045, #A045(a) and her speaking notes #A045(b).

MS HANNAH SWEDLUND CALLS

NGAIRE THERESE NGAMOKI (SWORN)

Q. Can you confirm your full name for the Tribunal please?

A. Āe. Ngaire Therese Ngamoki.

Q. Ka pai, and you filed a brief of evidence for Wai 3279 dated 26 March 2025?

A. Āe, I can confirm.

Q. And you filed speaking notes dated 4 April 2025?

A. I confirm.

Q. And can you confirm that the content of these documents remains true and correct?

A. Yes.

Q. Ka pai. **All right.** Great, so you have your brief and your speaking notes, and I will handover to you to take the Tribunal through your kōrero.

A. Kia ora. **Thank you.**

(09:02) NGAIRE THERESE NGAMOKI: (#A045, #A045(a), #A045(b))

Kia ora. Me tīmata.

Te mihi tuatahi ki te Atua kaha rawa nāna nei ngā mea katoa. Te mihi tuarua ki ngā hunga mate kei waenganui i a koutou, ā, kua whetūrangitia i runga o te korowai o Ranginui, haere, haere, haere atu rā. Te mihi tuatoru ki ngā mema o te Taraipiunara, tēnei te mihi atu ki a koutou. Ki taku whānau, ki taku pae kei muri i ahau, tēnā kōrua, tēnā koutou katoa. **Thank you. May I commence. Firstly, I want to acknowledge Almighty God who created all things. Secondly, I wish to acknowledge all of the deceased amongst you, those who have joined the stars under the cloak of the sky father Ranginui, farewell, farewell. Thirdly, I want to acknowledge the members of the Waitangi Tribunal, greetings to you. And to my whānau behind me, my elders behind me, thank you all.**

Ā, ngā mihi to my daughters online that are watching their mother and probably critiquing her, ngā mihi ki a kōrua **thank you both**. Tēnā koe. Ko Ngaire Ngamoki tōku ingoa. **Greetings. My name is Ngaire Ngamoki.**

READS SPEAKING NOTES #A045(b) FROM PARA 1

I am a trustee and treasurer for the Te Aramoana Whanau Ahu Whenua Trust, Treasurer for Roimata Marae, and a trustee for the trusts for the Waiotahi Parish 599 and Omaio 42 and 55. I have a passion and desire for the health and wellbeing of our environment, and in turn for our people. As the kōrero from our esteemed rangatira Uncle Paraone Pirika states, from Te Arawa: The state of our environment reflects the current state of our people.

For me, climate change is a reality and is grave concern for not only me but the future of my tamariki, mokopuna and their mokopuna. I need only look out my back door and see the flooding, coastal erosion, the damage that forestry debris/slash does to our stream and rivers by blocking them which in turn, affects our water flow and the ecosystems in and around it. I have and always will be an advocate for our Taiao.

My brief of evidence touches on the importance of education, our protection of our kai resources and the marae role in natural disasters.

From Reactive to Proactive

We cannot afford to stand back and wait for things to happen or wait for the Crown to come to us.

As Upokorehe whānau we have stood together as a reactive response, followed local and regional reporting procedures to protect our taiao, such as monitoring the take of kai moana from Te Kete Kai a Tairongo.

In 2023 we stood against the Marina Development in Ōpōtiki to protect our waahi tapu and environment. We followed policy and procedure, we did what we had to do in order to have our voice heard. But to no avail as the very processes prescribed to us by local and regional Government did not assist us in any way. We have not been treated as equal Treaty Partners, but rather like second class citizens in our own rohe.

We experience the same in climate change. The Crown's preference is to deal with settled entities or the Iwi Leaders group. Te Upokorehe are the ones on the ground doing the mahi, but we are more often than not excluded when planning is done or decisions are made.

Te Upokorehe are kaitiaki over many resources including the pipi beds at Whangakōpikopiko. I have been one of our hapū – one of many I might add, I'm not the only one – of our hapū members who has set up at this site to protect our taonga.

I have attached as "A" a newspaper article setting out information on our activities there. We set up near the pipi beds and, peacefully, remind people of catch limits, and to stop people driving on the beaches.

We want to ensure that the pipi bed continues to provide for future generations and is treated with the appropriate respect.

By providing written and verbal information we are doing all that we can to look after these precious resources, but again, I reiterate, what we need more of is funding and capacity.

Keeping our people safe in emergencies

Most recently, for Upokorehe I attended a Bay of Plenty Civil Defence Emergency Management Intermediate Course in Whakatane and was reminded that we cannot rely on the system in the event of a Civil Emergency. Our whānau of Upokorehe know this and are aware of our vulnerability to floods and tsunami. In times of emergency, we have supported our community, and those travelling through our rohe, as best we could with the limited resources that were available.

I had a terrifying and chaotic experience on March the 5th 2021, when a tsunami warning was issued for our rohe, including for the evacuation of Whakatāne Hospital. From that day I have been focused on improving the response for our whānau in the event of emergencies—because we know that they will happen more frequently with climate change.

It won't just be tsunami warnings, but also cyclones and tropical storms that we need to evacuate for. Our marae can be ready but we need to make sure all of our local communities are educated on evacuation plans and the risks.

Some good came of the chaos in 2021. People were jolted into action. A meeting was held in Ōpōtiki with schools, marae, and community groups to debrief what went well and what didn't. I attended a Psychological First Aid along with my sisters in 24th March 2021 where I was able to speak to the CED of the hospital directly, and voice my concerns about the evacuation process at the hospital. Then from 25–27 May the National Emergency Management Conference hui ā-motu was held, to seek Māori and indigenous perspectives on emergency management. The hui explored how we could all work together for better emergency management outcomes.

The hui was welcomed, and we need more approaches like this. We left that hui with a kete full of knowledge, a kete full of promises but no solid outcomes for our whānau. We were no closer to solutions or support, or any closer to sourcing funding to support our communities. Although the message was loud and clear at this conference, we know our communities, we know their needs, we have the local experts and knowledge, but we lack the monetary resources to train and equip ourselves better. But instead, we sit at tables discussing the colour of maps from red to blue, we provide our insights to those who sit at tables, and we are again overlooked.

In 2022, I was fortunate to attend a Ngai Tai Iwi led Iwi First Responder course under Shaun Cleaver, a qualified and talented educator and advanced paramedic. There is an identified need to have trained paramedics within our own community if we are cut off.

We learnt there were three different areas within Kutarere. Kutarere is where our kura and Kutarere Marae are, where there was some concern. Area 1 is the village itself. They would be most affected due to direct flooding and there would be no support from emergency services as the Matekerepu and Papanui bridges would be flooded. Area 2 is up on the Te Aramoana Whanau Ahu Whenua Trust Papakāinga where I am situated. This would be blocked because of the roads on either side of us. Area 3 is higher on Hiwarau, which would also be cut off. So in essence, there are communities within communities.

And I think yesterday when the drone footage was showing and the expansiveness of our area could identify where those roads would be blocked to our whānau, and currently we have about 130 residing on our trust, but that is not counting the village and the extended areas. I thought I would just touch on that.

I was in Rotorua at the time when Cyclone Gabrielle hit but heard about the wonderful job that was done by the hau kāinga and our local kura who supported a safe haven for our whānau to move to from Kutarere.

Another major concern for me was how resources were being accessed. I understand there were stories down the coast, involving whānau having to attend daily hui in order to qualify for accessing food and supplies. And there were questions about the quality of food and supplies they were receiving.

After Cyclone Gabrielle, on March 14, 2023, a hui was held by CDEM, in response to the evacuation. Again, these hui are welcome. But Te Upokorehe were no further along with resourcing or the ability to access funding, but we were provided with the additional duty of our Marae being named as a Civil Defence Welfare Centre.

Since then nothing has happened. So, Upokorehe, being the resourceful people we are, and with the knowledge that it's not a matter of IF something will happen it's WHEN because of the effects of climate change, our Te Aramoana Ahu Whenua Trust applied for funding from the Cyclone Gabrielle Fund for a Civil Defence Emergency hub, and we were successful. This was a valuable resource to be able to cater for the needs of our whānau in the community, with the hopes that this can be replicated to provide support for our vulnerable whānau within our rohe of Te Upokorehe.

If we are going to be set up as welfare centres, then we need to be properly resourced. We will need medical supplies, AEDS, generators, water, food and equipment to prepare it, people resource – knowing the skills within our own communities – and ongoing training. We also need fully equipped containers and people trained to use their equipment effectively, including the use of AEDs and how to use the first aid kits.

Broadly, we also need paramedic training suited to the needs of our communities. Basic first aid is fine, but not in intensive situations, especially if you don't have the relevant skilled people around or access to hospital care.

Which we don't. It's 20 minutes either way to emergency care for our whānau in Te Upokorehe and Kutarere.

This would include triage training in the event there are multiple fatalities. We have also asked the Ministry for information on the mobile centres that we saw during Gabrielle. These are inflatable, can house people, and have a mobile water tank. We have also asked about water filtration systems for our marae and communities.

We have had no response to the recommendations from the community that were given, nor response to our specific requests for information on emergency supplies and training.

In conclusion

The taiao is so important to me and to our whānau. It is not just about my name, but the rivers, streams, moana and maunga, that hold the history of who I am and my tīpuna - My pūrākau and as kaitiaki of our rohe for Te Upokorehe. I will continue to protect it whether it's at the Board Table or Local Government or protecting the pipi from extermination due to pollution, algae bloom and poachers.

Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa. **So thank you, thank you, thank you all.**

MS SWEDLUND TO NGAIRE NGAMOKI:

Q. Tēnā koe. **Thank you.**

A. Tēnā koe. **Thank you.**

Q. Do you have anything else you would like to say?

A. Kāo **no**, just questions from the Tribunal or from Mr Nixon Fong.

Q. Ka pai. **Okay.** Well, as you have alluded, the Crown and Tribunal may have some pātai for you.

JUDGE MILROY:

Thank you, Ms Swedlund and thank you, Ms Ngamoki for your evidence today. I will just hand over to the Crown. Mr Fong?

(09:14) MR FONG TO NGAIRE NGAMOKI:

Q. Ma'am, thank you. Tēnā koe, Ms Ngamoki. **Thank you, Ms Ngamoki.** Thank you again for your evidence. I note there are several themes in your brief of evidence. First in my questioning I just pick up on one of them. One of the themes that I've detected from your evidence is that you think that emergency response should be locally driven and draw on local knowledge and experience, is that a fair summary of that particular them in your evidence?

A. Absolutely it is, Mr Fong. I am going to refer back to the pātai that you had of my whanaunga, Maora, in regards – so let's be – it's a reality check for us is that we're so inundated, under resourced monetarily and under resourced. Here's our team. So, locally I'm trying get to the point here is that we're so overworked having to comply, comply, comply at local and regional council level that I suppose we didn't or weren't aware of the document until yesterday, and I did read it, and I believe in the brief time that I had a look at it that that was one of the driving aims of your – what is it called sorry? The National – yes, National Adaptation Plan was for the Crown or for the Crown agents to listen to local. It was exemplified yesterday by our whānau about we have those solutions. How long have we been doing this? Ten years prior to that was my tuakana Gaylene yesterday who has been the head of Civil Defence, and every time we take a step forward we're always pushed back by legislation, we're always pushed back and told to wait. So, again, referring to my evidence about being resourceful, we look, we look for the solution. It's not handed to us. Everything that Upokorehe does in our spaces we initiate that. Why should we chase it, nē? And I think my whanaunga alluded to the fact about the information is held in a particular iwi structure, we know who that is, and it's not filtered down to us. So, how are we to know, we're not informed properly. Ka pai having these beautiful websites, ka pai having these advertisements that we very rarely get to see, but how is that filtered down to a local level? Does that answer your question?

Q. Thank you, that is very comprehensive.

A. Ka pai.

Q. Thank you. So, before I go and ask you questions about specific paragraphs, what I want to begin with is to just put some questions to you about from the Crown's perspective how the current emergency management system works, and you can tell me if you agree with it, disagree with it, or you've got any other perspective on it. So, it's not a test, I'm just putting to you sort of some of the Crown's proposed evidence about how the system works.

A. Yes.

Q. So the first question is this. Are you aware that the current model of emergency management has essentially three levels, one at the national level, one at the regional level, and one at the local level?

A. Yes, correct.

Q. Is that something –

A. Yes.

Q. Yes.

A. We were told that at the national hui about the three different levels. But I'm going to go back to, again, that's okay at that level, but how does that filter down to community? I refer to the training that I had the other day, whilst that was an amazing system, when I thought about our – what do you call it – our whānau, I suppose, do they understand that? Because it's a lot of paperwork, nē, and at the moment we just want people that want to do the work. And I understand that it's our responsibility to go to those trainings and assist our whānau to understand these systems. But one thing that came out of that was if **(inaudible 09:18:49)** was a thing, I would suppose that everything went out the door and we just do what we do normally and have done over the centuries, is do what we do to survive on our thing. I refer back to my evidence about we'll be cut off. We've been told we'll be cut off for weeks. Does that answer your question?

Q. Yes, yes.

A. Ka pai.

Q. No, you've been very direct and good, so thank you for that answer.

A. Ka pai.

Q. But speaking to the current system, so at the national level you will know as I gather from your evidence that that's led by an agency called NEMA, the National Emergency Management Agency.

A. Correct.

Q. So, that's at the national level. At the regional level, and again I think you've alluded to this in your evidence, there is a group called the Civil Defence Emergency Management Group, is that something you're aware of?

A. Yes.

Q. And so, that group normally known as CDEM, my understanding is that each CDEM group is formed by all the local councils in the relevant region, is that correct?

A. To the best of my knowledge, yes, that's correct. But I'll go back to again how does that get down to local level and how does the local kōrero get taken up to these regional and national levels and listened to?

Q. Yes, and I will come back to that.

A. Ka pai.

Q. The next question I have is in terms of these CDEM groups, the Crown's proposed evidence is likely to say that these groups generally conduct their operations independently from the central government, is that something you are aware of?

A. No, but you've clarified that. I suppose it's a hit and miss. We're told to go to these hui. A prime example would be, I think I referred to the – when we sat down and we talked about mapping. Yet, around the table we heard our whānau stating that to be honest they didn't have a trust in the local system that they knew their areas. And it's going back to my whanaunga's evidence yesterday about no one knows our areas better in our rohe than we do. So, whilst these are prescribed to us about you go to point A, B and C, the reality is we can't. So, that's probably the only issue I have about these three layers, is that the bottom layer, us, the communities are ignored. I've been to multiple CDEM hui, but I only take what is needed for our communities, nē. I'm not saying that we can't do without the science, we need the science, however, the Crown needs to

listen to the communities. We know our communities. Does that answer your question?

Q. Yes, no, no, you've been very helpful, thank you. Just before moving to the local level and just another way of asking my previous question, which is that, are you aware that CDEMs are not managed by NEMA itself? Is that something you've picked up from the hui –

A. I picked up from your kōrero actually. Like I said, we're inundated with so much information because we're trying – we're like wheke. Do you know what a wheke is? An octopus. A wheke is an octopus with multiple arms, nē. So, when we have so much mahi to do, probably the finer detail isn't one of our top priorities. So, we attend these huis – I'm going to be honest, we attend these huis to get knowledge in how we can access resources faster for our whānau. So, detail probably wasn't – something I overlooked anyway.

Q. And I'm not suggesting you've overlooked anything, Ms Ngamoki.

A. Kei te pai.

Q. The other thing that I'm just wondering if you've picked up from your interactions which CDEMs, in these previous huis, that CDEMs are not funded by central government or that funding comes from the local rating system, was that something explored at the huis that you've been to?

A. It wasn't explored, but I read my rates bill and I actually saw the percentage that we had to pay to our – which I think is well spent money, but again, for I suppose speaking in their defence, why isn't Crown funded? If they're doing a – I suppose by default they are, but why isn't that Crown funded if we're talking about climate change and within your own reporting that it's going to increase, and we have multiple strategies which we have to do to mitigate that risk. So yes, I'm aware because of my rates bill.

Q. Now, moving to the local level, obviously that all the local councils are responsible for planning and providing Civil Defence Emergency Management in their own districts, you're aware of that?

A. Yes. My sister Gaylene who spoke yesterday is our Civil Defence Emergency rep.

Q. Yes. And so, the Crown's evidence is likely to explain that this structure where – this evolved structured with national, regional, and local layers is intended to reflect the practical reality that emergency events tend to occur at local and regional scale, and therefore best managed at first instance at the local level. You would agree with that underlying thinking, wouldn't you? Because you've said no one knows the area better than local people, it's important for them to draw on their own relationships, knowledge. Would you agree that the system kind of – the underlying thinking behind the system?

A. Hang on, I have to process that. Yes, I do agree, and I was very vocal at the National Hui to emphasise that, and I wasn't the only one. Again, prescribed solutions to issues that we know everything about. Put it this way, if there's an emergency, nobody in Wellington will be down there, it'll be the locals, yes?

Q. So from what I can understand, that you're not taking issue with the current sort of three level system, but your concern is that at the local level community groups are not resourced or funded sufficiently by the local council, is that right?

A. That is absolutely right. I can only talk for, yes, our whānau, is that right, I can talk for our Upokorehe whānau only. Other groups may, but I can't talk on every other rōpū in the community. But the tables that I've sat out, we literally have to be on bended knee to ask for these resources. So, we go out of our local community, and it was very, very fortunate that my whanaunga, Maora, found the Cyclone Gabriel funding application in order for us to access that. And I'll allude back to my evidence, is that, you know, when I was phoned in Rotorua in hospital that we were named as a Civil Defence Emergency Welfare Centre, but not equipped to do the mahi. We cannot rely on the limited resources that our marae has without the local government, regional government making a commitment to protect them and to equip them for the influx of whānau. Because we do. Behind me is my whanaunga Trevor, who takes care of all our whānau through Civil Defence emergencies at Kutarere Marae. They need funding. They need resources to be able to do that. Because we can't control Tāwhirimātea and when he's going to blow or when it's going to

rain. So, we're going to have to be prepared. And we haven't been supported at a local level. And again, I'm going to go back to their recent document about, you know, it's about the agencies listening to the communities. Kore taringa **no ears**. They're not doing that very well at the moment. I said no ears, kore taringa **no ears**.

Q. Thank you. And just to clarify, from your perspective do you see the local government as part of the Crown or the same thing as the Crown?

A. Well, I would say that –

MR LYALL ADDRESSES JUDGE MILROY – LINE OF QUESTIONING (09:27:47)

MR FONG TO NGAIRE NGAMOKI: (CONTINUES)

Q. Perhaps I could put it this way. It is your evidence that the Crown should be responsible for what the local government does in this context?

A. Can I refer to my lawyer who's just finished stopping me from that question? I just want to know through you, Hannah, is that appropriate to answer? Yes, ka pai. Can you repeat the question again please?

Q. So, in your view, do you consider the central government should be responsible for how the local government should be responding a message or actions?

A. With all confidence, yes, because then we're looking at leadership from the top down which trickles down probably. That's how your structure works. It comes from the top down. Your legislative bill. So, yes.

Q. Thank you very much. Now, if I can come to paragraph 20 of your evidence.

A. Paragraph 20. Aroha mai, taihoa, my eyes are a little bit blurry. "My strong focus is keeping our people safe in times of emergency." Are you referring to that one?

Q. That's correct. In para 20 and following you gave some very heartfelt evidence of your lived experience through the tsunami and talk about your concerns about future cyclones or similar natural disasters. Can I just clarify, that in these paragraphs you are not saying that tsunamis are caused by climate change, you're just trying to illustrate the problems of

Emergency Management System as you see it in these specific context, is that right?

A. Yes. But I go back to your plan is about how you highlighted within that document about what the Climate Change document is really about, preparing for increased cyclones, increased tsunamis. I'm not a scientist so I would really know how to answer that question, but from my perspective growing up in the village and every time an earthquake happened we were gone to the marae. So again, I'm going to go back to lived experiences for all our whānau, and I'm going to say that, you know, the current state on the environment is at our hand as humans to be honest. Does that answer your question?

JUDGE MILROY ADDRESSES MR FONG – TIMING (09:30:46)

MR FONG TO NGAIRE NGAMOKI: (CONTINUES)

Q. Thank you. The next question relates to paragraph 38.

A. Taihoa. **Wait a minute.** Yes.

Q. So there you refer to some stories that you've heard about what happened down the coast. Can I just check whether you managed to verify whether these stories are true or not or was it just something you heard second or third hand from someone?

A. Firsthand from whānau that were down there. Firsthand from whānau that were in Kaikōura at the Civil Defence Emergency hui and sharing about the resources were accessed. So, it's firsthand experience and kōrero. Does that verify or does that answer your question?

Q. Yes. So, I take from that answer that you've heard these stories from somebody else as opposed to you personally experiencing?

A. No, I'm going to say we have personally experienced that, but it wasn't to do with Climate Change, it was COVID-19. Again, we initiated our COVID stop, and again it was resourcing. It was tick box mentality for a few of the agencies that were in and around us. We didn't – can I give a lived experience? Without naming the agency responsible, half a bag of rice was given, a candle, a half a bag of soup for our kaumātua. So, if you're talking about lived experience and do we know about allocation of

resources, that's your lived example, the COVID stop and what our whānau were getting. I must admit that it got better later on. I'm also going to highlight that to access any support from any government agency, that was police, we had to go on bended knee and ask for it. Does that answer your question?

Q. Thank you. And on to paragraph 39 you talk about not having access to resourcing and funding. I'm just wondering if you or any other members of your hapū discussed or engaged with the regional CDEM or the local council about these issues?

A. Absolutely we did. So, lucky I did a bit of research. I'm going to refer to an issue or a – about four years ago we engaged with regional council because of the extensive flooding that occurs down in Kutarere. The whānau know their area and we know where the issue is sourced from, and that's the blockage of one of our key rivers into the village. Now, when we approached regional council, we were told that in order to get the support that we needed we had to pay, correct me if I'm wrong, $12,000 for an engineer's report. Now, when we received that engineer's report we already knew what we needed which was to dig our river out. So this is what I'm saying about. Kāore e whakarongo, they don't listen to us. These are people that have lived there for generations. They know their area. So if it's about accessing the support, why did we need to get a $12,000 report to tell us what we already knew. We needed a digger to dig out the river. Legislation stopped us again. At the end of the river are some manu, and I believe in looking after our wildlife, but when do you balance human life over that of aquatic or animal life? And we can't touch it. So therefore, our whānau will continue to suffer because of legislation. Does that answer your question?

Q. Yes, and then the final paragraph on which I want to ask you some questions on is paragraph 43. There you mention some recommendations for the Community. Can I just clarify, in terms of these recommendations, are those the ones that you've addressed at paragraph 41-42, are those the recommendations you had in mind?

A. Yes I did, but you know what, we didn't go to the local council because we got no – what do you call it – no response. So we leant on our other

iwi structures to help us. I did refer to Ngāi Tai Iwi Authority who provided us with the training. So we look within our own Māori communities for answer because nothing is being given by local or regional council, so that's how we resource, that's how we find our knowledge. And again, I will refer back to our iwi mandated structure that's supposed to support us this way, and they don't. Currently, the only way I get any training is to go to our Mataatua whānau at Te Puna Ora o Mataatua. So what does that say to you about having our mandated iwi structure supporting us? It doesn't. Does that answer your question?

Q. Yes, and my final question is just in terms of clarification. So, am I right in thinking that you have sought to make these recommendations to the local council and the regional councils but had no response from them?

A. We've had responses, but not responses we've been happy with because it's like our voices are overlooked and they're not valuable. Yet again I'm going to reiterate and reinforce we know the answers in our community. We have the people resource with that mātauranga Māori from decades ago. Kei konei **here**. My uncle Trevor, my cousins behind me, but we are ignored.

Q. Thank you very much. Thank you for your very helpful evidence. I have got not further questions on behalf of the Crown.

A. Ka pai, Mr Fong, thank you very much.

HEARING ADJOURNS: 9.37 AM

HEARING RESUMES: 9.45 AM

JUDGE MILROY:

Welcome back. A little refreshed I hope from that break to be able to stand up and stretch a bit. We do have some questions from the Tribunal panel. So, perhaps if you would like to ask first.

(09:46) PRUE KAPUA TO NGAIRE NGAMOKI:

Q. Kia ora Ms Ngamoki. I just had a couple of questions for you. One relates to paragraph 39 of your evidence where you refer to the marae being

named as a Civil Defence Welfare Centre. Can you just tell us who determined the marae was a Civil Defence Welfare Centre and how was that process undertaken?

A. The process to my understanding, because I was in hospital at the time, is that it came from the local Civil Defence coordinator in Kawerau, it was communicated through to my sister who then rang me and informed me that could Roimata Marae be identified as that. But we have our own internal processes within the marae. Kei te pai tērā? **Is that okay?**

Q. Āe, āe. **Yes.** So, it was a request. No issues around resourcing or anything like that?

A. There was raised that we have the minimal, but we needed more resources in order to house those numbers. Because can I just refer to my whanaunga at the back in regards to numbers? So just in Kutarere as an example, there was 60 rangatahi stuck in between Kutarere and Ōpōtiki due to the flooding, but if they aren't able to take the copious amount of people that come through us, because it's a major highway, then they'd be transferred up to Roimata Marae. And understanding the geographical location of Roimata Marae, it's on a high peak and safer for our whānau to go to in terms of flooding and tsunami.

Q. Kia ora. And just in relation to the question Mr Fong asked you when you were talking about in paragraph 43 you say: "We have no response to the recommendations," but I think in your answer you said you'd had responses that you weren't happy with. So, I just wanted to clarify what the situation was in relation to those, to the response, or to the recommendations?

A. So I think, if I think back to what I was talking about, was the Beca report in regards to what our whānau already knew to be true is to get a digger in and dig our the river at the mouth of the river. I can't recall, aroha mai **apologies**, in relation to the recommendations I made in regard to resourcing. So I'm going to be honest, since we were identified as a Civil Defence Hub or Civil Defence Welfare Centre, there's been little to no engagement with the local representative. Yes, that's my answer. Is that what you were wanting to hear?

Q. So really it's in relation to what might perhaps be the engineering report or so?

A. The engineering report, if I recall from my memory, it was the engineering report. I think it was more about the money we had to pay. Although it was funded by regional council. I personally didn't see the benefit of it because we still have to jump through hoops and apply for funding to get that machinery in. Then we have to comply with legislation and see what we need to do with the money. So, at the heart of all of this is to help our people. If I can also refer to an incident in the last flooding where a Crown agent offered support to bring our homes up to Healthy Homes standard, our whānau filled in the paperwork, were very unpleased because a lot of the water impacted on their floors and walls, only to be told that they would rather look at funding to purchase or to hire the digger to do the digging which was stopped because we couldn't comply with that legislation because the manu took precedence over human life. So I suppose the frustration is about how legislation is supposed to be there to help us but it hasn't been and we haven't been working in partnership. Because it seems to me that we're closed at every door and we're trying to do the right thing in regards to legislation and compliance.

Q. Kia ora. Kia ora, Ms Ngamoki. **Thank you, Ms Ngamoki.** Thank you for your evidence.

A. Ka pai, thank you.

JUDGE MILROY:

Thank you, Ms Ngamoki. We have no more questions. My questions were asked by Ms Kapua. So, thank you again for your evidence today, it has been very interesting and given us an insight into the local problems that you are having, so thank you.

NGAIRE NGAMOKI:

Ngā mihi, e te rangatira. **Thank you, Ma'am.**

QUESTIONS ARISING FROM MS SWEDLUND – NIL

MS SWEDLUND ADDRESSES JUDGE MILROY – SET UP FOR NEXT WITNESS (09:51:56)

WAIATA TAUTOKO

MS SWEDLUND CALLS

CHRISTINE MIHITERINA MARTIN (SWORN)

Q. This witness will be speaking to #A047 and #A047(a). Can you please confirm your full name for the Tribunal?

A. My full name is Christine Mihiterina Martin.

Q. Ka pai, and you filed a brief of evidence for Wai 3279 dated 26 March 2025?

A. That's correct.

Q. And speaking notes dated 4 April 2025?

A. Correct.

Q. Ka pai, and you confirm that the contents of these documents remain true and correct?

A. I can confirm.

Q. Perfect. In that case, you have your speaking notes and I will hand over to you to take the Tribunal through your kōrero.

A. Kia ora. **Thank you.**

(09:55) CHRISTINE MARTIN: (#A047, #A047(a))

Ngā mihi nui ki a koutou. Ko te mihi tuatahi ki tō mātou Matua i te rangi nāna nei ngā wairua, ngā mea katoa. Ko te mihi tuarua ki ō mātou kaikarakia, ngā mihi nui mō tō āwhina ki a mātou katoa i tēnei ata, ngā mihi ki a koe. Ngā mihi tuatoru ki te hunga mate, haere, haere, haere atu rā. Ngā mihi tuawhā ki te hunga ora, ngā mihi nunui ki a koutou. Tēnā koutou, tēnā koutou, tēnā koutou katoa. **Thank you all. Firstly, I want to acknowledge our God in Heaven who created all things. And secondly, I want to acknowledge the person who assisted us with opening karakia this morning, thank you. Thirdly, I must acknowledge the deceased, farewell, farewell, farewell. And fourthly, I must acknowledge the living, thank you very much. Thank you, thank you, thank you all.**

READS SPEAKING NOTES #A047(a) FROM PARA 1

Ko Christine Martin tōku ingoa. **My name is Christine Martin.** I whakapapa to Te Upokorehe.

This affidavit covers Upokorehe values to all aspects of our taiao including our wai, our streams, rivers, aquifers, groundwater take, wetlands, wāhi tapu and forests. It makes clear the importance of our taiao to Te Upokorehe existence and well-being in the context of the climate change effects that are impacting us.

I wish to acknowledge at the outset that most of the kōrero in this affidavit was gathered from Te Upokorehe kaumātua and knowledge holders, whānau, including at a hui.

Upokorehe rohe

I would like to talk about Ōhiwa harbour and Waiotahe river.

There are many waterways including rivers and streams that flow into the harbour. Hui of our creation whakapapa, and enhancing our kaitiakitanga o ngā wai **guardianship of the water**. The water is carried by these rivers and streams has long been a food source and source of spiritual nourishment also and care for Upokorehe, mai rā anō (from ancient times) until present day.

Spiritually, wai is also very important for us. It is used to bless taonga, it is used to bless whare, and to cleanse from hara or sickness, among other uses. Sacred wāhi tapu sites recorded in our kōrero tuku iho **oral history** are located within these waters as well.

The Waiotahe River is also significant for the iwi. There are taniwha kaitiaki and wāhi tapu sites within the Waiotahe awa. The most well-known of these are the Twin Rocks, Rangiatamea and Rangiataura. These were the twin sisters of Kahuki, the Upokorehe war chief. These two rocks are a permanent taonga that are to be respected.

The Waiotahe river was a pristine source of food, medicine, and supported many kinds of birds, insects, and medicinal plants along its banks. There were moruru, which were like cockabullies, herrings, which could be silver or blue in colour, flounder, kahawai, inanga **whitebait**, tuna, piharau **lamprey**, the blind eel. The blind eel died off over the decades due to pollution and run-off from farming.

Upokorehe tikanga

The overall health of Upokorehe descendants and others who live in our rohe is reliant on the diligent preservation of our taiao **environment**, moana **sea**, whenua **land**, awa **rivers**, ā ngā momo kai kei runga **and various foods**. Whakapapa is at the heart of all living things for us, and for our relationship to the environment.

Kaitiakitanga is not just conservation and protection of land. It embraces a broad appreciation of mana, rangatiratanga **authority**, mauri **life force**, tapu, manaaki and tuku **care and service**. This is needed to ensure balance between environmental health and human activity. For this reason, we maintain an intimate connection with the mauri of our momo wai **various waters**, and our various iwi kaitiaki or taniwha **powerful creatures, custodians**.

These beliefs and practices continue unchanged for us in line with teachings of our tipuna that have been handed down without interruption and form the foundation of our present day kaitiakitanga **custodianship**.

Manaakitanga is also an essential value within Te Ao Māori. It refers to the ability of whānau, hapū or iwi, to provide hospitality, kindness, support, respect and aroha. If the resources needed to fulfil these obligations are not available the mauri and mana of the people is deeply impacted.

I would like to share some whakataukī which illustrate Te Upokorehetanga **Upokorehe identity**.

Te ora o te Mauri o te awa wai-Māori, ika, ka kite koe te oranga o ngā momo ika. **There rivers and streams are like the veins in our body, all flowing to keep the land healthy.**

The rivers and streams are like the veins in our body, all flowing to keep the land healthy. And that first whakataukī I read was given by our kaumātua, our kaumātua Koro Wallace Aramoana. Another one:

Kia kikorua ake te Kaimoana i ngā manuhiri. **Let the shellfish outnumber the visitors.**

Let the shellfish outnumber the visitors. This Whakatauākī refers to being responsible Kaitiaki. To ensure that the kai remains abundant so that it may feed the people. And then:

Tai Pari, Tai Timu Whangaia he ika ma rātou Whangaia rātou he mataitai. **Regardless of the tide, you can feed the guests with fish and shellfish.**

Regardless of the tide, you can feed the manuhiri.

Kia tika he waewae ki uta, he waewae ki Tai, mau tonu mo ake tonu atu. **Let your feet be planted on land and sea, holdfast!**

Let your feet be planted firmly on the land and sea, holdfast! This Whakatauākī refers to whakapapa. With one foot in the sea and one on land your identity can't be lost.

Practices impacting our rohe

Our wai is vital for wellbeing, but through the last century, knowledge based in Mātauranga Māori **Māori knowledge** and tikanga of kaitiakitanga was ignored. Due to the raupatu, our iwi was displaced, and resources such as wetlands moved into Crown ownership. We were not able to combat the Pākehā interpretation of environmental management.

The history of Upokorehe since the end of the raupatu, has been one of systemic forms of structural violence. This concept of structural violence was developed in the 1960's by Johan Galtung. It describes the government and social organisations in societies that encourage practices resulting in unequal balance of power in communities. These two main forms of violence are visible and invisible. However, the consequences of invisible violence may be even more destructive than that of the visible.

The dairy industry was imposed on us and with it came environmental degradation. It was a system that deconstructed our history and reconstructed us within the rule of law. The waters in our rohe flow through these farming lands. Therefore, it is no surprise then that the quality of water in our rivers and streams is declining and impacting our health and wellbeing. There are times that we are unable to gather kai, because of discharge of wastewater into the rivers. This is both culturally and spiritually offensive.

This neglect is especially concerning as we witness the impacts of climate change in our rohe. These impacts are exacerbated by wastewater discharge into Ōhiwa Harbour, effluent runoff, poor septic tank and wastewater management, removal of native trees along the riverbanks, drainage and earthworks, the use of paper roads to access increased development and changes to the lays in the rivers and streams.

We've seen pests come into the harbour affecting the kaimoana. Slash causes damage to the environment, destabilising land and in turn causing erosion, pollution, and damage to the infrastructure around. Changes to the lays of the rivers and streams have caused erosion, pollution, and loss of habitat for our indigenous species.

Our shellfish gets smaller, and pollution of their habitat is made impossible for our people to gather food not just for personal use but for tangi, weddings, and all occasions where we would show manaakitanga.

The damage done to our taiao is hurting our whānau. Feedback about this from Upokorehe whānau includes that they can't swim in the rivers or catch kai and that the places where Upokorehe would carry out spiritual practices are no longer available due to pollution. The big issue is what will this look like for our mokopuna **grandchildren**.

Cultural Monitoring of Te Toi Ora o Te Taiao [Welfare of the environment]

Cultural monitoring is the term given to the practice of managing the overall health of the environment. This is intrinsic to Kaitiakitanga.

Our primary cultural indicator for the rivers is the mauri of all life in the river. Changes in the amount and health of different species indicate whether they are thriving. The ability to harvest with the traditional maramataka of Te Upokorehe is all part of the health of the mauri.

These are also the markers or tohu that show changes in the health and wellbeing of the whenua, and of specific wāhi tapu sites that Upokorehe care for (such as Tokitoki, Ahiaua, and the Waiotahe awa for examples). The wellbeing of coastal wāhi tapu such as Tokitoki are also evident through the impact of erosion.

These markers are important for our people because Mātauranga Māori **Māori knowledge** values the interrelationship to all life, and connection to rangatiratanga **authority**, kaitiakitanga **custodianship**, wairuatanga **spirituality**, mauri, tapu and noa. These values guide our tikanga and kawa for protection of resources in our rohe.

Future of our rohe

The future of our rohe is vital to Upokorehe Hauora **health**. Daily, tamariki and whānau continue to gather kai, rongoa and a range of natural resources from the across the rohe.

Any efforts to mitigate the impacts of environmental degradation needs to ensure that Upokorehe values are at the forefront. Te Upokorehe must

maintain tino rangatiratanga over rights and interests for the taiao within our rohe. That means Upokorehe are consulted and involved in consent processes, having representation in any co-governance activity, and the ability to participate and ensuring decision making over our rohe.

In order to see these values upheld, Upokorehe supports the improvement of the overall ecosystem so kai may be harvested from the rivers and streams. We seek to have positive and sustainable relationships with outside agencies and seek to ensure that our Mātauranga is actively upheld in resource consenting processes. We reject the planting of non-indigenous vegetation such as Pinus Radiata, as it exacerbates erosion, directly affecting important rivers in our area. Therefore, collaboration with Upokorehe and those in forestry is important for the future.

I would like to finish with a whakataukī:

Whakaako ngā Tamariki kia haria te Kete o Tairongo. **Teach the children so they may carry the baskets of Tairongo.** This Whakatauākī refers to the basket of knowledge, which in this instance is the basket of Tairongo. Fill the children with knowledge or teach the children so that they may carry their full kete into their future. Kia ora tātou. **Thank you.**

(10:07) MS SWEDLUND TO CHRISTINE MARTIN:

Q. Ka pai, Ms Martin. I understand that you were also interested i giving a bit more information to the Tribunal about Lodestone Energy?

A. Yes, yes.

Q. Ka pai.

A. Would they like to ask some questions about that or do I just…

Q. Just…

A. One of my roles as a – I work as a kaimahi for the Resource Management team for Upokorehe. Our kaitiakitanga and our mātauranga is led by the whānau. Sitting behind me our pou mātauranga Koro Wallace Aramoana, our chairman Trevor Ransfield, and also our cousins behind me. Lodestone, the whakapapa for the Lodestone mahi began a couple

of years ago with hui at both Kutarere Marae and Roimata Marae where they came and explained in quite detail what was going to happen. At the moment, it is the biggest or it's the largest solar farm in the country. There's 65 hectares. We were concerned about degradation and what was going to happen to the whenua underneath when the posts were put in. The relationship we have with them is both positive and ongoing. They have come many times to talk with us to understand what is important, and Uncle Wally led that kōrero for us. They came to us when they were concerned or when they had questions they wanted to ask, but also they had our accidental discovery protocols with them in place when they went around doing the major work at the beginning. So, I actually appreciate the fact that we have had something positive in that regard. And there are 70,000 panels. It can power up to 9,500 homes. Thank you, kia ora.

Q. Ka pai. I have no further questions. The Crown and Tribunal may have some pātai for you if you would like to –

A. Āe.

JUDGE MILROY:

Mr Fong, did you want to cross-examine?

(10:09) MS SEELEY TO CHRISTINE MARTIN:

Q. Tēnā koe e te Kaiwhakawā. Ko Grace Seeley tōku ingoa. Tēnā koe, Ms Martin.

A. Tēnā koe.

Q. I just have a few clarification questions for you about your evidence and thank you for the additional information you provided on the relationship with Lodestone, that's helpful to understand. Firstly, is it fair to say that your evidence generally concerns environmental degradation, including pollution of waterways?

A. Yes.

Q. Thank you. And then just moving to your brief, do you have a copy of that?

A. Yes, I do.

Q. At paragraph 25 –

A. Yes.

Q. – you say that neglect, for example the pollution of waterways which causes degradation, is especially concerning as you witness the impacts of climate change in your rohe, and that is exacerbated by issues like poor wastewater management, effluent runoff, deforestation, and development, is that correct?

A. Yes.

Q. Can you please explain for me how some of these issues exacerbate the impacts of climate change in your rohe, for example, how does effluent runoff from dairy farms exacerbate the impact of climate change?

A. Right. I do have something with me. Effluent from dairy farms, when it gets washed into the water, can infect the momo ika living within those waters and streams. Now, in 2010 I think it was our kaumātua were very concerned about the rise of E. coli coming from this particular source, and so they warned councils which didn't take any notice at the time until it got so bad that we had to put a rāhui out across the Ōhiwa Harbour because the fishing grounds, the pipi had become so polluted by E. coli. Now, since that time, there have been some attempts by some farmers to address this. They've changed the way they do their runoff. However, at the same time, at Verralls Road, just down the road from us, and at the Waiotahe River which is literally just down from our whare, E. coli levels are still within concerning reaches. So, although we have learned a little, we still have a very, very long way to go when it comes to the degradation of the rivers. Because, as I spoke before, those farming practices that were imposed from I guess from when the Treaty was nullified until the 80s, these practices were still continued, no one really thought about the long-term effects of what would happen if effluent continued to go into the rivers and streams, and this is one of the things that happened. Does that answer your question?

Q. Yes, it answers my question about the impacts of effluent runoff. Is it fair to say that your concerns there are more to do with the pollution of the water and the degradation of the water than necessarily climate change impacts?

A. I think both. I think what happens when the rivers and streams change the lay due to flooding or something, a natural disaster, then when everything settles back down, the impact on the land has become even more degraded, and so it's both. Climate change hand in hand with poor management mai rā anō creates this system whereby not only is there degradation of the land of the water, but there is continual changes, and as the previous witness talked about, legislation around managing this is very, very difficult to manage on the ground when we're a very small team. Thank you.

Q. Ka pai, I understand. And then at paragraph 26 –

A. Hang on a minute. Yes.

Q. I have two questions about this paragraph. I think firstly you talk about slash in the Waiotahe catchment. I want to just clarify, the slash that you talk about, is that from commercial forests in the catchment?

A. Āe, yes it is.

Q. Thank you.

A. Would you like me to expand on that or not?

Q. Please, haere tonu **continue**.

A. Okay, thank you. There is one flood event, Uncle and some other whānau went up the Waiotahe river into the hills to check on the slash that had been washed up along the banks. This changed the lay of the rivers and streams which caused a lot of pollution, loss of habitat for our indigenous species, and all these activities have impacted the delicate balance of the eco-system that we are fighting to protect. Now, I must admit that one forester in particular has improved his relationship with us, but when it goes to talking to or doing a resource consent for, well, for more forestry to be planted, the usual response we get is: "Per the new regulations for slash management" or "Per the new regulations for forestry." So that means someone in our whānau has to go and read what's happening in order for us to be able to have any kind of intelligent response, and it gets exhausting.

Q. I understand. You are echoing the comments of the previous witness.

A. Āe. But from a different perspective. She's on the ground in a management of a Civil Defence Emergency, things that have happened

in the land that have impacted our whānau. This is ongoing. The Resource – and I know that there are changes coming up to the Resource Management Act which make it even more difficult for, and not just our iwi but for iwi all over the country to be able to protect that which has been given mai rā anō, and to be able to work with, we want to have positive relationships with outside agencies, but it needs to be on an equal footing as first tier partners with te Tiriti o Waitangi. Kia ora, whānau. Kia ora koutou e te Tribunal. **Thank you. Thank you to the Tribunal.**

Q. Kia ora. I just have one further question. So, with paragraph 26.

A. Yes.

Q. You note that you have seen pests come into the harbour affecting the kaimoana. Is that a recent development?

A. It's been in the last 20 years. Or maybe even longer, 20-30 years. So it's not something that's recent. It's something that's come in because of the degradation of – overall degradation of the waterways and the management of how farming practices have been allowed to go on in the last 20-30 years. But not just that. There's been things that we have been – we were actively stopped in the 1970s, and I think Trevor Ransfield can speak to this far more eloquently than I can, but in the 1970s our whānau were stopped from clearing mangroves for example in the Ōhiwa Harbour. Because of that, pests were allowed to proliferate, and just get out of control, and eventually the council's realised that, "Oh hang on a minute, it's got out of control, maybe we can give some control back to the iwi and they can do it." However, in those 40 years, because it's only been a recent thing we've been given some control back, those recent years there's been so much degradation done that it's almost impossible to manage. So, does that answer?

Q. Ka pai. **All right.** Those are all of my questions. Ngā mihi mō ō whakautu me tō kōrero hoki. Kia ora. **Thank you for your responses and your testament as well.**

(10:19) PROFESSOR DAVID WILLIAMS TO CHRISTINE MARTIN:

Q. Tēnā koe, te kaikōrero. Tēnā koutou e ngā rangatira o te hapū, o te iwi. **Thank you, orator. Greetings to the leaders of the hapū, of the iwi.** I've got two questions. I've got my historian hat on and –

A. Oh dear, oh dear.

Q. – I'm interested in sources.

A. Yes.

Q. So, in paragraph 8 of your filed brief of evidence, you referred to the 1905 famine, if you can find that. Your point is that your people of Te Upokorehe were lucky in 1905 because you had the harbour and you had all the resources there.

A. Yes.

Q. But you refer to the 1905 famine and the desperate times. Very little has been written about that famine. I am aware of one open polytechnic scholar who wrote a paper in 2006, but I'm sure that's not your source, so your source is presumably oral history?

A. Yes.

Q. And can you tell me something more about that oral history of those desperate times?

A. I'm sorry, I don't think I can. Kahu, can you speak to that one please because that was part of something that you. Another witness can speak to that one if that's okay, when she is giving evidence after this.

Q. So, Ms Baker would be the person I should ask that question of?

A. Yes, that's correct, thank you.

Q. Her evidence is about pilot whales and things I think.

A. Yes.

Q. Okay.

A. I can give a little oral evidence from what I've heard from our own tīpuna. It was a desperate time. Some of our kaumātua, our kuia, had to sleep and hide in kūmara pits. It was a starving time. It was a time that when COVID came the mamae from that time was within our DNA if that makes sense.

Q. Right, yes, so thank you for that because, I mean, I think very few people in Aotearoa know about that time of 1905, but it's like the stories of

influenza, some of those stories get handed down. You're talking about that particular famine in 1905-1906, so it's very useful that you're bringing out that type of information, so thank you for that.

A. Thank you.

Q. Secondly, not in your brief of evidence but in your speaking notes today you referred to Johan Galtung.

A. Yes.

Q. Who is a Norwegian sociologist.

A. Norwegian sociologist, yes.

Q. You probably didn't get that information from your kaumātua.

A. No.

Q. Where did you come across the sociologist's work?

A. Okay. As I said in my brief, most of my evidence has been from our kaumātua and knowledge holders, but previously to my taking up being a kaimahi for the Resource Management team I completed a masters of Applied Anthropology at Macquarie University in Sydney, Australia, and I finished it in 2015, and I was studying the structural violence and custodial grandparenting and that's where I came across the study that was given by Johan Galtung. He was the first to consider the impact of organisational violence that may be originally formed to awhi the communities, but actually in the working out of it does far more damage.

Q. Right. Thank you for that. Can I ask you to supply that information to your counsel so that they can give a citation of what you are relying on there because I think it's important for us to be able to take account of that.

A. Sorry, I actually did give it in my – Aroha mai, I thought I gave a bibliography at the end of my –

MS SWEDLUND ADDRESSES PROFESSOR DAVID WILLIAMS – FILE FURTHER EVIDENCE (10:23:21)

PROFESSOR DAVID WILLIAMS TO CHRISTINE MARTIN: (CONTINUES)

Q. It's not referred to in your evidence. Is it referred to in the –

A. I don't think it is.

Q. I can't see a bibliography.

A. No, it's not. It was – he wrote – sorry, aroha mai. Mr Galtung wrote his original theories regarding both visible and invisible violence on the effects of war, and from that structural violence was developed as a theory.

Q. Yes, I'm familiar with his writings too. I'm just wanting you to supply the Tribunal with where you got that information.

A. Okay. I can do that, thank you.

Q. That's fine, that'll be good, thank you very much, and thank you to all of you.

(10:24) KEVIN PRIME TO CHRISTINE MARTIN:

Q. Tēnā rā koe e kui. **Thank you elder.** Can you tell me, is Upokorehe recognised as the – is your Resource Management unit recognised as the sort of mana whenua by your local council, district council?

A. Yes they are.

Q. And also the regional council?

A. Yes.

Q. Yes, okay, thank you. What is the formal status of your Resource Management unit?

A. Could you explain that a bit more please, koro?

Q. Most organisations have a formal status, they're registered, there's a charitable trust or an incorporated society or company.

A. We're a not-for-profit organisation, the Resource Management team.

Q. Oh yes.

A. For Upokorehe.

Q. Okay, thank you for that. The other thing –

A. We're part of Te Upokorehe Treaty Claims Trust.

Q. Thank you.

A. Thank you.

Q. That explains that, thank you. The other question I had, you did mention the – I asked this question of Mr Ransfield yesterday –

A. Right.

Q. – on how megawatts was the output of the – you said 9,500 homes, but I just wondered what's that in –

A. Sixty-nine, koro.

Q. Sixty-nine megawatts?

A. Sixty-nine gigawatt hours from the –

Q. Gigawatt. Goodness me.

A. From the Lodestone Solar Farm.

Q. Thank you very much, that's very much appreciated.

A. You're very welcome.

Q. Kia ora. **Thank you.**

(10:26) JUDGE MILROY TO CHRISTINE MARTIN:

Q. Thank you for your evidence so far, Ms Martin. I have just got one more question about the Lodestone project, and that is I think in Mr Ransfield's evidence yesterday he indicated that Lodestone would be providing power to the local community, is that correct, or is it going into the national grid?

A. It's going into the national grid, but they have also been supportive of considering maybe some support to marae and the kura also.

Q. That would be wonderful if they could do that.

A. Don't worry, we'll keep it before them.

Q. Good, okay. I just wanted to ask one more question. At paragraph 25 of your main brief, you refer to the various impacts of climate change exacerbated by a number of different things, and I – including wastewater discharge into Ōhiwa Harbour, effluent runoff, poor septic tank and wastewater management, and I just wondered what your experience of the local or regional councils were in terms of trying to improve those aspects.

A. Thank you for that question. Overall, I think the – my personal experience is that there's quite a lot of talk but a lot of protection also of past practices for European farming. I feel that when we challenge the way things are done there are reasons given as to why they are. Mātauranga Māori is not well respected, although it is improving in some areas but not in many, and I think there is a certain, if I may speak very frankly, there is a certain

protection of European systems and outlooks when it come to land management. In our normal site visits, and this is where I can speak to, we have come to one dairy farmer who is embracing change. The rest have been extremely reticent to do so. And so, it is very difficult to challenge someone at a site visit on the way they're managing their farms, but it is something that we continue to do, because we can see the evidence in front of us.

Q. So, that is something that the Resource – your own Resource Management unit has been doing, is approaching farmers to see what they're doing and to try and advocate for change to their practices?

A. Absolutely. What usually happens is that – and I do thank regional council for this. Regional council let us know about any changes that are going on within our rohe through the resource consenting process. So, if someone applies for an increase of water tank or increase of water tank or increase of effluent wastewater, then we will be notified if it's in our rohe. And what we usually do is contact the owner, make a time to go and visit, our whānau comes up, our pou mātauranga comes to look at the history of the land and give kōrero tuku iho if appropriate, and we look at the way things are being managed. And if we find that it is difficult, if it challenges the water take, if there's going to be damage to the aquifer then we will try and challenge that. It also goes to water tank within orchards as well. It's all the same system.

Q. I noticed that during the drone footage yesterday, that there was a lot of land around Ōhiwa Harbour that I would have thought would be very vulnerable to rising sea levels, and a lot of farmland.

A. Yes.

Q. In your discussions with the farmers or the orchardists and so on, is there any recognition of that risk to their business?

A. There has been one that has been concerned about that. The rest haven't really commented too closely on that at all. It's more status quo I guess and wanting to develop for the next mahi that they are planning.

Q. They're concerned with their business.

A. Yes, yes.

Q. All right. I have no more questions and I have just been told it's time for morning tea. So, it just leaves for me to thank you very much for your very helpful kōrero this morning and to – I am in awe of the amount of mahi that the Resource Management Unit is doing and congratulate you on that and wish you the best for your mahi in the future.

MS SWEDLUND ADDRESSES JUDGE MILROY – QUESTIONS OF RE-EXAMINATION (10:32:30)

(10:32) MS SWEDLUND TO CHRISTINE MARTIN:

Q. So, in your answers to my friend you mentioned E. coli in waterways. What is your understanding of the effects of warming awa and oceans and E. coli, and levels of effluent?

A. They go hand in hand. So, once the – it's like a vicious circle that doesn't stop. Once the warming starts then the rivers rise, changes in rivers and streams. The E. coli flourishes in that environment. And so, trying to manage it with mātauranga Māori has been extremely difficult because we have had to – and this is where I get very concerned and somewhat frustrated because mātauranga Māori, as I've mentioned before, embraces all concepts of our life within the taiao and in the teaching of our mokopuna as well. But in doing so, we're having to counter the teaching that they're hearing within the local and wider communities regarding what we call 'te ao pūtea', the world of money. And so, with that driving the impact of what is happening within our taiao, it's extremely challenging to manage mātauranga within the wider concept of te ao pūtea and how that drives economies.

Q. Okay, thank you, and you also talked to my friend about mangrove removal and would you just be able to please clarify the reason why Te Upokorehe removes the mangroves?

A. We remove the mangroves to unclog the waterways and to clear the bottom of the harbour so that it doesn't build up with pollution and silt, so that the shellfish can breathe, and grow in a healthy way and they're also healthy to eat.

Q. Ka pai. Thank you, Ms Martin. And just before we close, just to note that Dr Dunphy's evidence also relates and refers to the impact of invasive species and climate change, and just to note that can be found at #A51(a). Tēnā koe, Ma'am.

CHRISTINE MARTIN:

Can I just, aroha mai, just to respond to your historian online, that bibliography reference to Johan Galtung, it's, (2004), *Violence, War, and their impact: On visible and invisible effects of violence,* pages 1-14*.*

PROFESSOR DAVID WILLIAMS:

Thank you.

JUDGE MILROY:

Well, thank you again, Ms Martin, and we are all now going to break for morning tea and yours will be well deserved.

CHRISTINE MARTIN:

Thank you. He waiata, mātou. **We will sing a song.**

WAIATA TAUTOKO

HEARING ADJOURNS: 10.32 AM

HEARING RESUMES: 10.59 AM

JUDGE MILROY:

Welcome back, and over to you, Ms Swedlund.

MS SWEDLUND OPENS

Tēnā koe e te Kaiwhakawa. **Thank you, Judge.** I now call Kahukore Baker for Wai 3279. Ms Baker will be speaking to brief #A044.

MS SWEDLUND CALLS

KAHUKORE FELICITY BAKER (SWORN)

Q. Can you confirm your full name for the Tribunal please?

A. Yes. It's Kahukore Felicity Baker.

Q. Kia ora, and you filed a brief of evidence for Wai 3279 dated 26 March 2025?

A. Yes.

Q. And I understand that there's a correction that you would like to make to a paragraph of your brief, so if you could speak to that. Paragraph 9.

A. Paragraph 9 should start with "In 2016" not "In 2017".

Q. Ka pai. **All right.** And with that addition, do you confirm that the contents of the document remain true and correct?

A. Yes.

Q. Ka pai. So, I will leave you to share your kōrero with the Tribunal.

A. Brilliant.

(11:00) KAHUKORE BAKER: (#A044, #A044(a))

He mihi tuatahi ki te Atua. Tuarua, Papatūānuku i waho, te whare e tū nei, tēnā kōrua, tēnā kōrua, tēnā kōrua. E Te Whānau a Tairongo me Te Upokorehe whānui, tēnā koutou, tēnā koutou. Ngā mōrehu o te raupatu, tēnā koutou. E te Taraipiunara me ngā rōia, tēnā koutou katoa. Ko Kahukore Baker tōku ingoa, ko te teina o Christine. **Firstly, I want to acknowledge God. Secondly, to Papatūānuku outside and the house standing here, greetings to you both. To Te Whānau a Tairongo, to Te Upokorehe entirely, greetings, greetings. To the survivors of the confiscation, greetings. To the Tribunal and the lawyers, greetings to you all. My name is Kahukore Baker, I am Christine's younger sister.**

REFERS TO SPEAKING NOTES #A044(a)

I am the kaiwhakahaere for the Upokorehe Treaty Claims Trust and I lead – I felt listening to the kōrero from my whānau yesterday and today, I wanted to put some further context around my brief and in the front of my brief, and to focus on the political context that has brought us to where we are today.

Our ancient way of life since at least the 1300s is being totally undermined by the Crown, and also by those with commercial interest who have no knowledge, interest or understanding of the Upokorehe rohe.

How can Upokorehe adequately respond to the challenges of climate change while the Crown is actually taking us backwards through legislation that is, for the very first time in our history, putting another iwi over the top of us, which is not something Te Upokorehe have ever had to deal with before.

I want to begin with the 1980s and 90s, which is scene-setting for some of the key issues Upokorehe face, and our kaitiaki face today.

Back then I was a union organiser through the 1980s and 90s. We know that time left significant and deep rifts across our social and cultural landscape. I was a Western Bay field officer for the Norther Clerical Workers Union, and for both of you who might know a little bit about Union history we had an extremely strong General Secretary, Minister Jackson, and we needed that, because most of my time was spent in joint redundancy negotiations. Small town New Zealand shut down behind those joint negotiations. You could see schools closing, post offices closing, dairy companies, meat works, public works, forestry - all gone.

Libertarianism looked as if it was absolutely rampant, and it was unchecked. User pays was the philosophy, sole parents and anyone who was on the dole was seen as a ‘dole-bludger’, they were vilified, and the Government rolled on with its privatisation agenda.

But in the middle of this, there was one thing that stood in the path, and it was te Tiriti o Waitangi.

In total arrogance, the government decided to sell off state assets like lands and forests, never suspecting that their own State Sector Act would come back to bite them with that innocuous little phrase:

Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.

The Māori Council challenged this through the Courts, totally changing the entire political landscape, so on the one hand we have massive unemployment and destitution amongst our people but, on the other hand nationally, the political landscape had been totally changed and the Treaty was dropped right into mainstream New Zealand to deal with.

And that was so inspirational for those of us who were working on the ground with the devastation of the economic impacts of the 1980s. Those three principles, and they call them the three Ps, they were very hard fought for – yes they were a compromise, but they were very hard fought for. And they brought hope to our people at a very bleak time.

And then following on from the lands and the forests came the fisheries. Nationally this was another win, however the 2004 Fisheries Act has indirectly had a downstream effect on Te Upokorehe.

In that Act, there is a list of all iwi who were to receive quota, and it was to be a finite list of iwi. Upokorehe was one of a number of small iwi who not included for a range of reasons, but once again the Mandated Iwi Authority has gone beyond in our experience, it isn't just about the quota.

At differing times since the development of the Mandated Iwi Authorities and Organisations, neighbouring iwi for Te Upokorehe who do have that status have sought to split our rohe between them; or to tie their quota allocation into our coastline in an attempt to assert mana whenua status over Te Upokorehe's rohe.

You heard our people give evidence yesterday about Mai I Nga Kuri a Wharei ki Tihirau, the Customary Fisheries forum set up by what was once MAF. Te Upokorehe were on that forum in its very early days. It was a customary forum. But since the development of commercial interest, we're probably one

of the very few at that table who was not a MIO. So, the commercial interest would come straight into that forum.

Having represented their customary interests at this forum for over a decade, Te Upokorehe was well-placed to see the push of the commercial arm into the customary fisheries.

For example, the proposal to establish a rohe moana across the Mai I Nga Kuri a Wharei ki Tihirau forum was brought in by some of the MIO reps. Part of that was that Commercial Vessels should be able to obtain a Customary Authorisation/permit (for customary fish), from two nautical miles offshore, while at the same time limiting Tangata Whenua to fishing in their coastal waters, out to 2 nautical miles.

Te Upokorehe oppose this. It has gone ahead, but Te Upokorehe opposed it because we did not trust where this was coming from. Because of our previous experience with how we had been treated by those with commercial interests. And of course, it's not just the fisheries.

Another area where our rangatiratanga and kaitiakitanga is under threat, has come through the settlement of the Whakatōhea claims and the establishment of PSGE. It is yet another example of the Crown breaching Te Upokorehe treaty rights, while settling the grievances of Whakatōhea.

A direct example of how the PSGE is negatively impacting Upokorehe is the intention of the Whakatōhea PSGE to establish an enormous marine farm of over 1,000 hectares – only 4.8 kms offshore of the Ōhiwa Harbour, right across our MACA area. The size of the farm is on such an industrial scale, it may well upset the delicate balance of life within our harbour. Furthermore, we found out about it by word of mouth. There has been no engagement with Upokorehe nor any robust research on the impacts for such an industrial proposal.

The Resource Application ignored the fact that our Iwi Management Plan had been available on the Bay of Plenty Regional Council website since 2012,

stating that the Whakatōhea Post-Settlement Entity Iwi Management Plan was the only plan in existence. The application then went on to state that impacts would be minor, and therefore sought an exemption from notification under the RMA. Te Upokorehe oppose that.

That is yet to be heard. We wrote to the Council letting them know what our position was, and we understand a decision was yet to be made.

But the accumulated end result of all of this, one coming the after. It's felt very much to our people like an Oranga Tamariki uplift; where Te Upokorehe are the parents, who have given birth to, nurtured, and looked after that child; but whose rights have been wiped out through legislation that identifies which whānau can sit at the table where their child is discussed. This process hands over our child to third parties who more often than not, have claimed a dubious whakapapa tie to take legal control of the child, as the child, while very pōhara, has inherited significant assets.

Instead of corralling Upokorehe into outdated structures such as LNGs and PSGEs that create further grievances, there are alternatives.

I was really – I really am heartened to see very, very recently, I became of the Toha Network and the East Coast Exchange over in Gisborne, and I saw that as a totally different approach to the top-down LNGs and PSGEs. And I have only a very cursory understanding and I have only looked at their website. But it appears to be that by working with and supporting Tangata Whenua to take climate action at the land block, trust, hapū or even whānau level, what we have an opportunity to do is to work from the bottom up, and I also understand that there is a valuing and separation of the mātauranga and those who have the knowledge of the land from those who own the land. And for Upokorehe who have lost most of their land, that's a significant opportunity and it is one that we would like to explore further, apart from my cursory reading.

To address climate change, we need both macro and micro approaches.

Our knowledge system is an ancient one. Our Upokorehe experts, and are sitting with us today, are the knowledge holders and our whānau have the world at their fingertips.

When we had to gather customary evidence for the Takutai Moana, and you heard Trevor Ransfield speak to this yesterday, our experts visited all those waahi tapu, well over 100, they got out in the boat, they went to find the underwater ones, all the ones around the land. They did not download these from a website. It is their own mātauranga that was put into our MACA application.

Our research processes is unique to our lived reality. Not only has precious kōrero been handed down for generations, but the whenua, moana, awa, and the kaitiaki that dwell within them, know us of old. The atua, tipuna and kaitiaki have carried us throughout the destructive aspects of claims process.

They have come to us in dreams, and in prayer, and in our daily lives. They tell us where and when to look for certain evidence; where to go to find certain insights about the whenua, our whakapapa, and our history. They teach us how to interact with them in our world.

Yesterday, questioning from the Crown implied that Mātauranga Māori was seen as observation, and not research. That was already addressed by our people who that was put to yesterday, but I would like to refer the Crown official to look at work by Dr Kathie Irwin who has talked about Mātauranga Māori as epistemology, as methodology and as ontology – as knowing, doing and being. It is not just observations.

As an example, our Kaumātua describe Te Upokorehe's relationship with the tohora, with the whale, and when they talk about it they talk about it before the "arrival of the Waka People". It is a very ancient relationship.

Yesterday, you heard Trevor Ransfield speak of the beaching of 40 pilot whales from a pod of 70 at Ōhiwa.

The magnitude was a size that had never been heard of in our rohe before. I asked our uncles about it when that happened and they said maybe 75 years ago there might have been one, but something of this size was unknown.

REFERS TO BRIEF OF EVIDENCE #A044 FROM PARA 5

The Te Upokorehe Resource Management Team, Marae and whānau members worked alongside DOC, Bay of Plenty Regional Council, and the local community but unfortunately the entire pod had to be euthanised.

For Te Upokorehe, who have an age-old relationship with the whale, and consider them to be whānau members, the stranding was just a tragedy.

However, with whale expert Ramari Stewart, she then enabled us to carry out a customary recovery process of the heads of the entire upoko, for research purposes. Kaumātua Wallace Aramoana invited neighbouring iwi to send their representatives to work alongside Te Upokorehe and Ramari so everybody could benefit and share in Ramari's knowledge and experience.

The recovery involved several stages that took place over a year, at Roimata Marae. The whānau carried out this work alongside Ramari, fitting it alongside their daily lives and all the other commitments they had.

In 2016, Ramari brought a team of Te Waipounamu researchers to Roimata Marae for whale ear-bone research. Te Upokorehe turned Roimata Marae into a science lab. We have been informed that Te Upokorehe have recovered the largest familial collection that is known. While there are much bigger whale collections overseas, we were told we had the largest familial collection, and we had even recovered the upoko of a near term foetus.

When the pod beached, I remember kaumātua Wallace Aramoana saying to me their mauri and our mauri lie anchored at the Ōhiwa Harbour forever. And it couldn't have come at a better time for Te Upokorehe.

We understand from Ramari that a matriarch was ill, that there were lesions in her head which impacted her navigation. So, the pod would not desert her. Whenever she headed to shore, they came with her, they died with her. But the process that we could use brought them back to us within Roimata Marae, and they were set up as a whānau again when we had people coming to look at them and mihi to them. They were set up facing the sunrise and they all had names, and the beauty of that is our tamariki were coming in and going: "Kia ora, Pōhutukawa. Kia ora, Pōhutukawa," and patting them. So, our tamariki were able to be involved in this, we were able to reclaim the knowledge, but more importantly they were our whānau. They didn't go to some NOA laboratory. They were embraced within our tikanga and our tamariki were able to be part of that process and part of the learning, and that was a significant achievement for our whānau. And I remember being so involved down at the heads, in those sand dunes when we were recovering the upoko and bagging up the teeth and bagging up everything else, it was so hot, and I was just exhausted after 10 days doing that sort of full on.

And I remember driving home, back to Wellington, and I thought I would just pull up to the beach for a swim. So, I dived in, and I couldn't feel the water and I couldn't see the water all around me. I could see and hear the whales, and then I could see colours, and I thought no matter what we think we understand about kaitiakitanga, nothing can replace the lived experience of it. But I thought how blessed I was to have that one experience, but I also realised how our whānau and our iwi had those experiences every day of their lives. And now, we are hanging on. You've heard from our whānau, we are hanging on to hold what we have and to push back. And Upokorehe has been doing that and will continue to do so. But it is taking its toll, and the resources are not coming through, and it's getting even harder with some of the decisions that have gone on. So, from our perspective, it is about the relationships. It's about the relationships that we form within our rohe, with some of those significant groups, and we have had some significant MOUs that we are attempting to build, but it is a small iwi. And I think Maude said yesterday, a thousand things come at it at once and we have to pick and choose based on our own priorities, and it's not easy.

We are concerned that the threats posed by climate change, including algal blooms, loss of food supply, and changing water temperatures will kill these creatures or mean they no longer come to Te Upokorehe. As has been proven, a little funding can allow us to do a lot of research. That research was $10k, it was under 10k. In fact, I think it came in at about, what, 6 cents under 10,000. So we can make a little go a long way.

My message here today is that the people on the ground, the communities, are those that best know the threats and the solutions for them.

Kia ora. And we have a –

(11:20) MS SWEDLUND TO KAHUKORE BAKER:

Q. So, you heard Professor Williams' question of Ms Martin, if you would like to respond to that?

A. Yes. Kia ora, thank you for that. When I was doing some research for the MACA, there were two areas where that kōrero came, one was through our people talking about how things work at Upokorehe about that time following on from the raupatu, following on from the fact that land had been given back in the name of Te Upokorehe. But Te Upokorehe people were not necessarily the ones it was given back to, it was given back to other people from other iwi, and we were eked out in existence. But as out kaumātua have always said, we rely on the harbour for our kai, for everything in times of trouble. Now, what happened, there was a potato blight, and that failed the crops. But in this information, the failure of the potato blight and the impact on the Urewera came from Judith Binney, and it was – I think it was in my bibliography for another piece of work, but it was –

MR LYALL:

Yes, Ms Baker, we will be able to supply that reference to the Tribunal rather than you looking it up. Kia ora.

MS SWEDLUND TO KAHUKORE BAKER: (CONTINUES)

A. Thank you. So yes, we put that in from the MACA and it was also, I think, might've been quoted by David Armstrong, I'm not sure, in his work.

Q. Now, Ms Baker, I note that you have gone slightly outside your brief, and you prepared some additional speaking notes, is that correct?

A. Yes, I have.

MS SWEDLUND ADDRESSES JUDGE MILROY – FILE SPEAKING NOTES (11:22:31)

MR LYALL: (VIDEO EVIDENCE)

Tēnā koe e te Kaiwhakawā. **Thank you, your Honour.** We have been in correspondence with the Registrar about the copyright of the video that was filed concerning the pilot whales. Te Upokorehe advised me that when they undertook the mahi it was on the basis that they would retain their intellectual property, and they didn't see that there is an issue with it being shared, but we do want to be careful and make sure that we do have confirmation of that. So, what I would propose to do is to play the video but not have it entered on to the Record of Inquiry. It I think comes in at around six minutes long, and then turn Ms Baker over for questioning if that is an appropriate course for us to take.

JUDGE MILROY:

Yes, thank you, Mr Lyall, and the Registrar has advised me that it will be played for us but not on the livestream, so just to make sure we are not doing anything we shouldn't.

MR LYALL:

Thank you to the Registrar, you have beaten me to that request. I wasn't aware that it was going to be possible or not but thank you your Honour for accommodating us on that and I will keep seeking it from the copyright holder on it.

JUDGE MILROY:

Good, thank you.

MR LYALL ADDRESSES JUDGE MILROY – PREPARING TO PLAY VIDEO (11:24:12)

VIDEO EVIDENCE PRESENTED – NATIVE AFFAIRS – THE WHALE PEOPLE (11:25:15 – 11:32:35)

(11:32) MS SWEDLUND TO KAHUKORE BAKER: (CONTINUES)

Q. Tēnā koe. Ms Baker, do you have anything else that you would like to say?

A. Kāo.

Q. Ka pai. **All right.** The Crown and Tribunal may have some pātai for you.

(11:33) MR FONG TO KAHUKORE BAKER:

Q. Tēnā koe, Ms Baker. **Thank you, Ms Baker.**

HOUSEKEEPING – TIMING (11:33:08)

HEARING ADJOURNS: 11.34 AM

HEARING RESUMES: 11.35 AM

JUDGE MILROY:

Thank you. Mr Fong, over to you.

MR FONG TO KAHUKORE BAKER: (CONTINUES)

Q. Thank you, Ma'am. Tēnā koe, Ms Baker, thank you again for your very interesting and heartfelt evidence. I have just got some brief questions on your brief of evidence. So, can I just check you have got a copy in front of you?

A. Yes.

Q. Turning to paragraph 5 of your evidence, you have mentioned that you and others in Te Upokorehe worked alongside the Department of Conservation at the time of the whale stranding in 2014, is that right?

A. Yes.

Q. And can I just ask if you had a positive working relationship with DOC at the time?

A. I'd like to ask the kaumātua who were the ones leading that, if they could respond to that.

KAHUKORE BAKER ADDRESSES KAUMATUA – CONFERS WITH KAUMĀTUA RELATING TO QUESTION (11:43:31)

MR FONG TO KAHUKORE BAKER: (CONTINUES)

A. Āe. It was relationships that we had with local DOC staff, and the fact that if Ramari hadn't been the one leading it, no, it wouldn't have gone well at all. It was the relationship we had with Ramari, and they trusted Ramari because she was the expert.

[Unidentified Speaker] And then she upheld mātauranga, eh.

[Kahukore Baker] Yes.

Q. Thank you. And would you – and is it your understanding that the Department of Conservation is the government agency responsible for dealing at least from a government's eye, for dealing with marine mammal stranding events, including whale stranding?

A. The have a role.

Q. And would you agree that they have accumulated experience in dealing with whale stranding over the years as the responsible government agency?

MR LYALL ADDRESS JUDGE MILROY – LINE OF QUESTIONING (11:44:36)

MR FONG TO KAHUKORE BAKER: (CONTINUES)

Q. Well, Ms Baker, perhaps I could do this. What I'm going to do is put some of the Crown's proposed evidence to you about the relationship between climate change and whale stranding and you can tell me whether you agree or disagree of, or if you've got any comments to what I'm going to put to you. So, firstly, whale stranding has been occurring for millennia and it's not a recent phenomenon, would you agree to that?

A. I think with Upokorehe it is. So no, I would not agree with that.

Q. So, you don't agree in terms of the location of where it happened, but the stranding itself, you would accept is a natural phenomenon that has happened –

A. I cannot speak to a natural phenomena across the whole of Aotearoa. I am speaking to Te Upokorehe's experience. It is unique, it is new.

Q. And so, the second proposition that I am going to put to you is that there are many theories why whales would strand, but in many cases the cause is unknown and unlikely to be due to any one factor. Is that something you are in a position to –

A. Again, I would draw on the research understandings we got from Ramari with our whale stranding, and she talked about one of the, apart from the pollution, she talked about the fact that they were starving as well, and that has got a lot to do with climate change.

Q. And I haven't read the research that she prepared, but did she mention anything directly about climate change in her research report?

A. She didn't do a research report.

Q. So your understanding is based on your discussion and conversation with her?

A. At the time of the stranding when she pointed it out.

Q. And the next proposition that I am going to put to you is for a mass stranding events, strong social bonds of these whales may lead to a heard following a single sick or disorientated pod member into stranding. Is that something you can speak to or –

A. No, I'm not commenting on general comments. I'm representing the kōrero and the experience that Te Upokorehe had. So, whatever might be general research out there I am not going to be comment on because I'm not a lawyer.

Q. You did make a general comment, didn't you, at paragraph 11 when you say you're concerned that the threats posed by climate change will kill these creatures. So, is that **(inaudible 11:48:04)** at a level of generality or are you implying that –

A. It's a concern. It's a concern we have after we watched this whole pod be euthanised after they beached at our harbour. It's a concern.

Q. But at a level of generality, or are you saying – so you're not making a general comment that whale stranding is caused by climate change?

A. I can't make that comment. I'm talking about the Upokorehe experience.

Q. Yes. That's helpful. So just to clarify that you are not making the assertion that there is a general link between climate change and whale stranding?

A. No, no, I'm not saying that at all. I'm saying for our whale stranding, it is a factor. I'm not commenting on for the rest of Aotearoa. For our whale stranding, climate change is definitely a factor.

Q. And that just, at the risk of repetition, and that's based on the interaction you had with Ms Ramari Stewart at the time?

A. It was based on the whale stranding and our experience of that with Ramari.

Q. Thank you very much. I have got no further questions for you.

JUDGE MILROY:

Thank you, Mr Fong. I will just ask the panel if they have any questions.

(11:49) PRUE KAPUA TO KAHUKORE BAKER:

Q. Kia ora, Ms Baker. I just wanted to clarify from Mr Fong's question about the relationship with Ramari Stewart. Was she brought in by DOC or did she work for DOC or how was that relationship and her involvement in terms of the project?

A. Ramari has had a long relationship with DOC, and I remember her saying that she was at a seminar with them about four days before our stranding happened and she made the comment that there hadn't been one in the Eastern Bay of Plenty, and she said four days later it happened. So, she went up there, and because of her relationship with DOC she was able to work with us, and if she hadn't done that we would not have been able to recover anything. And because of her prior relationship, she came in and basically led the – she talked to our people and told us the options that we had by working with her, and DOC supported that.

Q. And when you say supported, do you mean financially?

A. I think there might've been some support for the initial stranding, but it didn't cover all the costs that we had.

Q. In terms of the work that was done at the marae and so on?

A. Yes.

Q. Yes, okay, thank you.

JUDGE MILROY:

Thank you, Ms Baker. We have no more questions.

QUESTIONS ARISING FROM MS SWEDLUND – NIL

MS SWEDLUND:

That concludes this portion of the evidence for Te Upokorehe. Just a waiata.

JUDGE MILROY:

Okay. Can I, just before the waiata, just thank you very much, Ms Baker, for your evidence, and very interesting and important project that took place at Roimata Marae in terms of the whale stranding, and we can only hope that it doesn't happen again.

MR PREBBLE:

Aroha mai, your Honour. Sorry, it's Mr Prebble here for the Crown. Before they close, I just wondered if it might be beneficial for the Tribunal and parties to have a little bit more in evidence on the Lodestone project that was referred to, and by that I just mean whether it might be useful to have a short supplementary brief that talks a bit more about the engagement that occurred with that project and the potential benefits that are coming out of it. It just seems like it might be something that is a good new story to some extent and shows the engagement that occurred with the iwi, but in your Honour's hands as to whether or not that is something that the Tribunal would benefit from. Thank you and sorry to interrupt there.

JUDGE MILROY:

So, the evidence would need to come from Ms Martin. I think it would be helpful just to have perhaps a short supplementary brief which might expand a little bit on the oral evidence that she has given about that engagement with Lodestone.

MS SWEDLUND:

Yes, Ma'am, we can arrange that.

JUDGE MILROY ADDRESSES MS SWEDLUND – TIME NEEDED TO FILE BRIEF (11:53:24)

MS SWEDLUND ADDRESSES JUDGE MILROY – FILING DATES FOR QUESTIONS IN WRITING FOR MS BAKER (11:53:43)

WAIATA TAUTOKO

LEGAL DISCUSSION – TIMETABLING (11:55:28)

HEARING ADJOURNS: 11.56 AM

HEARING RESUMES: 1.00 PM

JUDGE MILROY:

Welcome back everybody and I hope you have had an enjoyable lunch. I must thank the witnesses for Wai 3262 for being willing to come a wee-bit early. So, with no further ado I will hand over to you, Ms Kudrat, to lead your witnesses.

MS KUDRAT OPENS

Tēnā koe e te Kaiwhakawā otirā e ngā mema o te Rōpū Whakamana i te Tiriti, tēnā koutou. **Thank you, your Honour, and the members of the Waitangi Tribunal, greetings.** Ma'am, I will be leading Ms Bailey who is presenting first for Wai 3262. Mr Bennion will follow and will be leading Mr Pucher's evidence. Just checking you can hear us okay, Ms Bailey? Ka pai. You will be familiar with Ms Bailey, she and members of Climate Justice Taranaki presented evidence in November from Te Whare Hononga last November. We haven't filed opening submissions for this

particular hearing as the case open for us at hearing one remains, and our recommendations sought are set out in full in those submissions. We just wish to highlight that the point remains that the Crown is failing to act with sufficient ambition, and today Ms Bailey's evidence will highlight the following points:

It explains further what is meant by gross-net emission fraud, which was a question posed by Ahorangi Professor David Williams at the previous hearing. She discusses further what the claimants call fraud happening in Taranaki and provides further detail and updates on the Toitū targets and their document. Ms Bailey will be speaking to some slides which, my apologies, we filed rather late, so I hope everyone has a copy of those. For the Tribunal's record, Ms Bailey's evidence is at #A042 with an attachment #A042(a). So, if there are no questions, I will turn to Ms Bailey.

JUDGE MILROY:

Yes, thank you.

MS KUDRAT CALLS

EMILY BAILEY (SWORN)

Q. Kia ora, Ms Bailey. You filed a brief of evidence dated 16 March 2025, is that correct?

A. Kia ora. Āe, that's correct.

Q. Ka pai. And just for the record, are you happy to confirm the content of that brief of evidence?

A. Yes, I'm happy to confirm that.

Q. Kia ora. I hand it over to you to begin your presentation. Kei a koe, e hoa. **I pass it to you, my friend.**

(13:03) EMILY BAILEY: (#A042, #A042(a), #A042(b))

Kia ora koutou. Tēnā rā tātou e te Taraipiunara me ngā rōia me ngā kaitautoko ki Pōneke. Kei te noho au ki Taranaki. Ka mihi au ki ngā maunga o Te Papa-Kura-o-Taranaki, ki ngā manga, ngā puna, ngā awa e rere atu ana ki Te Tāpokopoko o Tāwhaki. **Greetings. Greetings to the Tribunal and lawyers and the supporters, those in Wellington. I am living in Taranaki.**

And I want to acknowledge the mountains of Taranaki, the springs, the rivers, waterways that flow out to the sea.

Greetings everyone. I am speaking to you from my home in Taranaki and I have got a presentation to share, so I'm just going to speak to that for about half an hour, but yes, lovely to see you all. I'm slightly nervous but this will be fine. So, I'm just going to try and share it. I'm used to doing what's on my phone than a screen, so hopefully this works. Can you all see? Okay. Can you see the screen now with the picture?

JUDGE MILROY:
Yes, thank you.

EMILY BAILEY: (CONTINUES)
Cool, thank you, ka pai. Yes, so a brief introduction for our group Climate Justice Taranaki. We are an incorporated society run entirely by volunteers that's been around for about almost 15 years working on mostly fossil fuel and extractive agriculture issues in relation to climate change and solutions.

REFERS TO PRESENTATION #A042(b)
So, just to bring you to Taranaki and just, I guess, reiterate that we are the energy province of the country as far as oil and gas goes. We have hundreds of wells in our rohe.

We also, due to the confiscation of our lands from our iwi, most of our whenua is under pasture. I'll just put that out there. For particularly the dairy export industry which, of course, has had a devastating effect on our forests, our wildlife, and our streams and our reefs, and of course the climate.

Sorry, I have to keep moving this thing around.
So, what this photo here shows is Employment structure by broad sector. So, the green is for Taranaki and the dark blue is for Aotearoa, for the country.

So, just something I wanted to highlight is that, so the mining industry here employs about 1% ironically, 1% of our community. Agriculture employs at the moment about, it's about 11%, and this has decreased in the last 24 years from 18%.

What you will notice on the right-hand side for you is where the red arrow is, is that most of our community is employed in manufacturing, and health care and social assistance, and construction. Which ironically is the sort of sector that the Government has been targeting with all the firing of people in Health care.

So yes, just wanted to sort of outline, this is kind of what makes up our community as far as employment goes. This is not particularly how the Government has been treating us as far as transition goes, but I will speak to that later.

What I wanted to talk about now is just going back to emissions for the country. So, apologies, this is quite small. Of course, our agriculture emissions make up the majority of our emissions, with dairy in particular making up over a quarter of our emissions, and that's not even including the international travel and the processing and manufacturing of the product, so it should actually be a lot higher.

If you shift to the side, this is a graph you've probably all seen around methane emissions compared to carbon dioxide and nitrous oxide. There's this kind of myth in the agriculture world that because methane emissions disperse faster than other greenhouse gas emissions then we can treat them differently. But of course this ignores the fact that we're not just going to slaughter all the cows tomorrow. The cows are going to be there for many years if the industry continues. So, of course, this has had an impact on our carbon reduction planning for the country. Our emissions, everything.

What we prefer to look at is the graph below it which talks about the methane cloud which shows how it has gone up over the years and it stays up. A lot higher than other emissions.

And if you go to the left, this is just a table around emissions per capita of – so dark green is carbon dioxide and the light green is other emissions. So, you can see that New Zealand is particularly – has a particularly high rate of methane emissions in particular per capita. Like, we have the worst in the entire world, so we need to take it seriously, and yet we're still not doing this.

So this graph you will have seen of course. I just want to highlight that this graph covers most of my life starting from 1977 where we started to head towards the sort of pinkie colour. My children come in where the dark red is. This is a reality that we've been facing with poor action from governments around the world, but particularly in Aotearoa where the temperature is just going up and up of course.

So, in my brief of evidence I was asked to talk a bit more about the gross-net accounting fraud, so I've provided a few pages in there and just wanted to really just reiterate the point, the problem with the gross-net accounting fraud is that it's grossly misleading, it's distracting from what we really need to do, and it's time wasting because this is an urgent crisis we need to deal with. And, you know, the definition of fraud is criminally deceptive to cause – what was it – private profit, personal gain, or being accredited with accomplishments. And I think you can actually say that with the New Zealand Government trying to look like we're doing better than we have been doing. And you'll probably know there's an LCANZI claim going on at the moment for several governments who are basically allowing the planet to be wrecked knowingly.

So, yes, this quote that I've included on the slide is from the Court of Appeal judgment on LCANZI's case, paragraph 88, and just wanted to point out the end where it says:

> Targets that represent comparable effort between countries would therefore appear weaker in terms of headline rates of reduction for countries with high rates of removals in the base year (like ours), which is challenging to communicate internationally.

I mean, what they mean is it's embarrassing because we're trying to hide the fact that we haven't actually reduced the emissions when we have, and we've used forest to do this when we said that we wouldn't. But I will leave this for James Every-Palmer to talk more on, on Friday, when he speaks.

I did want to touch on another graph that was included in there just from paragraph 85 from the Minister's Cabinet Paper. So, interestingly, it shows the different types of targets you could have. So, for the third one down is Equal emissions per capita (during 2021-2030), just around 80%. Or if you go to 2030 it's about 70%.

So, what our group wants is we want the 100%. We want actually more than 100%. We want drawdown, and I'm going to talk about that more later. And in this graph it's called the equal responsibility for warming (from emissions since 1850), since the industrial period. So that's our target.

Yes, so I guess, yes, we've had years of government poorly acting on this climate crisis, which of course led lots of groups around the country to protest around the ending of oil and gas and coal and, you know, other polluting industries in the country, and we've finally got the, well, semi-ban in 2018.

So, following that announcement we've had a whole lot of strategies come out, particularly in Taranaki. We had the Tapuae Roa Strategy which came from the Mayoral's forum. Then we had the Taranaki Roadmap which came from the business sector under the Venture Taranaki. And then they produced other things, and then the Government put money into Ara Ake. So, all of these things were funded by rate payers' money and taxes where they were all driven by the business sector. They were all, like their governance boards, they're made up of business companies. They have perhaps one or two community or iwi representatives, but they're outnumbered.

So, that's what I'm trying to say, is that Government is paying for business to write our transition strategy for the country, and that's not what they should be

doing. And not only that, the solutions they're coming up with are terrible. So, I mean, we talked a little bit about carbon farming and that, you know, you're trying to use something that already exists to cut emissions which are not cutting, which is just an accounting fraud. We need to cut emissions, actual emissions.

When it comes to carbon capture, most of the research that's used to say that it works is done in, you know, experimental situations on a small scale. There are no real examples of this working, and a lot of it is showing that it does not work, which is why it hasn't really been picked up around the country because it's a myth.

And we notice in the Emissions Reduction Plan No 2, it's even used in there as an excuse to say that we can drill more gas. So, it's been used to increase extraction of fossil fuels and greenhouse gasses without the proof that it will actually capture the greenhouse gasses.

When it comes to dairy exports, our group goes on and on about this. That 95% of what they produce is exported, and when we don't have fossil fuels or any other fuel to process and transport it overseas, then that industry is going to collapse and there is no plan. Like, I've been going to these dairy conferences and saying: "What's your plan when we don't have fossil fuels?", and they just stand there blankly. So, to think that we can continue that industry, and that's a core of our community, is just insanity.

And then if you look at hydrogen, you know, there's a reason that it's never taken off after being around for decades. So, things like it's highly dangerous, it leaks a lot, it has a greenhouse gas 33%, so 33 times worse than carbon dioxide. To create the infrastructure for hydrogen has a massive carbon footprint, and the main thing is, is that it has a terrible return on investment. It's really expensive and you might as well just use a renewable energy to create it in the first place.

Lastly, offshore wind turbines. We've had quite a few companies trying to move in here over the last few years. This is a very expensive industry and there's only four ships in the world that can actually install them, and they're all stuck in the North Pacific where there's more money. And basically to produce a wind farm here offshore has a massive carbon footprint. And so, if you're going to do it you have to be a massive company with a massive market. And so, they're not doing it for New Zealand energy uses, they're hoping to do it to export the energy as hydrogen, which goes back to the previous false solution.

But I mean, the funny thing is that what the Government's been doing lately has actually pretty much killed this industry. I went to the last conference which was on last week and there was about 20% of the participants we've had over the last few years, and two companies have already left. So, that's not an industry that's going to really get off the ground without a lot of money coming from who knows where.

And so the last one is EVs for everyone. This is another solution that the Government's been pushing a lot. You know, to switch your car to an electric car. Mine the planet for platinum of which there is not enough for every single car. Mine the planet for lithium and all these other minerals, and it's just completely unsustainable. It's basically trying to extract out way out of an extractive capitalism disaster. So yes, the government is pushing business solutions which do not work.

And I just want to reflect on this, and apologies, this is a very busy slide. I listened to a webinar yesterday from an Australian anthropologist called Nick Bainton who has been looking at the effects of mining on indigenous peoples, particularly in the Pacific, over the last few decades.

So, the first table you can see, these are all the different minerals or some of the minerals that renewable energy companies need over the next few years. You will see there's nickel, lithium, copper, graphite, rare earth minerals, cobalt. The light blue is the minerals needed for renewable energy. So, it's massive amounts that they're trying to take out. But of course mining is the problem of

why we have climate change. So, he talked in the webinar a lot about how this is a compound exposure. So, you have communities in the Pacific who are highly affected by climate change, then you have mining companies come in and want to mine their already damaged communities and whenua to take minerals out to create false solutions of massive renewable energy, which causes more impacts on those people and then increases emissions which causes climate to get worse, not better, which has more effects on those people. So, it's that compound exposure. I'm just repeating, you know, the mistakes we've done before, but at a time that we cannot afford to do that.

So, the pictures on the side are just of Nauru, which of course New Zealand mines, pretty much mined the whole island to cover our green pastures with their superphosphate. And you'll know the disasters in Papua New Guinea with Civil War and the mining and pollution over there. At the moment there's I think 87 existing and potential mining projects that they want to do there. A lot of them for minerals for renewable energy. But I will move on.

So yes, this gets us to our Toitū Taranaki 2030 Plan, which is solutions from the community where we're not focussed on business things, we're focussing on human needs, community needs. So, business tends to go we've got a problem with this energy, let's just swap it out for another energy. We don't do that. We're trying to do what the Transition Engineers do which is to say: "Okay, this is our problem (climate change), we need to get to this situation where we don't have these emissions, say, 100 years in the future. How do we get there? What will it look like?" So, we go back in time to what it looked like before, and then we try and find projects to go from the past to the present, which is a completely different way from the transition plans you're seeing coming out.

So, just to quickly go through, so if we look back at energy use, which is the table at the bottom. So, in 1924, so this is just post-industrial period, we didn't use much energy, and of course it's increased massively. So this map only goes up to about 1994. So, what we're saying is all that extra energy we need to get rid of. We need to replace it with efficient renewables that don't harm the planet and people, or we just need to use less energy.

And again, on the other graph, this is the one that's mostly black, this is pollen data. I think I talked about this the last time I spoke. So, this is looking at how much forest cover we had and how much agricultural crops we had in the country back in the time before the industrial period. So, that's where we look back to.

So, we did energy targets, agriculture targets, and reforestation targets. So, our energy targets, we have four main ones, which is basically to cut fossil fuel domestic production and imports by 2030 and bans on new exploration and production. Energy target two was to phase out fossil-fuel based transportation. Target three was to phase out all fossil-fuel use in agriculture, and target four was to get energy production, transmission, distribution, and pricing under public control.

Because as you will see in our plan one of the problems is when things got privatised it just pushed the prices up and then the energy use became very unequitable. So, this is the table that we had our in our plan and we just sort of made some notes on it where we're at now, four or five years down the track.

So, the red is where we've backtracked. The grey is where we've really not made any progress. And the yellow is where we actually have made some progress, so there is some good news. But of course the big red ones up the top, if we can't cut our emissions then, you know, we're just doing good things in a worse things situation rather than making the situation better.

So, yes, the main thing is, is that the Government has decided to reopen mining. They've changed the speed limits back up or they're trying to push them back up, and they're just things like just really not moving stuff on private vehicles, still telling people that they can use gas into fibre infinity units, still encouraging trucking and travel and all of these things, and just doing – yes, they're not doing as much as we had hoped on public transport and those issues.

So if we go to the Reforestation Target One, this is the phase out importing and exporting timber and shift forestry markets in Aotearoa predominantly towards the domestic market.

So, Reforestation Target Two is to establish a sustainable forestry industry that makes all ongoing domestic consumption by 2030 consisting of a minimum 2.2% of total land area or 0.587 million hectares. So, that's a reduction of current exotic forests by about 5.6%.

The Reforestation Target Three is to establish a total permanent carbon sink from native forest, tussock land, wetland, scrub and duneland at a minimum of 60% of total land area of 16 million hectares by 2030, which is an increase of about 25%. So, that's going back to that Collin data of how it was, well, almost how it was pre-industrial. Because we do, you know, accommodate that there's no more people living here than there was at that time.

Reforestation Targe Four is to reform the ETS or switch to a carbon charge by 2022, that caps emissions, stops international offsetting and free allocations, includes agriculture, and sets a price that will reduce emissions sufficiently to meet our targets. Which none of that's happening.

So, if we go to agriculture now. Agriculture Target One is to phase out all fossil-fuelled processing of agriculture products by 2028 and fossil-fuelled transportation for agriculture by 2030. Target Two is to phase out natural gas-derived and imported fertilisers and feeds for agriculture by 2025. And Target Three was to shift central and local government plans, policies, bylaws, and banking rules to allow subdivisions and mortgages for smaller rural land blocks by 2022. So, that's basically saying shift out of the big export dairy industry into smaller farms feeding local markets while opening areas for people to actually live, so the housing.

And you will see in our Action Plan table, yes, we've gone backwards on the gas. Going backwards on stock out of waterways. And timber, I mean, there was those two timber manufacturing companies that shutdown before

Christmas so that they could at least pay their staff out. The Government did nothing. Yes, and then the backtracking on the predator free work by cutting funding there. The only, well, we've kind of made a little bit of progress on the coal processing, but we're now, you know, opening up coal mines. Yes, and a lot of the other stuff hasn't shifted.

So I guess what we can say is that – so we can have targets, and we have things we want to do, but you need the people to want to do them. So, where we're really trying to focus now is the social change needed. So, we need the political change, the legal, and the economic shift, which at the moment is going backwards, and we need the cultural shift as well as values and behaviour, and again that's also going backwards because of the other. So, we're seeing a rise of, you know, racism and protectionism and less of the working together and focussing on protecting the most crucial things like the environment that we all need to live off.

So, you know, what we need is this massive input into education around transition. We need councils and communities to be talking about what is actual real transition, what is the real goals that we need, not just shifting the dairy industry into hydrogen or the oil and gas industry into hydrogen and offshore wind. Yes.

So, we have an action plan on that, and as you can see a whole lot of that has gone into red. So, capital gains tax, wealth tax, support for ownership, that's all going backwards. Carbon tax doesn't have a hope. We have more homelessness than we did before. Social housing looks like being paused or sold off, and the living wage is not moving, and of course we've seen cuts in education and health care and public transport and the, you know, issues with our Māori wards in council, yes, it's not good.

So, I guess what I want to finish with is just – so this is an article from the paper yesterday, or *Radio New Zealand,* talking about, you know, the tariffs disaster and the economic crisis where we're just heading into now with Trump's quite insane policies. And I guess what we're saying is that, like, we knew things like

this were going to happen, perhaps not quite like this, but we know that the future – like, what we have now, the way we live now is not sustainable. It needs to change. And so, we can either go into apocalypse and crash, or we can plan for it.

And so, you know, this is why we often talk to farmers who are complaining about greenies telling them to get the cows out of rivers. It's like, you know, you can complain about us trying to protect the environment but without you protecting your environment your business goes under. If you can't export your product your business goes under. So, we're trying to do these things to help you to understand that these are real problems that we need to solve in the community and not just pretend, like, blinkers on it's not happening.

So yes, just I guess my final things, so we want things like:

- Growing resilient communities, not climate crises
- We want to grow community wellbeing, not greed
- Want to grow rural communities, not emigration

You know, there's a massive number of kids and farmers leaving

- We want to go to local markets, not global trade
- We want to grow quality food, not export commodities
- We want to grow local manufacturing, not import reliance
- We want to grow papakāinga, not prisons.

I'm just going to stop sharing and I will leave that there. Kia ora koutou.

MS KUDRAT:

Kia ora, thank you, Ms Bailey. If you could just remain there for some questions from claimant counsel, the Crown, and the Tribunal, but I believe it might be time for a five minute micro break, so if we can just get you to stay on until then.

JUDGE MILROY:

Yes, thank you, Ms Bailey, and Ms Kudrat.

HEARING ADJOURNS: 1.31 PM

HEARING RESUMES: 1.38 PM

JUDGE MILROY:

Thank you everybody. We are now resuming.

(13:38) MS KUDRAT TO EMILY BAILEY:

Q. Sorry to interrupt, your Honour. Just before I hand Ms Bailey over, is there any final points you would like to conclude with, Ms Bailey?

A. Yes, thank you. Sorry to cut you off. Yes, just something I forgot to mention is I wanted to just give a couple of examples of real transitioning that's been happening here. So, just one is with Parihaka Pā. So, I'm the chairperson up at the pā. In 2022, we had a major flood which affected several house and made some of our whānau homeless. And so, since 2022 to hopefully the end of this year we've been doing flood modelling, assessments of wetlands and streams, like, major assessment of what we need to make our pā climate resilient. And so, at the end of this year we should basically have had all the infrastructure upgraded to get those houses out of the flood zone and to get all of our septic tanks and our water fire hydrants fibre climate resilient. And I think, you know, that's only, what, three years, if we can do that as a small community with some Government funding then everyone should be able to do that. But I guess as another example, for my whānau, we've been on a piece of land where I'm privileged enough to have bought it when it was cheap. It's about two acres. When we moved here the land was about 90% pasture. There was cows and sheep on there before with a house. We've now shifted that in the seven years to about 70% of trees. So, we grow probably about 70% of our own food, and that's throughout the year because we store a lot of food. We've got our own power, solar, our own heating in winter with our own trees, and we do our own water, our waste, and we've also advocated for a bus to get our kids to school in New Plymouth every day and ourselves to meetings and things that we do. So I think, you know, if we can do that in that short time other people should be able to do that if we help them, because our carbon footprint is

ridiculously small now and that's how we need the rest of the country to shift. But that's everything, thank you.

JUDGE MILROY:

Thank you, Ms Bailey. We're now going to have questions from other counsel, the Crown, and the Tribunal, and the first person on the list is Mr Lyall, so over to you, Mr Lyall.

MR LYALL:

Kia ora, your Honour. Thank you for your evidence. I'm sorry to disappoint or may not disappoint, but having heard your evidence I don't have any questions today.

JUDGE MILROY:

Thank you, Mr Lyall. Sykes and Co, Mr Vincent?

(13:41) MR SAM VINCENT TO EMILY BAILEY:

Q. Thank you, your Honour, yes, I will ask a question. Tēnā koe, Ms Bailey. **Thank you.** I understand that there are many particular targets with real transitions that Climate Justice Taranaki has identified need to happen, but if we zoom out to the national level, and of course we have the nationally determined contributions and the issues that you've identified with that, what should we be doing with targets on a national level, and is it appropriate at all for net emissions to be part of those targets?

A. Yes, good question. Kia ora, Sam. Yes. Net emissions, no. We need real reductions in emissions. We need to actually cut the fossil fuel industry, we need to cut the dairy industry, agriculture, and the same with emissions from transport and waste and manufacturing. Yes, and so, our targets also are too weak. I mean, we're all heading for 2 degrees now, and we're only just starting to see the effects of 2 degrees of warming which, you know, people are dying, species are going extinct, and it's only going to get worse. And we're going to be lucky if we can keep it at 2 degrees. I gave up on that ages ago. I think we're probably heading for 3 or 4 degrees, and that's serious. Millions of people dying, massive

extinctions, you know, forests burning. Like, we can't rely on the forest to suck up all our waster. They're dying themselves. So yes, the Government's just not taking it seriously and pretending this is going to go away by doing some fancy accounting is the way we see it.

Q. Thank you. I don't have any further questions.

JUDGE MILROY:

Thank you, Mr Vincent. It's over to the Crown now.

(13:43) MR PREBBLE TO EMILY BAILEY:

Q. Tēnā koe, Ms Bailey. Ko Jeremy Prebble tōku ingoa. Kei konei ahau mō te Karauna. **Thank you, Ms Bailey. My name is Jeremy Prebble for the Crown.**

A. Tēnā koe.

Q. Thank you very much for your evidence today. I just had some questions about that evidence that you provide on gross net fraud, which is the words that you used in your evidence, and I note that you have in your recent evidence attached the submission of LCANZI to the Climate Change Commission which was the on 22 March 2021. You are familiar with that?

A. Yes, yes.

Q. And you will understand that at that time the submission wasn't followed by the Climate Change Commission, you would agree with that?

A. Yes.

Q. And that ultimately led to the litigation that was undertaken by LCANZI against the Climate Change Commission, I assume you'd agree with that too?

A. Yes, yes.

Q. And you have in your evidence encouraged I think the Tribunal to read the LCANZI submission, and you also refer to the High Court decision in your evidence. You're aware I take it now that you've also referred to the Court of Appeal decision that that litigation has been determined against LCANZI in this case?

A. Yes, I'm aware of that.

Q. And that, just for the reference of the Tribunal, that decision has been put into the record by coordinating counsel for the claimants and it's at Wai 3325, the number is #3.3.15(a). And so I assume you're aware in that case that LCANZI argued that the Climate Change Commission made four errors, and one of them was determining to use the starting point for measuring emissions as gross rather than net accounting?

A. Yes, yes.

Q. And you didn't have – I appreciate you didn't have the benefit of that decision when you actually prepared your evidence for this Tribunal, so it was a later addition, and obviously you've referred to it and you've put in one of the paragraphs from Officials to Cabinet into your outline that you just provided, but just wanted to ask you the question of whether or not that decision changes any of your evidence that you had prepared for the Tribunal this year?

A. Not that I'm aware of. I mean, I've only had a skim read of the decision, but I think we still stand by what we said.

Q. And I guess without wanting to therefore get into or go through that decision, I would say it is a useful decision for the Tribunal because it highlights the reasons behind the Climate Change Commission's advice on the gross net accounting, would you agree with that?

A. I'm not sure. I mean, like, the claimants weren't asked to pay for the court fees so, you know, there was merit in their case, and I'm assuming that they're going to continue with the case, and we'll hear more from that from James Every-Palmer on Friday. I still think there's an argument to be had there. I still don't think what the Government's been doing with the accounting is correct.

Q. Well, without I guess getting into it, my question to you might therefore be, and I think it's probably for the benefit of everyone we don't delve too far into that court decision, but you're not asking this Tribunal to revisit or overturn that decision, are you?

A. Sorry, I'm not aware of how the courts work, so I'm not sure if I could answer that, but we're just here to talk about our claim and the Government doing more on climate action.

Q. Okay. I will leave it there, thank you. I just wanted to turn now to some more, possibly, more practical matters, and I understand you advocate for the Tribunal to recommend targets in the Toitū Taranaki document for the Government. That's the gist I take from, for example, your paragraphs 34-37, is that a fair reading of your evidence?

A. Hang on, I'll just quickly check.

Q. Yes, no, sorry, take your time. So, it was at paragraphs 34-37. I guess my question is, I understand you are putting forward these targets and the, I guess, the practical things you can see being done as something for the Tribunal to consider ultimately in perhaps making a recommendation to the Government, and is that a fair summary of what you're trying to achieve here?

A. Yes, it is, yes.

Q. And look, I'm not – the Crown obviously hasn't filed its evidence, I'm not looking to contest necessarily the figures that you have there at this point and certainly not without the benefit of Crown evidence, but I am – you've obviously thought about this a great deal, and so I am very interested in how this might work with the current legislative framework that we do have in place at the moment, and before perhaps coming to that in a more practical sense, obviously your Toitū Taranaki targets and what you've put in there, I mean, as a general level they're not the same as, for example, what is in the Climate Change Response Act as it currently sits, is that fair?

A. Yes, yes. Very different.

Q. And I understand you're familiar with how the Climate Change Response Act operates broadly speaking?

A. Yes, broadly speaking, yes.

Q. For example, you would be familiar with the overall target that is set for 2050 and that has obviously some criticism attached to it from certain people because it's not a, you know, in terms of zero emissions by 2050 and there's a different emission target for methane.

A. Yes.

Q. And you'd be familiar perhaps with the regime in terms of it having beneath that there's kind of budgets that we operate to, and they're set in

that regime on the advice of the Climate Change Commission, are you broadly speaking familiar with that?

A. Yes I am, yes.

Q. And in order to get, therefore, to that target, the Climate Change Commission which is specifically tasked to provide independent advice to the Government, it puts in place recommendations, and then the Government ultimately has to make decisions for each of those budgets as a, if you like, stepping stone to try and get to that target at 2050, does that sound correct to you?

A. Yes, that's correct.

Q. And so, okay, just coming back to your recommendations that you've helpfully provided in your evidence, are you – perhaps if I put it this way. Are you seeing those as fitting within that legislative framework or are you thinking that that legislative framework itself needs to more systemically change?

A. I'm not so clear with the lingo, but yes, I mean, the plan doesn't have enough substance. I mean, the targets aren't good enough basically and the plan to get there is just too, like, it's too technical. It's not grounded enough that these things are actually going to happen. And we've seen over the decades, my entire life, that these things don't happen unless they're grounded in real community buy-in, business buy-in. Otherwise it's just numbers on paper. And I mean, you know, emissions are going up however you want to read the reality on that, but yes, the situation –

Q. No, thank you, and I understand your broad point there. Are you aware that the Climate Change Commission itself has an ability to review, for example, the target that is set in the legislation and has indeed recommended there be a change to that to the government?

A. Yeah I'm not aware of what the recommendation to change it is, so I haven't kept up on that, but I have little faith in the Climate Change Commission to be honest. I just – I don't know if you want to talk about that, but we've been watching what they've been doing over the years with sacking the Māori department, you know, having these compromised people sitting on there, commissioned. Yes, I think there's issues there as well.

Q. No, thank you, I really was just interested in whether you had thought about how your recommendations might practically be able to, I guess, work in with the existing legislative framework and perhaps what I'm taking from your statement is that you see there needing to be more ambitious change, and perhaps that's both at the legislative level but also in terms of the actual planning documents under them. Is that fair?

A. Yes, I'd agree with that. And I think we've been saying that in our submissions on their drafts for a while now.

Q. And I guess to really just wrap that up therefore, are you hoping out of this, and your claim, for the Tribunal to provide recommendations that might be at odds if you like therefore with what the Climate Change Commission is recommending to the Government?

A. Yes, I guess it probably will be, but yes, we'll see what happens with the Waitangi Tribunal. I mean, yes, I know there's heaps of pushback from the Government on the Tribunal as well, so it's tricky.

Q. No, thank you, I just was really interested in how practically this might lok, so thank you very much for your evidence today and answering my questions. Those are my questions.

A. Thank you.

(13:54) PROFESSOR DAVID WILLIAMS TO EMILY BAILEY:

Q. Tēnā koe, Ms Bailey. **Thank you, Ms Bailey.** Just first, can I just acknowledge, that looks like your mother behind you there?

A. My aunty.

Q. Your aunty. That's one of the people I think of as the Parihaka aunties that I met perhaps during the Aila Taylor Te Ātiawa claims on Motunui-Waitara, is that right?

A. Yes. This is Vera Bezems or Wharewera Bailey who was one of the lead writers of that claim, yes.

Q. Good, well thank you. So, as Crown counsel has just indicated, they will of course be providing evidence in due course, but I just want to thank you for taking the trouble to go through this gross net accounting in the detailed way you have in this brief of evidence, and Dr Every-Palmer who we will hear on Friday has provided similar material. I think the difference

is you use the word fraud quite frequently and he doesn't actually use that word, but you're both dealing with this gross net accounting theme, and what you just said in your presentation just now is that that helps us to probably look as though we're doing better than we actually are is what you said just this afternoon.

A. Yes.

Q. And my question goes back to your paragraphs 8-10 of your written #A042 brief, so if you have got that in front of you, so it seems from your evidence that all of this goes back even prior to the Kyoto Protocol, and that New Zealand – this is what I want you to clarify for me, New Zealand all along, even before Kyoto was signed up, was one of the countries with significant interest in forestry that led to the idea of gross net emissions becoming part of the agreement and then the Paris agreement after that. You go on to say in paragraph 10 this was a major change with huge impacts for Māori. So, is your evidence that what you call a fraud, the gross net accounting, using gross figures at one point and net at other points, is something that's been pushed by successive New Zealand governments from prior to the Kyoto Protocol right throughout to the present day?

A. Yes, I mean, that's what it looks like. Yes, I mean, they say one thing and then they do the other. Like, they say they're not going to use the forest and then they do use the forest. It's, you know, there's examples as well with, like, the carbon capture, not going to use it and then they are going to use it and then the hydrogen trucks, they said it was going to be used for trucking and then they're not going to do that. So, you know, there's just like constant misleading of the public of what they're going to do and then they just do what they want. Does that make sense?

Q. Well yes, I'm just trying to clarity that this idea of using different measure, not using gross-gross or net-net, but gross for some and net for others. That's an idea that's been around – it's been argued about, according to your paragraph 8, so while the Kyoto Protocol was being negotiated. What you say there, there was an argument that only direct reductions in emissions should be counted. I take it that would be your preferred position, is that right?

A. Yes, (inaudible 13:58:41).

Q. Yes. Well, the atmosphere actually sees I think you used the expression.

A. Yes, yes.

Q. I think you used or maybe Dr Every-Palmer used. But that would be your position?

A. Yes. Like, it's the emissions that are up there now and that we're creating now which are important, not the ones in so many years which the forest might do something about but might not if they're burned to the ground.

Q. Okay, kia ora, thank you for that. Now just one other just little technical clarification just to get my mind around these things. I've done a tiny investigation and I find for such things as short tonnes and long tonnes and metric tonnes, and it depends whether you're British or American as to between the short and long tonnes, but what you and Dr Every-Palmer and everyone else in the Climate Change Commission, you're all talking about metric tonnes, usually spelt tonnes rather than tons, and it's a metric system. So, you've got your mega tonnes and your giga tonnes and all the rest. And just for clarification, because once upon a time I was confused as to whether a billion was a thousand million or a million, million.

A. Yes.

Q. And we now I think all call a billion a thousand million, is that correct?

A. Yes, it depends which country you're from, yes.

Q. Well, it depends which country you're from originally, but now when we're having all this climate change discourse all around the world we are using the same term, are we. It's a metric tonne system. When you're talking about –

A. That's my understanding.

Q. – metric tonnes of CO2 equivalents, you're using the metric tonne, and in that system a billion is a thousand million.

A. Yes, that's my understanding, yes.

Q. Right, good, okay.

A. Definitely metric.

Q. Well, if there's any changes to that let me know or let the Tribunal know.

A. Yes.

Q. But it's an astonishingly large figure of CO2 emissions that are being pumped out over the last couple of years, I guess you're going to agree with that, aren't you.

A. Yes definitely, yes.

Q. Okay. Well the remedies are up for further consideration but thank you for your evidence and for your time, kia ora.

(14:01) KEVIN PRIME TO EMILY BAILEY:

Q. Tēnā koe. **Thank you.** I had the same reservations as Professor Williams really, was the use of the word 'fraud', and I think your answers have helped me to verify how you were defining fraud, and I suppose being a farmer myself I think I think practically and try to understand what your issue is, is that the targets do not go towards reducing emissions at the moment. Is that partly what you say?

A. Yes, well, the sort of wishful thinking that in 2030-2050 we'll get them down, but there's no real plan for that.

Q. Yes. And also that planting forests is really just to offset emissions, isn't it? It doesn't reduce emissions in itself planting forests?

A. Well, yes, that's a tricky one. So, I mean, it does reduce emissions, but it's not something we should rely on because we've already cut a lot of the trees in the country. Like, we need to replace those trees and then cut the emissions as well from the fossil fuels. So it's replacing the trees shouldn't be the remedy for not reducing emissions. Does that make –

Q. And –

A. Like, trees are needed, but not in that way, like, the whole carbon farming thing –

Q. But it does –

A. It's just a way to make money for some people by pretending to do something.

Q. It does offset emissions though. That's the objective, isn't it. Planting more trees.

A. Yes, as long as the trees are alive, they do, yes. Yes, for sure. It's just, you know, we're heading into a crisis where if we keep burning fossil fuels those trees – I mean, we're seeing the Amazon trees are dying, and same

with Northern America trees are just dying because they can't handle the temperatures or they can't handle new diseases and changes in species that normally would keep things in balance. So, yes, we need the trees, but we can't rely on them as an offset. Does that make sense?

Q. Just changing the subject. Your mentioned about how you're surviving on your 2 acres, and you mention that 70% of the food that you produce. What do you not produce on that – what's the 30% that you've got to buy?

A. It's the silly things that we should actually stop, the things like chocolate and wine and bread, those kind of things. Which, you know, we could do some of it ourselves, but it's just quite time consuming.

Q. Yes. So there are ways around – could you ever get it to 100% I suppose is what I'm asking.

A. Yes, I mean, we could if we just did away with the luxury stuff we could. Like, we grow our own fruit and vegetables and beans, some nuts, yes. It's just a kid's thing where we would rather have food in plastic bags like what the **(inaudible 14:05:10)** do because we're not normal, but actually we're living sustainably and climate resilient.

Q. And you use electricity on your property?

A. Yes, we've got solar panels on the roof, yes.

Q. Okay, that's fine, thank you, Ma'am. Thank you.

A. Kia ora, Matua.

(14:05) JUDGE MILROY TO EMILY BAILEY:

Q. Thank you, Ms Bailey. Just one further question before I get into my own questions, following along the track that Mr Prime was following, and that is I am presuming because you're buying bread it's because you're not producing the wheat to make the bread?

A. Interesting question. Yes, we've been trying over the years. The problem is we have all these new bird species that come in and eat the seeds. So, we did an experiment this year with a cage, which worked really well, but just the labour to process it is quite intensive, and then to have a cage which is enough wheat to grow what we eat is just hard, but we've done things like growing maize. We've got chestnuts now we're trying as a flower. Yes. Other grains.

Q. Well done. Well done, and I think you must definitely deserve the chocolates for the effort in there. Sorry, my questions are a bit more mundane because I don't read graphs very well.

A. Sorry.

Q. So, if I can take you – I hope you have got a physical copy of your PowerPoint presentation today, and I just need to check that I've understood what I'm certain of the graphs are telling us.

A. Yes.

Q. So, the first one that I'm looking at, you had the slide about the employment structure in the region and that's okay. It's the next one, and it says Figure 2 on the left-hand side, Gross greenhouse gas emissions percentages in 2022 by sector, category, and gas type, and I can understand that clearly enough. And then on the right-hand side there's the 31 January 2021 Draft Advice for Consultation, and it shows at about 2020 the green amount for methane, and I'm just clarifying or making sure that I've understood that the way it goes up so steeply is showing how much heating the methane in the atmosphere – not how much heating it does, but how much it causes heating.

A. Yes.

Q. And then it falls off reasonably quickly, and then goes down to quite a low level over by 2200. Whereas the blue line for the carbon dioxide emissions goes up less. So, it's heating – the amount that it causes heating, yes, is less than methane, but it doesn't drop off over the hundreds of years.

A. Yes.

Q. So I've understood that. Then there's another one, nitrous oxide I think it is.

A. Yes.

Q. Yes. Okay, so I've understood that. Can you just tell me, at the bottom of – I'm just wondering where this graph came from?

A. So, this is the – I think this was a Climate Change Commission draft consultation.

Q. Okay, yes. I've assumed that they are from the Climate Change Commission's reports or productions –

A. Yes.

Q. But I just needed to make sure that that was where they were coming from, that's all.

A. Yes. If I could just speak to that. I mean, I don't know exactly where the data came from, but my guess is it's come from the agricultural lobby, because they always push this thing of over 100-year periods methane is so much better, but over a 10 year period methane is so terrible. And what I wanted to point out with this graph is that sure it goes down like that, but that's if you stop producing the methane, but if you – so that's slaughtering all the cows. But if you don't then that stays up as well, which is the graph below which shows the line continues.

Q. Right, yes.

A. So it's misleading.

Q. That was the next graph that I wanted to check with you, is that yes, it's showing it going up and at one point very steeply, but they're also showing – that graph also shows a red line for net additions: 5 year MA, whatever that is, and of course it's much lower, and I just wondered if you could explain to me what that red line was about.

A. Yes, to be honest I can't remember, but I'm guessing that's the planting. Yes, I could get back to you on that, I'll have to find the original document.

Q. Yes, if you could that would be good, thanks. Because –

A. Yes, I'll put it in writing.

Q. Okay, thank you very much. And I've just got one more to ask you about. And the last one I want to ask you about is the slide just before the Toitū Taranaki 2030 page, and this is where you've produced the graphs showing nickel, lithium, copper, graphite, rare earths, and cobalt, and I didn't quite catch what you said. I think the pale blue was what was being extracted or what was needed to be extracted?

A. Yes, sorry, it's very small on here as well. So, yes, the light blue is minerals needed for so-called clean energy and the dark blue is minerals needed for other uses.

Q. Right, and your evidence is that in fact we don't have enough of these rare minerals in any case to support some of the proposed solutions for capturing carbon or EVs for everyone and so on –

A. Yes –

Q. We just can't – besides the other issues about extraction of these kinds of minerals and the conditions on which they're extracted and so on.

A. Yes, yes, that's correct.

Q. All right, thank you, and one other question not about graphs, you've shared with us these plans which would show how we could become carbon – get to carbon zero, and it is rather daunting to see the points where we've gone backwards and the points where we're not making any progress at all. Fortunately there is a bit of yellow there to show that there's some progress being made. My – you've said that you've been able to make the changes necessary to be basically carbon zero and self-sufficient almost as well. What – my question is that in undertaking any of these things such as, well, we do need to phase out oil and gas production eventually and they are going to – they're diminishing resources in any case, and there were various other things that you've mentioned here such as disincentivising on essential air travel, and as you say, it's going to take a lot of political, social, cultural will to make the changes. So, it's quite a restructuring of our society, and I suppose I just wanted to make the comment that we have undergone these kinds of restructures before. So, you know, you are an example of that that we can do it and we don't necessarily have to live as cave people to do it. Well, I think that's a lot of the concern that people have that we're going to end up living a lifestyle that's very, very difficult to – and involves an awful lot of hard physical work and may not be sustainable to our life, for our life expectancy and so forth. Do you have any further comments you might want to make about that? Do you find your life restricted by the lifestyle you've chosen?

A. No. I mean, I should note that we're quite privileged and that we managed to find some land that was really cheap because basically the farmer's children, there were too many of them to own the farm sustainably, so they sold it off, which is happening all over the place, and they sold it off cheap because they have houses and jobs elsewhere in the country, so we were lucky. And also, we don't have a mortgage, and we're educated so we can work online, and we can, you know, we know how to use things

efficiently and carefully. So, this is not for everybody, but if enough of us can do this and we can help others, you know, if those who can't do the physical, if we can do the physical work for them and they can, I don't know, play us a song or whatever, or you know, just knowing that they are well is enough for us to be okay to support them. I guess, yes, like, we get this a lot particularly from our mayor who's now flipped to being pro-mining, is that there's this terrible fear of living in caves and life being not so good, but the thing is, like, we are not going to move to caves, but life is going to get harder, and as soon as we understand that that is the reality and we can either plan for it or we can fall into it in a chaotic situation where we have the white supremacists out with their guns, you know, we've got to choose. We can't just pretend it's not happening and keep going until it's a disaster. We've got to plan for it, and we've got to protect our people, and yes, we can see the government's not doing it; we can see the political will's not there, so I mean, our job as a group is trying to encourage our iwi and our community organisations to work together to do it ourselves on the ground.

Q. Well, thank you very much for your presentation. It is good to have examples of how things can work, without – and in a no-carbon economy, so thank you very much for coming again to present to the Tribunal, and I will just hand you back to your counsel in case there are any further things they wish to ask you just for clarification or other purposes.

A. Thank you.

QUESTIONS ARISING FROM MS KUDRAT – NIL

HOUSEKEEPING – TIMING (14:18:11)

HEARING ADJOURNS: 2.18 PM

HEARING RESUMES: 2.29 PM

JUDGE MILROY:

Welcome back everybody. We are continuing with Mr Bennion.

MR BENNION:

Tēnā koutou. Ngā mihi ki ngā kanohi o te rā. **Thank you. Thank you to the faces of the day.** So, we return today with Mr Pucher on my right, but for your left, whatever, and we're up at his house in Wellington. So, you may hear planes come over occasionally but hopefully they won't be too bad. And Mr Pucher's evidence is being presented here as a witness for Climate Justice Taranaki, it's #A041 in front of you, it's to provide the Tribunal with information about the difficulties, advantages, and disadvantages of having carbon credits on Māori forests. It's presented in that manner as a good example to look at the problems. So, I will just get this evidence in.

MR TOM BENNION CALLS

ADRIAN MAXIMILIAN KEEPA PUCHER (SWORN)

Q. I just want to confirm, Mr Pucher, that your name is Adrian Maximilian Keepa Pucher, yes, correct?

A. Yes.

Q. And you produced a brief of evidence called #A041 for the Tribunal and with attachments #A041(a), is that correct?

A. Yes.

Q. Okay, and then confirming that's your evidence for the Tribunal?

A. Yes.

Q. Yes.

MR BENNION ADDRESSES JUDGE MILROY – PRODUCED FURTHER EVIDENCE – PRESENTATION (14:30:39)

TECHNICAL DIFFICULTIES (14:31:23 – 14:32:40)

(14:32) ADRIAN PUCHER: (#A041, #A041(a), #A041(b))

Kia ora. My name is Adrian Maximilian Keepa Pucher. I am of Austrian Māori descent. And what we're talking about today is a township called Pipiriki on the Whanganui River.

REFERS TO POWERPOINT PRESENTATION #A041(b)

(inaudible 14:33:06). Ruapehu te maunga. Whanganui te awa. Atihaunui a Pāpārangi te iwi. Ngāti Kura te hapū. Ngāti Kura. **Ruapehu is the mountain. Whanganui is the river. Atihaunui a Pāpārangi is the iwi. Ngāti Kura is my hapū.**

Okay. The picture we have here is, in red, is those areas that are part of the Pipiriki Incorporation. From there you can see the Pipiriki township plays a central role in it, and in terms of an incorporation Pipiriki is very unusual that not in its centre is not farmed or forestry, it's actually a township.

What these next two graphs, diagrams are showing is in this case slope angles. Now, this plays an important part in how forestry is developed in the area.

This one, again, same area, but what it is, it's forest erosion susceptibility. Now, if you look at the red parts of the graph, those are the highest, the steepest slopes. Over the top of it you see some lines. That is part of the forestries that we have. So you can see that a lot of the forest is on quite steep susceptible land and erosion is quite dominant in some of those areas.

What these pictures show is just some of the areas, especially in terms of most of them are slumping, and you can see a lot of slash coming down from all that slumping.

MR BENNION TO ADRIAN PUCHER: (#A041(b), SLIDE 7)

Q. Sorry, Mr Pucher, do you want to just explain, these pine trees in these pictures, do you want to explain what the forestry company has been doing with some of the trees?

A. Well, the good trees they obviously take out, whereas, as you can see, there's a lot of slash as well in there, and it's just left on site. So, the risk, there is a risk of it running into Te Awa Tupua.

Q. Is the forestry company able to get all the trees off those slopes or –

A. No, no. Safety issues stop that from happening. The other thing I might comment quickly is, is that the soils in the area are quite thin, but they tend to slide along the papa, which causes these slumps and creeps.

ADRIAN PUCHER: (CONTINUES #A041(B) FROM SLIDE 9)

The picture you have here is another one of the forests, but in this case, you can see the trees at the front. Due to the inability of the forestry company to cut those trees, they've actually just gone in and poisoned it. Now, at the moment we're having a bit of a disagreement with them because we want them to prove that this has not affected all the soils around it from seepage into the system, because at the moment we are negotiating a lot of hand backs from the forestry company due to the uneconomic nature of some of the blocks.

MR BENNION TO ADRIAN PUCHER: (CONTINUES)

Q. While we're there, do you want to briefly explain how the land got the forest in the first place? It's in your main evidence and I know the Tribunal would have read it.

A. Yes.

Q. But let's just go briefly through that.

A. Initially most of the area was covered obviously in natives, but at the time of the Think Big projects, the then Prime Minister Sir Robert Muldoon came to us and said: "Look, we need forests for the two mills and the pulp mill in Karioi. So, what we want you to do is to plant these in pines." This wasn't a choice of our, it was basically a demand from the then Prime Minister that, "you plant forests, pines, or else you'll lose it and then we'll plant it".

CONTINUES #A041(B) FROM SLIDE 10

This is just a brief explanation of how the New Zealand carbon price is determined.

The NZ carbon price is determined through an auction process in the carbon market. The government issues a set number of carbon credits called New Zealand Units each year, which emitters can buy to offset their emissions.

The demand for NZUs is driven by businesses and organisations that need to comply with the NZ ETS and individuals who voluntarily purchase carbon credits for environmental purposes.

The supply of NZUs is determined by the government and can be influenced by factors such as emissions caps, international carbon prices, and the political will of the government that is in power at the moment. When demand is high and supply is limited, New Zealand carbon price increases, and vice versa.

The Pipiriki Incorporation has 5,267 Hectares under lease. The liability if it is not forested $20,000 per Hectare. The 100% of the leased land was unforested. That would come out to roughly around $105 million. The Incorporation was given 81,840 credits to mitigate this. The value of those credits is worth just over $5 million, $5,060,167.2. The value of the credits is roughly 4.8% of any actual penalty.

MR BENNION TO ADRIAN PUCHER: (CONTINUES)

Q. Do you want to briefly explain when you were given the credits and how they were given?

A. As part of the forest, our ownership, carbon credits were transferred over to us, but again we really had no choice, and of course they could be useful at a later date whether it be to develop areas of the hapū or to mitigate unplanted areas.

Q. How is it decided how many credits you've got?

A. In terms of the number of credits – I think it's per hec – sorry, I can't tell you that one.

Q. Do you know why you didn't get enough credits to cover the whole plots?

A. I think it was due to the acreage, and that's what it came – oh, why we didn't get – well, it was the way it was calculated that we didn't get enough to cover any penalties.

Q. Did you have any say in how that was **(inaudible 14:41:04 - coping)**?

A. No.

CONTINUES #A041(b) FROM SLIDE 12

This graph or table is basically if a certain area – how much percentage of area is left unforested, what the hectares are, and what the deforestation penalty will be. And as you can see, if all the land was deforested, 5,267 hectares, it would come out at just over 105,340,000, which 5 million doesn't even take a small bite out of that. As you can see, as it slowly goes down, it's somewhere around 4% that those 81,000 credits cover the potential penalty if it's there.

Now, of course, the machinations on this is that there is a lot of variability in the carbon credit market. So, we're at the whim of the ETS system, and any potential deforestation areas we will have to cover which clearly from this we will never be able to do.

MR BENNION TO ADRIAN PUCHER: (CONTINUES)

Q. Now, you've said in the slide a carbon credit price of $61.83 as at 4 April 2025?

A. Yes.

Q. So you're indicating by machinations of the market –

A. Yes.

Q. – that could go up or down?

A. That could go up and down very quickly depending on the political environment it looks like at the moment.

Q. All right. Do you want to explain this –

CONTINUES #A041(b) FROM SLIDE 13

What this one here is just the potential risks of deforestation. On the left shows a couple of blocks where there's land creep and slumpage. The middle two ones are revolved from a forest fire that occurred in 2015. The isolated area, unfortunately the forestry company did not keep their fire POMS up to scratch, and so ultimately they ended up having to use the Whanganui river for the choppers. The one on the right, basically was just an interesting thing where they said they thought it was a comet or part of a comet that actually caused the forest fire. At the moment, we're in a very unusual situation as has been seen on the news, the forestry company up there has had to close its mill and pulp mill. Now, potentially the forestry company could walk away due to these

uneconomic conditions and won't replant, and so yes, then we have that penalty clause within the ETS just coming in. Now, just as an example, over the last week, they've actually pulled all the crews out of the Waimarino Forest for the next four years, and they also want to hand back a lot of uneconomic land.

MR BENNION TO ADRIAN PUCHER: (CONTINUES)

Q. Okay, and who is the owner of the forest?

A. The owner of the forest is Ernslaw.

Q. And where are the owners located?

A. Indonesia.

Q. And what is this slide about?

WITNESS REFERRED TO #A041(b), SLIDE 14

A. This basically shows us the cost of replanting. Purchasing and planting around $1500 per hectare. Post plant spraying at $1000 per hectare. Other associated costs, around $500 per hectare. Which gives a total of around $3000 per hectare to bring it up to ETS standards. Down there, you can see that if 100% of the area was needed to be forested, replanting costs would be just over $15,801,000, going down 1% which is $158,000.

Q. And in terms of replanting, what species are you replanting at those costs?

A. In this case, we've been looking at natives.

Q. How would pine replanting compare roughly?

A. Pine replanting is far cheaper where a sapling would cost somewhere around about $1.50-2.00, whereas some of the more native species would cost for a sapling around $5-10.00.

CONTINUES #A041 FROM SLIDE 15

The quote here is from a forestry manager we are using to renegotiate a lease with Ernslaw and – no, yes, that's it. Okay, this is just a quote from our forestry consultant, he said:

"I think that all Pipiriki is compliant with the New Zealand ETS pre 1990 standards. The key issue for Pipiriki is that the forest is low margin and even worse with the closure of Karioi."

Now, this obviously falls back to the type of land it was planted on.

"So it is likely the forestry right will terminate as the trees are harvested."

Which then we would incur costs on that.

"Then you will have a replant problem as it will be uneconomic to replant, but you need to maintain forest cover and that will come at a cost.

You are not alone as I suspect a number of leases between Opotiki and Ruatoria are in exactly the same position as yourselves, Karioi as well.

Your Pre 1990 carbon credits partially compensated for the loss in land value, it didn't compensate you for the need to keep the land in forest when that is uneconomic."

MR BENNION TO ADRIAN PUCHER: (CONTINUES)

Q. And have you got any further comment on that?

A. No.

CONTINUES #A041 FROM SLIDE 16

One of the things clearly with the carbon credits is it can benefit those that do not have major income. Now, this is a problem on the Whanganui River, and it could be used to benefit the people.

The NZU is a very volatile market and can fluctuate wildly as you can see from the graph.

The political environment and the statements made by politicians have an effect. In other words, if a politician in the government says we should pull out

of the Kyoto Protocol, you can basically imagine that the price of carbon credits would then drop dramatically.

But you also have to remember, you may be under an obligation to spend this money on replanting to meet ETS standards.

What this is here is, it's a – if you would have seen about a month ago a carbon trading company called Tāmata Hauhā made an agreement to lease carbon credits off the Ngāporo Waimarino Trust which is just north of Pipiriki.

Now, we did at one point think about this, but due to the taxable nature of what we were negotiating it became uneconomic for us. The main problem being is the pre-1989 legacy credits are not taxable. But what would happen with the company, Tāmata Hauhā, is that they would sell those credits and any credits that came back would be I suppose you can call them normal credits, and they would be taxable on sale. That is one way it's occurring.

The other way is if we look at a place Jerusalem which is just to the south of Pipiriki, they've actually borrowed money off Tāmata Hauhā for replanting of carbon sequestering trees, and then Tāmata Hauhā will take a percentage of carbon credits to cover their costs.

This is just a report from Moana Ellis on that agreement.

My conclusion.
There is a potential in selling your carbon credits, which means, as I said, you can spend those carbon credits on things that help the community, but there are risks involved, which means you're at the whim of the market to some extent, but also that the forestry lease meets your requirements.

Now, in terms of Pipiriki at the moment, it has a ground rental. Now, with what's happened within the Waimarino area, Ruapehu area with the company pulling out of the forest mills and the pulp mill, it potentially could mean that the value

of those forests will decrease at the next, because they're not in that much demand, at the next leasing point where we have to renegotiate the lease.

Leasing, like the Tāmata Hauhā model, seems to be a good option as long as you can mitigate tax changes and the potential failure of the company you work with.

But above all, what we would like to do is regenerate all our areas into native vegetation and promote all native species in the area. But clearly, this is quite an expensive operation, and it would be beneficial if we could get help on that.

MR BENNION TO ADRIAN PUCHER: (CONTINUES)

Q. When you say help on that, what do you mean?

A. In terms of financial help.

Q. Right. And just in that last slide you've said leasing seems to be a good option. That's leasing of the credits, yes?

A. Yes.

Q. As long as you mitigate tax changes and the potential for the company you work with to go under.

A. Yes.

Q. What company do you mean there?

A. I think any carbon credit trading company.

Q. Okay. Anything else you want to add before we give it back to the panel?

A. No.

MR BENNION ADDRESSES JUDGE MILROY – FURTHER QUESTIONS (14:53:18)

(14:53) MS MAITHILI SREEN TO ADRIAN PUCHER:

Q. Tēnā koe, your Honour. It's Ms Sreen here on behalf of Mr Lyall. Just confirming you can see me and hear me?

A. Yes.

Q. Tēnā koe, Mr Pucher. **Thank you, Mr Pucher.**

A. Tēnā koe.

Q. I only had one question for you, and you might have actually answered it when you gave the Tāmata Hauhā example.

A. Yes.

Q. At paragraph 37 of your evidence you talk about a problem you faced would be owing a large tax bill on any transaction because of the way tax rules treat NZUs issued pre-1990 forest land.

A. Yes.

Q. Are you – the tax rules, are you talking about those that you talked about when referring to the Tāmata Hauhā example?

A. Yes, the thing is pre-1989 credits are what are called legacy credits. They don't carry a tax if you sell them. But if you were to transfer those shares across to, in this case let's say Tāmata Hauhā, they would then use that tax exemption. So, any credits that come back to you would have a tax on them.

Q. And so, how does this affect your decision you might make on trading NZUs?

A. Well, that – without going into too much detail because I'm not really allowed to, with that potential tax break disappearing it means more could come back on to us in terms of tax, and that was one of things that, let's say, stopped us from going down that track.

Q. Kia ora. That was all from me, Mr Pucher, thank you.

A. Kia ora.

LEGAL DISCUSSION – TIMETABLING (14:55:34)

HOUSEKEEPING – TIMING (14:56:00)

HEARING ADJOURNS: 2.56 PM

HEARING RESUMES: 3.30 PM

JUDGE MILROY:

Welcome back. We are at the point where the Crown to be questioning Mr Pucher, so over to you.

(15:30) MS SEELEY TO ADRIAN PUCHER:

Q. Tēnā koe, Mr Pucher. Ko Grace Seeley tōku ingoa. **My name is Grace Seeley.**

A. Kia ora.

Q. Kia ora. I just have a few clarification questions to start. Do you have a copy of your brief in front of you?

A. Yes.

Q. Great. So, at paragraph 14.

A. Yes.

Q. In and around paragraph 14 you say that 6,871 hectares of the broader forest was stocked in Pinus Radiata.

A. Pinus Radiata, yes, yes, that's on point 14, yes. We use a figure of 5,267. I'm not sure how that got…

Q. Okay. Sorry, what was that figure? Five thousand, six hundred and…

A. Five thousand, two hundred and sixty-seven hectares.

Q. Right, thank you.

A. That came from an email from our secretary the last couple of days.

Q. Is it possible for the brief to be corrected on that point?

A. Yes, no problem.

Q. Thank you. And then just zooming out to the broader forest in the paragraph above, paragraph 13.

A. Yes.

Q. From some quick maths, the broader forest is about 14,000 hectares, is that right?

A. Yes.

Q. And so –

A. Being – sorry.

Q. Sorry, you go. You go.

A. I was just saying, being 3,855 hectares freehold and 10,000 hectares Māori lease land. Yes.

Q. Yes, thank you. So, if 5,267 hectares is stocked in Pinus Radiata, what is the remaining 9,000 hectares stocked in?

A. Probably natives, different native species.

Q. Okay, thank you. And then moving to paragraph 18.

A. Yes.

Q. A few questions about this paragraph. You say that some areas of the forest have become uneconomic.

A. Yes.

Q. What portion of the forest would you consider uneconomic?

A. I don't know if I could answer that question. I don't think it's really ever – unless we use the table on, Table 3.1, on page 7.

Q. With the proposed hand back areas?

A. Yes.

Q. Okay, thank you. So, when you say they have become economic, does that mean that they have become worse over time?

A. Yes. You saw from those earlier pictures blocks that had slumping on everything on that and there was a lot of slash coming down. Those sorts of areas, yes.

Q. Okay, thank you.

A. And I suppose you could also include – sorry – those areas that are too unstable to be cut. And that was one of the reasoning behind the poisoned trees, because Health and Safety will be compromised, they actually tried to go in and cut those ones.

Q. Sure. So jut staying on the unstable land that you mentioned in your introduction and with reference to the PowerPoint that erosion is quite dominant on the Pipiriki lands?

A. Yes. That's a factor, there are two factors involved in that. One is the steep land itself, but the other is what comprises the soils and of course the papa underneath where it basically slips off it.

Q. I understand. So, are you aware of the Hill Country Erosion Programme?

A. No.

Q. So, Crown evidence will cover this in time, but as I understand it, it's an MPI programme that supports councils to plan more and treat erosion-prone land. There are a number of options as I understand it, tree planting, retirement of land and reversion to native forestry.

A. MPI, okay, that'll be interesting to find out more about.

Q. Ka pai. **All right.**

A. Ka pai.

Q. And still staying with paragraph 18, you say that the Pipiriki Incorporation as landowner is responsible for deforestation liabilities, but as the landowner has no control over the forest management, is that correct?

A. The forest is managed at this stage by Ernslaw Forestry.

Q. Understood.

A. But ultimately it will come to the Incorporation war. Having to take responsibilities as land blocks get handed back up to 2070.

Q. So, 2070 is the end term for the lease –

A. Yes.

Q. End of the term for the lease?

A. Yes.

Q. Okay, understood. And on the issue of potential deforestation liabilities, have you engaged with MPI about that risk that you perceive?

A. No, not with MPI.

Q. Okay. Are you generally familiar with the Emissions Trading Scheme provisions in the Climate Change Response Act?

A. A little bit.

Q. Understood, understood. So, on that basis, are you aware that section 180 of the Climate Change Response Act does provide some cover for, as I understand it, the sort of situation that Pipiriki might be in?

A. I do understand there are parts of the ETS scheme that says these lands will never meet the requirements of ETS standards, and that, yes, they can be taken out of it. I assume that's what you're referring to?

Q. So, section 180 as I understand it provides that the landowner, so Pipiriki in this situation, is not liable for deforestation if there is no control over the decision to deforest, provided other requirements with MPI are met.

A. Yes, no, yes, I understand that. Of course, the point being is we had no choice in terms of that because we're forced into putting the forestry there, whereas it would not be a choice we would normally make in putting the forestries in there because of the unsuitability of the land for pine plantations.

Q. So, just a question to clarify, when you say that you were forced to put the forests there, you're referring to the Think Big era of projects that you refer to in your evidence?

A. Yes, that where they required trees for the mills.

Q. Okay, thank you. Moving to paragraph 19, you refer there to an assessment of the commercial return of the Waimarino forest?

A. Yes.

Q. Who made that assessment?

A. Some of it was done – I'm not sure if that was the Treasury one that said that. Our assessment was done by Treasury, and they said that it was – there was never going to be a good commercial return for local Māori landowners.

Q. My read of your evidence, and please tell me if I'm wrong, was that the Treasury assessment was done earlier in the time period, and that assessment was from 2010 but –

A. Yes, actually I can't tell you who done that assessment, whether it was done on our behalf or someone else, sorry.

Q. No problem. Thank you. So, in paragraphs 20 and 21, you continue to discuss deforestation liabilities and your concerns about liabilities applying to the land because the leases were entered into prior to the establishment of the ETS, and so the terms of the lease didn't take the ETS into account.

A. Into account, yes.

Q. Is that correct?

A. Yes.

Q. You also refer at 21 to another assessment about the ETS requirements. I have the same question about who made that assessment, but kei te pai if there's no answer available. But part of that assessment at 21 was that natives would not regenerate rapidly enough to meet the ETS criteria, is that correct?

A. Yes, and that is one of the major concerns because we would rather go and plant natives, so regenerating area rather than putting pines in, so yes, that was a concern.

Q. Okay, understand. So, I'm just going to take you back to another provision in the Climate Change Response Act. So, are you aware that section 179 of that Act allows, as I understand it, for an extended – for a

20-year time period to be applied to indigenous plantings to obtain sufficient canopy to meet the ETS requirements?

A. No, I didn't know that. We always thought that due to the slow nature of development of native trees that it would meet the ETS standard. That's the way we always –

Q. Understood.

A. – understood.

Q. In your view, would a 20-year period for native plantings be sufficient to meet canopy requirements?

A. I couldn't really answer that question because it's not sort of my line of specialty. Twenty years, probably not, because some of those trees can go to about 100 years et cetera.

Q. Okay, understood, thank you. Staying with natives, moving to paragraph 28 of your brief, where you say, as you just said, that you have a strong preference for planting natives.

A. Yes.

Q. You say throughout your evidence that planting natives is viewed to be much more costly and with a lower return than planting exotics. Is that correct?

A. Costly, yes. Lower return, the whole point of going into natives was not in terms of return, it was to regenerate the forest to bring in all the native species back in there.

Q. Yes, just at paragraph 33, you do mention the lower return.

A. Yes, yes, due to the length of time it takes for those native trees to be, let's say, productive.

Q. Productive from a harvesting perspective?

A. Well, no, from an ETS perspective.

Q. From an ETS perspective.

A. Yes.

Q. Understood. Thank you. Have you heard of – are you aware of the One Billion Trees Programme?

A. Yes.

Q. And did you engage with MPI about that programme?

A. Yes, we have, and we still are to some extent.

Q. And what was that – what did that engagement entail?

A. Taking blocks of land that normally had sort of scrub et cetera on it and converting it to native mānuka and a certain number of tall trees as well. So, there was a specific number of tall trees you had to put in, there was a specific number of smaller varieties like mānuka to put in.

Q. And did you receive funding through the One Billion Trees Programme?

A. We do.

Q. You do?

A. We do.

Q. Great, thank you. Is it fair to say that your evidence is that overall the ETS and the associate potential liabilities have been imposed on you without your consent?

A. Yes.

Q. E.g., that you've been locked into the scheme?

A. Yes, well, basically we're forced to put the forest on, the forest had ETS in it, or had an ETS component with it, and we had no choice on it, yes, so we had to. Now, we've had them for at least, what, 20 years the ETS credits – and it's only now we've started thinking about potentially using them, but we have to mitigate those risks that were involved in using them.

Q. Understood. And as a general premise, do you agree that all landowners are subject to some form of regulation managing land use?

A. In terms of the RMA, yes.

Q. And in respect specifically of the ETS and obstacles for planting native species in particular, do you agree that those obstacles are mainly a consequence of exotics being more economically viable than native species?

A. Yes, well, the thing is, the lease – say, take the lease for Pipiriki, it is for three 30-year leases. And in that time they will get three cuts. Whereas, in terms of natives that wouldn't occur. So yes, in terms of economics, it was far better to put pine in there than slower growing native species.

Q. Understood. But would you agree that the ETS has no ban on the planting of natives?

A. We are – it's not a ban, but it's, you know, we would rather you put Pinus in there so to make a profit out of it.

Q. Understood, thank you. At paragraph 35 –

A. Yes.

Q. – you say that your view of ETS has changed over time as you have become more familiar with the scheme, is that correct?

A. I wouldn't put it in those terms. We are more confident now of using the ETS scheme to help us, whereas over the past 20-30 years it was just, "oh god, we better leave them there", you know, in the form they're in now, just in case something goes wrong in terms of the forest. Whereas now, we're saying okay, renegotiating the lease a specific way, and so hopefully we can mitigate those fears that we've had over the last 20-30 years.

Q. Yes, as you've become more confident in interacting with the scheme.

A. I think we've become more confident in taking the 81,840 carbon credits and actually using them to benefit the community and all our shareholders.

Q. Understood. Would it be fair to say then that your view of the ETS has become more positive with time?

A. It's a scheme that we had to go into. Now, if you take it in terms of, you know, mitigating CO2 levels et cetera, I have very big doubts on that. You know, we just have these forests, and someone who is a major polluter just comes in and says: "Look, we'll pay you such and such for your carbon credits." But they're still polluting exactly the same amount. So, to some extent that's where I agree with Climate Justice Taranaki.

Q. Yes, I understand, but for you specific – I take your point about the operation of the scheme in the wider context, but specifically for Pipiriki, has the ETS been a useful tool?

A. No, because all those shares have done, those carbon credits have done, is sit in one location, and we've never been able to – well, never had the confidence to actually use the value they represent.

Q. And what would it take to give you the confidence to use the value they represent?

A. I think a better understanding of the system but having the right people in the right place to actually give us confidence to use it, whether we're talking about leasing carbon credits or selling carbon credits. Are we more confident in that? Yes.

Q. Understood. Those are all of my questions. Thank you very much for your evidence and your responses today, Mr Pucher. Ngā mihi nui. **Thank you very much.**

A. Ka pai, thank you.

(15:50) PROFESSOR DAVID WILLIAMS TO ADRIAN PUCHER:

Q. Kia ora.

A. Kia ora.

Q. Thank you for your evidence. Your land is adjacent to an awa that I'm familiar with having gone up and down on the old wheel –

A. The steamboats –

Q. The steamboats in the past.

A. Yes.

Q. Being pulled around the rocks by horses and ropes and stuff and done some paddling and even jetboating as well.

A. Yes.

Q. So, it's an area I'm familiar with, although from the river you can't see too much of those hills up beyond. The questions I had have all been put to you by Crown counsel because I'm interested in the native trees option that you obviously favour. So, the Tribunal's task is to put forward recommendations to the Crown, what sort of recommendations would you have that would make it more possible for the vision of planting natives to meet the climate change issues rather than putting in more pines and then cutting them down and then having all the other problems.

A. I think there should be an element of the native trees bring up a more native diversity. You know, we're talking about the – we have one project in Pipiriki with Ngā Whenua Rāhui which is called Te Matapopore, and what that does is it charts what is happening to a certain block of land over the Matariki cycle, and it's an absolutely fabulous project. But if that was – I think there has to be more, a better understanding of putting native

trees into the ETS scheme and understanding that these grow slower. So, that has to be taken into account.

Q. Yes. So, is access so impossible that mānuka plantings for honey and so on are an option for you on your Pipiriki lands?

A. A lot of what we do is plant mānuka as much as we can on some of the blocks, because that doesn't, as far I understand, that doesn't gather ETS units, which would be good if it would. Now, yes, we do a lot in terms of putting in mānuka for honey, and we have an agreement with an apiarist in the centre of the North Island for that, and that has been beneficial in a lot of ways in terms of Pipiriki.

Q. Right, yes, as a young farmer's son I cut down a lot of damn stuff, it was called a weed. But anyway, the world has changed.

A. Yes.

Q. If you've got any further thoughts about this could you let your counsel know so that when they make their final submissions we can hear more about the native reforestation options would be great. Thank you very much.

A. Ka pai.

(15:54) BASIL MORRISON TO ADRIAN PUCHER:

Q. Thank you, Mr Pucher, kia ora.

A. Kia ora.

Q. Can I just ask you on the second to last page of your slides you have an article there that's attributed to Moana Ellis.

A. Yes.

Q. Local Democracy Reporting. How recent is that?

A. In the last month.

Q. Okay, thank you.

(15:55) PRUE KAPUA TO ADRIAN PUCHER:

Q. Kia ora, Mr Pucher.

A. Kia ora.

Q. Thank you for your evidence. I just, on that slide that's got the three, it's about five in that's got the three –

A. The three pictures, yes.

Q. Yes. And you made a comment about safety issues stopping the removal of that slash on the site. Can you just tell us a little bit more about what those issues involve and why that can't be taken out?

A. Well, a better person to ask, that would of course be the forest manager, but from what I can see is, as I said, the soils on the top tend to slip along the papa underneath so making it very unstable. And so, the forestry company, due to all that slumpage and slipping and creeping, is unwilling to do it because of safety issues to cut them.

Q. So, it's within their realm of policies or procedures that stop this on the safety.

A. Yes, yes, that's why they want to hand back certain blocks of land because it has these slumps and slips on them, and of course it would then be uneconomic for them to cut it, so they don't want it.

Q. Right, thank you, kia ora.

A. Kia ora.

(15:56) KEVIN PRIME TO ADRIAN PUCHER:

Q. I just had one question. Do the – is the ETS obligation on the landowner or the lessor?

A. As long as the forests are there it's not an issue. It's when the forests are cut or land, like you see in those three photographs, is handed back that the obligation then becomes on the owners of the land.

Q. On the owners of the land.

A. Yes. But that's only after, in our case, that land has been handed back.

Q. Okay. Ka pai tēnā, kia ora.

A. Ka pai, kia ora.

(15:57) JUDGE MILROY TO ADRIAN PUCHER:

Q. Kia ora, Mr Pucher.

A. Kia ora.

Q. I've just got a few questions because I am interested in this Tāmata Hauhā proposition. I wasn't quite clear. Is your trust or incorporation considering this, going with them, or is it just something that

you know about and have raised as another way that the ETS can be used?

A. Have talked to the Tāmata Hauhā? I hate that name because I always get it wrong. We have talked to these people, yes. Now, the deal that was talked about by another trust, the trust Ngāporo Waimarino, we actually are in the same offices, so we get to hear a lot about what they're doing as well. But would we consider it? I think we will probably, yes.

Q. And I'm just interested, as you've said there are blocks of land or pieces of land that the Ernslaw is wanting to return to you.

A. Yes.

Q. Because it's uneconomic. Is there still, like, old forest, you know, on those spaces?

A. There are – we can't go back to the map. But there is a block of land called Whakaihuwaka C13 on the opposite side of the river. Yes, that is old timber.

Q. Right, so, and if a block like that is handed back –

A. Yes.

Q. – it's not deforested as such.

A. No.

Q. Although, it's not taking up carbon anymore.

A. No.

Q. But you don't become, as far as you know, you don't become liable under the ETS?

A. I think that only – as far as I understand, that will always be forested.

Q. Yes.

A. So yes, there's no liability in that.

Q. Right. So, it's only the land that's been harvested –

A. Yes.

Q. – but is handed back. Because there are other reasons why, apart from the difficulty of the land why a forest on a particular piece might become uneconomic.

A. Yes.

Q. Such as falling markets and so on.

A. Well, as I said in the presentation, at the moment, what we all know, basically what's happened to Ernslaw in the centre of the North Island. Now, a lot of their forest are the Waimarino Forest they used to put for the mill and the pulp mill. Now, again, they are pulling out their cutting crews for the next four years. Now, to some extent, that's quite good for us because it means the ETS liability is not going to come up within the next four years because those trees are just going to be sitting there.

Q. Yes. I suppose I'm asking these questions because it does strike me as – that you're in a very difficult position given the value of the carbon credits that you have as compared to the costs that you might incur.

A. Yes.

Q. And obviously you need to weigh any decisions about the use of those carbon credits very carefully against the possibility of the liabilities.

A. Yes. And as it is, Pipiriki, if you look at the – where is it, which clause? Clause 13. You can see that Ngāporo Waimarino, they've got much larger hectares in forestry. Fortunately, or unfortunately for Pipiriki, at its main centre is a township of people, which means we don't have those enormous resources, yet we have to act like a sort of a council and mayor with only 1% of what comes in on that in terms of rates et cetera. So, yes, we have to be overly even more careful with what we do than groups like Ngāporo and Ātihau.

Q. All right. Well, I'm glad I'm not you or in your position. Those are all my questions. I will hand you back in case Mr Bennion has anything that wishes to ask you just to add further clarification.

A. Thank you.

(16:03) MR BENNION TO ADRIAN PUCHER:

Q. Yes, there was one question from Crown counsel there that I just thought you could expand on slightly your answer, which was you were asked whether Pipiriki was aware of the Million Trees programme, and you said: "Yes, we took part in that." Do you want to just describe briefly how you took part, what calculations you made and what funding or whatever was received or what trees were planted, do you want to briefly explain?

A. We had an area of 26 hectares which was to be planted in a mixture of, as I said, tall trees and small – I've forgotten what they call them – smaller native forestation trees. And we were given funding to do that. Now, the exact amount of funding I can't remember at this stage.

Q. All right, thank you, that's all I had.

JUDGE MILROY:

Well, thank you again, Mr Pucher, for your evidence, it's been very interesting, and we must thank you for your attendance today and for being here. Thank you.

ADRIAN PUCHER:

Ka pai.

JUDGE MILROY ADDRESS MR LYALL – TIMETABLING (16:04:55)

MS SREEN ADDRESSES JUDGE MILROY – FURTHER WITNESS EVIDENCE FILED (16:05:30)

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING ADJOURNS: 4.07 PM

HEARING RESUMES ON WEDNESDAY 9 APRIL 2025 AT 9.00 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

MR MICHAEL SHARP CALLS

DR WAYNE JAMES NGATA (SWORN)

Q. Just a few preliminary things, Mr Ngata. First, just to confirm, your name is Wayne James Ngata?

A. Āe, this morning, that was my name.

Q. And you have signed a brief of evidence in these Waitangi Tribunal proceedings dated the 7th of March 2025?

A. Āe.

Q. Can you just confirm that the contents of that brief of evidence is true and correct.

A. True and correct.

Q. Kia ora Mr Ngata, I'll hand it on to you from here. I understand that what you are going to do is, rather than read your brief of evidence, just to speak to it and summarise each section of your evidence. Having said that, I will now hand it on to you Mr Ngata.

(09:04) DR WAYNE NGATA: (#A031)

Kia ora koutou katoa. Te Taraipiunara, koutou, otirā, koutou ngā rōia, e whakakanohi nei ngā kaupapa o te wā, tēnei kaupapa tonu nei. **Greetings all. The Tribunal, to you, the lawyers, who are representing the current matters at this time.**

Wayne Ngata tōku ingoa, nō Te Tairāwhiti. **My name is Wayne Ngata, I'm from Te Tairāwhiti.**

BEGINS SPEAKING TO #A031

I was asked by Tōtaranui to support their claim in terms of not just recent weather events that have impacted this particular area. But more so on the impacts that have occurred over a longer period of time, and how people,

communities, organisations, on the Tairāwhiti have responded, or not, to that. And how we see a part that Crown and local government as well, play in this.

Just in brief, and I'm making assumptions here that the brief has been read. But in short, my background is education, has been for a long time and still is. When people ask me what I do, that's all I say, "I do education stuff." Part of that education is working on ways and means to help people understand better, how we might apply our own kawa and tikanga to issues of the day.

In terms of government policy and how that addresses climate change, or not, then it's important, from our point of view, by ours, I mean, people who live in the Tairāwhiti and particularly, Māori. On how we see Māori and for want of a better term, mātauranga Māori being part of policy making.

My view is, and has always been, that not just in this area, but in other areas as well, that whoever governing agencies, whether local or national, there is a need to recognise that Māori have a part to play in policy settings and policy making. In this case, in terms of how it impacts or effects environment.

It might be fair to say that Māori have developed a particular relationship with the environment and environments that we live in, over a number of centuries. That in itself has a value that can be accessed, utilise, applied. That value, however, is not necessarily fully understood, or for that matter, accessed and utilised.

Fundamentally, I suppose, my brief essentially states that, as Māori, we have a relationship with everything that exists in our environment or environments. That relationship is a whakapapa relationship, whereby, in most cases, we as people are from the pōtiki of the species. So, we are pōtiki, in this coastline at least, we are pōtiki to other children of Tangaroa. We are pōtiki to whales, we are pōtiki to reptiles and fish, we are pōtiki to trees. To all other flaw and fauna.

With that, if people understand the nature and the place of pōtiki in a whānau, sometimes we are mischief, and those of you who may be pōtiki in the whānau,

you will understand that. But also, we have obligations and responsibilities. So in that whakapapa we have an obligation and a responsibility to support or look after others, different species that descend from our origin atua. Whether that be Tangaroa, Tane, and others. So that's in contrast, perhaps, to a dominant western ideology. It proposes that there is one God, and that human or mankind is part of that construct and according to the book of Genesis, that mankind has domain over everything else in this world.

That underpins that fundamental ideology. Underpins policy and underpins behaviour. That's really simplifying it. But it makes a lot of sense in terms of how we, in the western world, in particular, behave. So, we are an extractive society, that's our behaviour. We take for our benefit and continue to take until we can't take anymore because it's not there. Or the negative effects of taking too much impact on our current and future.

The classic example of that, of course, and I've raised it at the end of my brief, is around two particular industries in the Tairāwhiti farming and forestry. They have been major players over the last 100 plus years in terms of that ideology playing out. Sad to say, we as Māori, have been very much a part of that for a number of decades. So, the farming, we clear the land, and we stock it. Forestry of course, we are re-planting, but in particular, species and then we clear.

Again, simplified, but the effects of both of those particular industries we are sea emerging, noted in my brief. In the time of the Wahine storm in 68, I remember quite distinctly, waking up in the morning, looking out the window, and I saw what I thought was the sea. I live in land. It was a river that had risen, it was below our house, and it flooded everything. And so, that was one and since then, there had been, to my memory, some five, one in 100 year extreme flooding events in this area. Yes, that's not a joke, because it's quite serious, and of course, when we think about recent ones, Gabrielle, in particular. And we are told by those who understand weather systems that this will be a reoccurring event. Extreme weather events.

Those particular events amplify the results of the extractive industries. Slash on the hills north of Mangatuna between Mangatuna and Tokomaru. On the hills of the Hikuwai region, still sits there waiting for the next big rain to come down and into the waterways, clog the rivers, and they end up out to sea and come back on to shore. That's just one real example of what we see and expect now, in this day and age.

So, how do we as Māori, or how should we as Māori, influence policy at a local government level, at a national government level. Fundamentally, I mentioned before, this about ideology underpinning policy making and policy settings that underpins the results and behaviour. If we don't fundamentally change the ideology, then we will continue to behave in a way that is not beneficial to the environments that we live in.

Without going into detail, that's the crux of my brief and I do advocate that government, whether national or local government. Needs to take into account and access meaningfully with local Māori knowledge and tikanga to better understand, and to better put in place policy that is beneficial. Not only for us, but also for the environments that we live in.

Kia ora. **Thank you.**

LEGAL DISCUSSION – FURTHER QUESTIONS (09:16:31)

(09:16) MR VINCENT TO DR WAYNE NGATA:

Q. Tēnā koe, Mr Ngata. The day before yesterday we heard from Alison Cole, who is from Ngāruahine and gave a lot of recommendations regarding climate policies. A theme of her evidence was that climate policies like ecological resilience solutions and energy sovereignty mechanisms need to be Māori led and Crown funded. What is your view on that?

A. One, I would agree with that, and secondly, I would also agree with that with a wider, that we – our recommendations tend to be human centred, regardless of how much we might say that they actually benefit an

environment. But we have to really drill down into our own thinking and understand that, if we pose a recommendation, how environmentally centred can that recommendation be. Because in many cases, it will come back to, what's the benefit for us as a human race, as opposed to what's the benefit for the waterway. So, I fundamentally agree with the recommendations.

Q. Thank you.

(09:18) MR PREBBLE TO DR WAYNE NGATA:

Q. Tēnā koe, Mr Ngata. Ko Jeremy Prebble tōku ingoa. Kei konei ahau mō te Karauna. **Thank you, Mr Ngata. My name is Jeremy Prebble. I am here for the Crown.**

A. Kia ora. **Thank you.**

Q. Thank you very much for your evidence, it's very helpful and interesting. I just had a few questions. As you have outlined today and, in your evidence, you refer to the need to involve Māori in forming policy, responding to climate change, and certainly to make more use of mātauranga Māori and the kaitiaki relationship that Māori have with the environment. That's kind of the summary of where you are coming from this morning?

A. That's right, yes.

Q. I guess before, I was going to just ask a few questions about practically, how that might work. I was interested in what understanding or experience you have had with the current legislation or the framework that has been put in place at a national level. Which is the Climate Change Response Act.

A. Absolutely nothing.

Q. Right, okay, no, that's good to clarify, because I was going to ask you some questions about that. Which I think we can skip over. But I think more practically, I am interested in your experience and your, I guess, lived experience with engaging with the Crown and local authority. And whether or not you had any examples, just to start with, practical ones. Whether they are good or bad, the practical examples of engaging with government or local government?

A. Yes, like I mentioned before, my field is education, amongst other things. That requires me to be part and parcel sometimes, of government agencies, which I have been and continue to be. And so, in a practical sense, one example is, I chair ministerial advice for a group on Māori education to Minister Stanford. That way, you influence policy and behaviour in the education sector. I chair – acting chair, of Tertiary Education Commission. So, you influence flow of resourcing for tertiary education. I am part of, certainly with

TECHNICAL DIFFICULTIES (09:20:56 – 09:21:08)

MR PREBBLE TO WAYNE NGATA: (CONTINUES)

A. **(Audio begins at 09:21:11)…** changing behaviour. So, in terms of practice, it is having a Māori voice at a decision-making table and not a Māori voice that is brought into support decisions that might already be made. That's probably the best way of putting it.

Q. Thank you, Mr Ngata. It might just be at my end, but I only got probably a quarter of that. I am just checking whether anyone else is in a similar position.

JUDGE MILROY:

Yes, we did have a couple of freezes Mr Ngata. Perhaps if you are able to repeat what you have just said.

MR PREBBLE TO WAYNE NGATA: (CONTINUES)

A. Yes, so, at a national level, I am involved in places where – I am a Māori voice at a decision-making table that influences policy, particularly in education. In a local level in terms of local government, I'm a Māori voice, with others, at decision-making places that support infrastructure and the rebuilding or repurposing of infrastructure. Roading in particular, in the Tairāwhiti region. It's important to note that the Māori voice is not brought in after decisions are made. So, that voice, and that knowledge and that contribution needs to be from the outset on whatever matters or issues are being proposed.

Q. Kia ora, thank you for that. And from what you are saying I understand your interest is therefore both at the national and at the local level in the sense of ensuring that the policies take account of mātauranga Māori and ensuring that that's done in a way that is not after the fact. If I have understood, you correctly.

A. Yes, the best way of putting it, is that you need to have a line of sight from a national decision, to what might happen literally, on the ground somewhere. From my case, at least, in a Māori community.

Q. We won't go back into the national framework because you haven't obviously been dealing with that. But there is work that, for example, the Ministry for the Environment, which is tasked with implementing aspects of that legislation, they are doing. They, for example, have, as part of that legislation and the plans that sit under it, established a Māori climate platform. Which was established in 2022 and is currently housed with an MFE. Have you had any experience dealing with MFE in regards to that platform?

A. Only in so much as the inquiry that was led by Hekia Parata two years ago, I think. In regards to the impacts of Gabrielle on this region. So, being informed of that particular matter by those who are involved in not just setting up the inquiry, but those involved in being part of submissions to the inquiry.

Q. Thank you, and that's helpful. Obviously, the evidence from the Crown is yet to be filed. But my understanding is it will outline aspects of that platform which, it has a function of investing funds in tangible climate outcomes for Māori communities. And as the ministry is working collaboratively with Pou Take Ahurangi to look at pilot projects for providing funding to ensure more climate resilience. Is that something that sounded familiar from what you are saying about Hekia Parata?

A. Yes, yes. Two things, one, it's what's the, I suppose, how do you ensure that those payers, or industries, who have a part in creating, I suppose, conditions that accelerated the need of effects of extreme weather events. How you bring them to account to ensuring – and this was land and forest companies in particular. Ensuring that they abide by the regulations that local councils have to, or had to, enforce. Now, there was

argument around neither being fully responsible where they should have been, and so, they get these negative effects, of the slash.

Q. Yes, yes, thank you. I mean, it is, as you say, there is many aspects to this from both the national and the local level. So, the slash example, which obviously is exacerbated by climate change. Very much falls on local authorities to regulate under the Resource Management Act, doesn't it?

A. Yes.

Q. Yes, thank you. In terms of, I guess, just those practical examples you had, did you have any practical suggestions or thought about how and I hear your push for ensuring that earlier engagement and taking into account, mātauranga Māori. Do you have any practical suggestions for how central government might do that better? Just from what you have observed to date, is there anything that you would like to see? Your chance to provide a recommendation if you like.

A. Yes, the Tribunal is very much aware of the current government and their particular thinking. So, I do think at a national level, ensuring that there is a real Māori voice influencing policy is important. Now, having said that, what does that actually look like at a practical level? It is not the low Māori voice that sits in there. There is a time or was a time when that was the case, and that Māori voice would be referred to and then shied away. But more fundamentally, how do Māori, or how are Māori very much part and parcel of decision-making at a national level when the whole notion and practice of co-governance is seriously questioned. Co-governance is where I think it is that, but that has been challenged, certainly during this administration. Not to say that it won't come around again.

Q. Thank you, that's helpful and yes, we are here. I guess just turning to another topic now. At paragraph 23, you refer to how Māori are relocating and rebuilding as part of a managed retreat. That's pragmatic tikanga in action. Look, I appreciate this may well be a very difficult topic given the impacts to the marae and so forth. But I did have just some brief questions about how that is working, and you note there, that Hinemaurea marae was recently classified as Category 3 under FOSAL

by Gisborne District Council. Can provide your understanding and experience of the FOSAL programme?

A. In so much as it effects this particular marae, the categorisation was something that certainly worried our people on the ground. That's simply because, one, there are emotional attachments to place. And when you're being asked or told that your place is not a safe place to be, then there is some real worry about that. Now, having said that, amongst Māori ourselves, we challenge each other on those things. So, that's why I referred to real pragmatic and action. If our people were threatened by whatever it was, then you did something about it. Now this particular case with Hinemaurea marae, this didn't just happen because of Gabrielle. We were arguing this particular point amongst ourselves 20 years ago, and made a decision then, and then it was changed. That was our own decision-making, by the way. In external player in here, with Gisborne District Council, and making a decision under FOSAL, then that puts it in another place as well. But it doesn't deny the fact, the place is a flood plain, and therefore, not safe. So, pragmatically, go somewhere else.

Q. In terms of that, at least, my understanding is being given a categorisation three means that essentially there's co-funding, as I understand, between local government and the Crown. Where that enables, if you like, a voluntary buy out of the property. Is that what happened in this case?

A. That's what's happened, yes.

Q. And once that happens is there an ongoing engagement with mana whenua on addressing the risk or the relocation of the marae in this case?

A. There is, coming to an agreement, on what that site can be used for, or not used for. For instance, you can't reside there.

Q. In terms of the change from the – as I think you said in your evidence, you are now looking to move the marae, is it two to three kilometres further in land or up a higher location. How is that working?

A. We are in the throes of doing that now, so it will be a two year process, ideally. So, there are a lot of core preparation parts to that, and we are working through those, since the middle of last year, and are in the middle of it now.

Q. Thank you. Just in terms of your evidence where you talk about, at 28, the need for taking into account, if you like, as I have read your evidence, the socio-economic impacts of, I guess, climate change and responding to climate change. You would, I think, recognise therefore that there is a need for, while, and I have heard you, we need to hold, if you like, emitters to account and look at that. But there is also a need, as you say, to recognise the fact that Māori are also invested in some of these industries. Therefore, we need to move in a way that is respectful to those who might be vulnerable to changes. Is that a fair way of capturing what you are trying to say there?

A. Yes, it's not entirely black and white in a sense, in what is recognised that – a whole lot of my relations work in forestry, farming.

Q. Yes. So, while we need to move in a direction that obviously, reduces emissions, we need to do it in a way that protects existing jobs and communities, and those in vulnerable positions?

A. Yes.

Q. You also refer at 29, to the ETS, which, it also is an area where Māori are heavily involved in, and the need there to recognise that, as I understand your evidence. As you understand the ETS, do you accept that it is a market based tool?

A. It is a market based tool. Yes, this is about survival and what does survival look like I suppose, and also, the fact that most of our people who work in such industries have limited options. If I go back, now, you know, this is not a stretch, but if I go back to my involvement with education, education is one of those pathways that provides options. Whereby you are not necessarily – your survival does not depend, necessarily, on someone else, or some other business that you might be working for. And so, the current situation we find ourselves in, in an isolated community, requires a lot of balancing, is the best way to put it.

Q. Kia ora. I guess, another aspect, I understand that perspective, and another aspect that came through from your evidence when I read it was obviously a desire, if you like, for a move towards indigenous re-planting, perhaps. As opposed to exotic under the ETS scheme. Is that also fair form your evidence?

A. That's fair. I also do understand that, I haven't done a lot of research on it, but I do understand in some places around the world, you might call it agroforestry or more sustainable forestry practice. Is carried out, maintained and is more sustainable than our particular practice in New Zealand here. So our forestry, for example, in a 25, 30 year rotation, we are probably on, I think, maybe the third rotation, in some cases. And so, your soils have had one species for two or three rotations, for a long time, and they are depleted in certain ways. I don't think that is sustainable. I mean, you know, scientists would argue the same.

Q. And you may not have joined the first week, but we did hear evidence around the ETS scheme and the fact that it doesn't itself have a prohibition, if you like, on indigenous forests. It's more the economics of it, if you like, drier, the planting and exotics, is that something that sounds right to you?

A. Yes, I understand that. That's extractive ideology, I want to take as much as I can as fast as I can, out of this place. And understanding, of course, that the forestry companies that operate on this region, are foreign owned. So it goes (inaudible 09:38:53).

Q. And so, if you would like to see a change here, it would be really to look at ways to encourage indigenous planting over exotics really, well at least one of those is your concern?

A. Definitely.

Q. Thank you very much for your evidence. As I say, it was very helpful, kia ora.

A. Kia ora.

HEARING ADJOURNS: 9.39 AM

HEARING RESUMES: 9.44 AM

(09:44) KEVIN PRIME TO DR WAYNE NGATA:

Q. Tēnā koe e te rangatira.

A. Kia ora, Kevin.

Q. I just want to refer you to paragraph 21 of your evidence. Were you around during the Cyclone Bola in the East Coast?

A. Āe, yes. Kua te wā i mate ai tō mātou kuia. **That was the time our grandmother passed away.**

Q. What were the main effects of Bola at that time?

A. What I remember is the mud, certainly, and interesting enough, fence, a number of us were involved in not rescuing stock, but pulling carcases out of fence lines, pulling fence lines out. So, all of that damage to farms, because we were farming and so, everyone had to basically lend a hand to help. Not just our own, but any other farm around the place. But certainly, all the rubbish that came down the river. In this case it was vines, because there are a lot of grape vines on the flats around our particular area at the time. Wires, posts, all that sort of stuff came through, and just the mud, or just the silt that was left over for a long period of time. So, at that time, I suppose, that's in the 80s, from my point of view, ours was more about being part of the work force to help others get back on their feet. Not so much understanding the wider effects. Yes, so on a real personal level, our grandmother was one of the ones who drowned with two other pakeke from down the road from her. Because she refused to move from the place we were brought up, and she brought us up in. So, her thinking, because our cousins went out there and tried to force her to move, they tried to convince her to move over the period of the whole day. But she said to them that she'd lived through at least three floods, and she wouldn't move, and decided to move when it was too late. So, three of them, essentially, drowned and two escaped from the car. You know, that was stark, and then trying to support different parts of our community to get themselves back on their feet with all the damage that had been done to their places.

Q. Kia ora. But at that time, it wasn't seen as an effect of climate change, was it?

A. No, no, and I suppose that's what I mentioned. You sort of don't understand those things, I suppose, well, I was 28, you know. I'm not sure how the meteorologists would have seen it at the time, even in hindsight.

Q. No, kua pai tērā, mārama ana. Ka nui rā tēnā, kia ora. **I understand. That's enough. Thank you.** My other questions have all been asked by Mr Prebble actually, so, ngā mihi.

(09:49) BASIL MORRISON TO DR WAYNE NGATA:

Q. Kia ora, Mr Ngata. I thoroughly enjoyed your brief. Just following on from Mr Primes questions and comments in regards to Bola. I guess at that time, the land that had been cleared, shall we say, form native vegetation would have been, pretty much, dry stock farming, I guess?

A. Yes.

Q. And I guess, both central and local governments response to slipping, slumping, pāpā soils, underlaying soils, all of those issues, and you mentioned the mud, and I have some appreciation of that. Led to, shall we say, Crown policies delivered through local government. I.e., district council, regional council, for the planting of pine to alleviate the slipping and leading to mud and blocking of streams. Was that the response after Bola, to plant, or had it started before then?

A. That's a good question, I'm just trying to think. Because our go to person at that time was Parekura Horomia, and not just in local work schemes to address some of these things. But certainly, at a local government and later on, at a national government level. But the planting was to address erosion, that started before that, but certainly, was more stark post Bola. I'm trying to think of a comment made by Graham Atkins. Graham Atkins is one of our local people from Te Waiapu, who has been involved in environmental issues for all his life. But he did make the comment around post Bola and effects on how farmers, their response, and forestry's response. So, you have people leaving, because it was just too tough. Just the damage was too tough, and forestry was seen as a remedy of sorts for silt erosion. Now, recent studies, I understand, that it's all good in hindsight, you know, challenge some that, challenge some of those assumptions, but that's hindsight stuff. So at the time I think communities were more in fix up mode, and certainly in terms of the farmers of the time, basically trying to work out how they were going to survive. If they were going to stay in farming at all.

Q. Okay thank you. I just note that only in the last couple of months or so, I majored a station in dry stock farming. Out there has been sold into a major forestry companies' development, so I get this was a long time ago. So, thank you very much.

A. Yes, so, in a place which is well known for farming in this region, what we call Tauwhareparae. You can't get there anymore because the infrastructure has gone, the road links shut. But a lot of those farms in that hinterland, were basically acquired by forestry and farmers walked off, or so.

(09:53) PRUE KAPUA TO DR WAYNE NGATA:

Q. Kia ora, Dr Ngata. Ngā mihi ki a koe.

A. Kia ora.

Q. I just had a question about, I think, probably when you referred to your experience in education, and the Māori voice, or the voice not being alone. I just wondered if you could enlighten us, I guess, about what you consider it, a basic requirement if you are going to have a Māori voice at the policy table in terms of a kaupapa like this?

A. Yes. Prue, if sister Ngahuia was alive, she would be the one. You know, you need to be certainly a part of a community that has been affected by such events. Literally on the ground, and to have a really good understanding of those effects. Not just immediate effects, but effects on one or two generations, and what that looks like. I think more importantly, we do need Māori who think Māori, and that may sound strange. But I'm more of the opinion that we as Māori may have lost touch with some of the fundamental tenants that underpin how Māori think and therefore, how Māori behave. My simple way of looking at that is, you realise that when you get a bit older, what your old people said to you, and the sense it makes. But you know, at the time, you think you know everything, and you're bulletproof. So, you need people with some experience, you need people who understand how and why, our old people made decisions that they made. And you need to be thinking, you need people who think, three, five, 10 generations down the line. Because administrations in local and national government come and go. But for some of our

communities, Māori communities in particular, that have been here for a while, that continue to be here. That way of thinking has to be quite deliberately sourced. We can't assume anymore that if a Māori is put as a voice at a table, that they will be a Māori voice. I'm just saying here, because I've seen, excuse my language, but I've seen a fair bit of bullshit pedal out in national forums and local forums, and sometimes call it out. Our people are practical people, but our people also have a vision beyond themselves, beyond ourselves, and we need to be like that. The education theme requires that we have particular education. Now when I talk education, I'm not just talking Western education, but I'm talking about how one should understand how a local community works. When people ask me about why I sit on this board, that board, or whatever, and what, perhaps, encouraged me to be there, and what do I take to that. I simply refer to the fact that our best learning, from my point of view at least, took place, or takes place at our marae committee meetings. Because in many cases, they have no rationale, no reason, and the greatest or the biggest take on the table, is the maunga. So, if you know how to navigate amongst your own, and get decisions made and work done, that's really valuable education that you take into other forums.

Q. Kia ora, Dr Ngata, thank you.

A. Kia ora.

(09:58) PROFESSOR DAVID WILLIAMS TO DR WAYNE NGATA:

Q. Tēnā koe, Dr Ngata. Thank you very much for your evidence and I think I am very pleased, with the sort of, specific recommendations. You have made relation to climate change, and I acknowledge the point you made, that it's not a joke to talk about five or six, one in a 100 year events. All occurring within 20 years, and the very fact that your whole marae has to be shifted. But I would just like ask some questions about the first section of your paper. There is a bit of Hāhi Mihingāre perspective I would like to put to you. So, at paragraph 9 you talk about the western Christian doctrine as espoused in Genesis. You don't talk about a western Christian doctrine, you talk about *the*, and you refer to this book of

Genesis of course. As I'm sure you know from your background, there are five books that are called the Torah, or in te reo –

A. Yes.

Q. – te Ture.

A. Yes.

Q. They have got lots of rules and lots of conflicting stories. But one of them is that you cannot charge interest on a loan, and anyway, after 50 years, you have to forgive all debts.

A. Forgive all debts –

Q. Now – so that does not lead to an extractive approach to the environment, so, see, you are sort of asking the Tribunal in paragraph 12, "the question therefore is, who is right?"; is it the Book of Genesis, or is it – or is it mātauranga Māori-sourced perspectives? And I just wonder – I would just like a comment from you as to whether it is such a binary perspective.

A. Yes.

Q. Probably your problem is more colonialism and capitalism, I would say –

A. Yes. Yes.

Q. – and if I read what you – if I hear what you are saying, you say let's start from mātauranga perspectives, mātauranga Māori or mātauranga ā-hapū, and rather than start from extraction is a good thing. Have I understood you?

A. Yes. Absolutely. I did think at length about definitive or not, b or a, and I did think about the Qur'an and other pieces, and then I focused, I suppose, on the fact that te Hāhi Mihingare, the Anglican church, was a very big part of – a major import into the Waiapu in the time of Piripi Taumata-ā-kura, one of the – you know, he came back from the Bay of Islands. So – and that influenced, certainly, how we on the East Coast came to behave and continue to. And so my mother and grandmother would be turning in their graves, I will say that, because I have always challenged how the Church, or a church, has influenced how we think and therefore how we behave. The – the binary is more to make the point, as you have mentioned, about okay, how do we decolonise ourselves to therefore allow ourselves to apply our particular way of thinking and therefore policymaking and behaviour. And if we want to

understand how we as Māori did think, and if we want to – to not look at our stories as myths or legends, then that takes another step. That requires us to take another big step back into ourselves. Now, I fully appreciate that part of the arrival of Christianity into the Tairāwhiti, the comment made at the time, in Piripi Taumata-ā-kura's time, was about taking the flesh of our ancestors from our teeth, and so at the time, it worked. It was necessary for that time. Is it still necessary for this time? That's what I ask of my colleagues, a number of who operate within the Pīhopatanga, Anglican Church, this day and age, and so – so I suppose those particular paragraphs are essentially about what enables us to make policy, and therefore behaviour, and therefore actions, our basic fundamental ideology – is the point I am making there.

Q. Kei te pai te kōrero. Thank you very much.

A. Kia ora.

(10:05) JUDGE MILROY TO DR WAYNE NGATA:

Q. Thank you, Dr Ngata. I have just got a few questions. The first is that you have spoken about our extractive ideology, and previous witnesses have talked about capitalism and the continuing press for growth which also drives the need to convince people to consume, and I wondered if you had any comments or thoughts about how education might play a part in terms of the consumption side of things.

A. That's a very good point. I think education has a major part to play in terms of re-educating, perhaps, ourselves on self-sustainability, and so when – we're driven to consume because – well, for a number of reasons, but one of them, primarily, is that that's how business operates – without applying tariffs, by the way, but that's how business operates. I thought I'd just throw that in there.

Q. Yes. Yes, the elephant in the room.

A. And so a classic example, for instance, there's been a bit of a little protest in Kaiti in Gisborne about Kentucky Fried putting up an outlet in the Kaiti Mall – it's being built now – and questions being asked about "Should it be? Why not?". Well, there is a consumer market there. Usually, those consumer markets are in poor places. And so, the target audience is an

audience that will go there and buy that, which is detrimental to their own health. I'm just putting that out there. And, you know, those arguments are not – not new. And so good business knows how to target an audience, and therefore generate that consumerism and increase that. So how do we re-educate ourselves at particular levels, particularly with kids, around – you know, I really appreciate those schools and those kura who actually have gardens. We have to do that stuff deliberately now, planting your own food, eating your own food. In this coastline, for instance, there is a – I always make the comment that we can never starve, we will never starve, because there is food all over the place. It's in the river down below my place. You watch Māori when we drive, you're always scanning. You're scanning for where there, it's usually watercress, or something on the side of the road. Not roadkill, by the way, but you're scanning for food. We will never starve. So how do you re-educate people to re-enter that sort of world? And there are a whole lot of initiatives taking place now, not just in schools but in communities, that people are deliberately taking people hunting, fishing, planting, to be self-sustainable to a certain extent. I'm involved in that in another way as well, and that's where I think we should be re-educating.

Q. So it is a matter of reminding people and bringing people closer to their environment so that when they see the changes that climate change is bringing now, but will bring in greater force in the future –

A. Yes.

Q. – people might change their views about how things should be done, I suppose.

A. Absolutely. Absolutely. Yes. I suppose the tohu, for me at least, that I would like people to aim for is what I refer to as te māra a Tāne, so the birdsong. So if you can support an environment to attract particular species, and for those species to flourish, then that's a win-win, and birdsong is one of those, bees, of course, and other creatures as well, because there's a balance in there. Our extractive behaviour has sort of created some imbalances in the immediate environments that we exist in.

Q. Thank you very much, Dr Ngata, for your thoughts. It has been a pleasure discussing these matters with you, so yes, thank you very much for your evidence.

A. Tēnā koe. Tēnā koutou.

QUESTIONS ARISING MR SHARP – NIL

MR SHARP:

Your Honour, that is the evidence for my client in these hearings. There will be some further evidence in the following hearing.

JUDGE MILROY:

All right. Thank you, Mr Sharp.

(10:11) MS KATIE PAUL: (#3.3.017)

May it please the Tribunal, our opening submissions are filed for and on behalf of Moerangi Potiki and Roana Bennett, who are from Te Rūnanga o Ngāti Whakaue, for and on behalf of Ngāti Whakaue ki Maketū Hapū, as well as Kataraina Pirihira Gail Skerrett-White, for and on behalf of her whānau, hapū, and iwi.

The claimants present their concerns regarding the Crown's handling of climate change policy, particularly its impacts on Māori communities, Māori cultural practices, and the socio- and economic well-being of Māori communities.

This inquiry focuses on the impacts of climate change on Māori, exploring the physical, spiritual, cultural, social, health, and economic consequences, both historically and in the future. It examines how these impacts intersect with the Crown's obligations under the Treaty of Waitangi, particularly in terms of partnership, protection, and redress.

Counsel submits that the Crown have breached those obligations towards the claimants and Māori under the Treaty of Waitangi in relation to its handling of climate change, and the key breaches identified by our claimants include a

failure to adequately consult with Māori, undermining Māori kaitiakitanga, discriminatory climate policies.

And for this, we will take a look at the Crown's policies on climate change. We will not traverse these here and now. But there are considerable policies that have been identified by the Crown, and we would like to highlight in particular the CCRA Act or the Climate Change Commission's Act. Which includes specific requirements to recognise and uphold the Crown's responsibility to give effect to the principles of the Treaty of Waitangi.

We are particularly concerned about the removal of section 3A of the Climate Commission's Act, in that it would undermine the recognition of Māori rights and responsibilities in climate governance, reducing opportunities for partnership and co-governance.

So we submit that the Crown's climate change policies have not been developed with the meaningful involvement or participation of Māori communities. And while the legislative framework established under the CCRA Act sets out mechanisms for engagement, in practice, the Crown has failed to engage in genuine, proactive, and sustained consultation with Māori on climate policies.

The claimants, who are kaitiaki acting on behalf of the whenua, of the wai and moana, are facing significant adverse effects due to the Crown's climate change policies, and these changes threaten not only their physical world but also their whakapapa, their mātauranga, and their ability to live as Māori. The Crown's policies have imposed disproportionate prejudice on Māori whānau and hapori.

Now I would like to refer to claimants' evidence; Moerangi Potiki and Roana Bennett. They both highlight the severe environmental, cultural, and economic challenges faced by Ngāti Whakaue ki Maketū due to climate change and accelerated by inadequate Crown support. Their ancestral connection to the land, sea, and sky is under threat, with rising sea levels, flooding, and

erosion endangering sacred sites, homes, and livelihoods. Climate change is not just an environmental crisis for them, it is an existential threat to their identity and their future.

So despite developing the Maketū Climate Adaptation Plan with strategic priorities for resilience, the Crown has failed to meaningfully engage with or support their efforts. The claimants seek a true partnership with the Crown, one that acknowledges their role as kaitiaki and provides the necessary resources to ensure the survival of Māori culture, whenua, and the way of life for future generations.

This afternoon, we will turn to our first witness, Haukapuanui Vercoe. He is a PhD candidate, kura kaupapa Māori graduate at the University of Auckland. He is an emerging Māori researcher and civil engineer focused on enhancing some resilience against natural hazards and climate change for our marae, which has been spoken throughout Hearing 2. His research uses geospatial hazard mapping to assess marae exposure to flooding, earthquakes, landslides, liquefaction, and tsunamis, highlighting the significant risks they face. And motivated by the vital role marae play in disaster response despite inadequate infrastructure, he aims to develop engineering solutions that align with te ao Māori values.

And now turning to our second claimant this afternoon, Kataraina Skerrett-White. Ms Skerrett-White is a proud descendant of Ngāi Tahu and Te Arawa with whakapapa to Rakiura. She currently resides in Maketū, working as a kaitiaki for the Ngāti Pikiao Environment Society, and serves in various governance roles that bridge iwi and government agencies. Her testimony today highlights the severe impact of climate change on the traditional tītī harvest, a cultural harvesting right, a practice her whānau and other Ngāi Tahu have engaged in for over 800 years. Climate change, particularly El Niño events, has disrupted the food sources and migration patterns of tītī, leading to a drastic decline in harvest numbers. This decline threatens not only the food security of her people but also their cultural and

spiritual well-being, as the tītī harvest is a cornerstone of Ngāi Tahu identity and tikanga.

So Ngāi Tahu's connection to Rakiura is linked in history, mythology, and the environment, with mahinga kai central to their way of life. The iwi has long practiced sustainable harvesting and kaitiakitanga, which are now being challenged by climate change, so research partnerships, such as the Kia Mau Te Tītī Mo Ake Tonu Atu project, have combined mātauranga Māori with scientific methods to better understand the impact of climate change on tītī populations and implement conservation strategies. The loss of tītī threatens not only the species but also Ngāi Tahu cultural identity, language, and traditional knowledge. In response, the iwi has developed climate resilience strategies, advocating for greater Crown engagement in addressing environmental challenges that impact Māori as Treaty partners.

And finally this afternoon, we have our mātauranga kaumātua expert Michael Skerrett, an uncle to Kataraina. He has been a dedicated advocate for Murihiku Māori, and has spent his life serving Ngāi Tahu in various leadership roles, and was awarded the Queen's Service Medal in 2013. He has observed the tītī harvest for decades and has noted significant changes due to climate change, which has led to declining bird stocks and unpredictable harvest seasons. Traditionally, the tītī harvest is a vital cultural practice for Ngāi Tahu families, but environmental shifts, particularly the impact of El Niño on the food chain, have drastically affected bird populations, so research from Otago University highlights the importance of this harvest, with increasing numbers of Māori retaining their rights to the practice. So despite environmental challenges, scientific research and sustainable management ensuring the protection of both the birds and their habitat for future generations.

So finally, the claimants submit that climate change is not just a distant threat – it is here. It is already impacting Te Arawa and Ngāi Tahu ki Murihiku whānau, hapū, and iwi in profound ways. Their lands, their waters, their tāonga species, cultural heritage, their livelihoods are under siege from rising temperatures, from shifting weather patterns, and from increasing environmental instability.

These changes threaten not only their physical world but also their whakapapa, their mātauranga, and their ability to live as Māori.

So these, your Honour, are our submissions today on behalf of our claimants. The relief they seek is wide-ranging remedies in climate change mitigation and adaptation. Planning, engagement, and funding are all key concerns. They include:

a. Upholding Te Tiriti o Waitangi in climate change policy: Ensuring that our climate change policies and adaptation plans give effect to Te Tiriti, recognising Māori rights, Māori responsibilities and interests in relation to their whenua and their communities;
b. They are seeking climate risk information to Māori: Sharing comprehensive, accurate data on climate change impacts and risks (such as sea-level rises, extreme weather events, environmental degradation) on Māori land, communities, cultural sites, and enabling informed decision-making and planning;
c. They are looking for recognising Māori knowledge and culture: Honouring mātauranga Māori alongside other knowledge systems in climate change, and respecting their cultural values, their identity, and their practices in their local communities;
d. And finally, empowering Māori leadership in climate decision-making: Facilitating meaningful Māori participation in climate change policy development and decision-making, including joint or delegated authority for Māori within their communities to lead adaptation planning and response strategies for their whenua and for their communities;
e. Protecting Māori Land and Sites: Conserving and protecting their tāonga, their marae, their urupā, their papakāinga, and Māori rights to settlement lands;
f. And encourage collaboration between Māori, government, and local authorities;
g. And finally, ensuring fair funding: Providing adequate funding to support Māori participation in adaptation planning, compensating for land loss,

funding mātauranga Māori research, and implementing Māori-led adaptation solutions.

And these are the end of our submissions, your Honour.

JUDGE MILROY:

Thank you, Ms Paul. Ms Kapua has a question for you.

(10:27) PRUE KAPUA TO MS PAUL:

Q. Kia ora, Ms Paul. I just wanted to take you back to paragraph 8 of your submissions, and to just ask whether when you state that counsel submit that if the Treaty Principles Bill is enacted, it will result in the removal of section 3A. Is that in fact a reference to the review of the Treaty clauses policy?

A. Yes, it is –

Q. Thank you.

A. – indeed, and it goes hand-in-hand with the Treaty Principles Bill, which has been of great concern to the claimants since it was first mooted last year.

Q. Thank you, Ms Paul.

HEARING ADJOURNS: 10.28 AM

HEARING RESUMES: 10.59 AM

HOUSEKEEPING (10:59:38)

MR EVISON OPENS

Tēnā koe e te Kaiwhakawā. Ko Mr Evison tōku ingoa. Nō te tari o Phoenix Law. **Greetings, your Honour. My name is Mr Evison. I'm from Phoenix Law.**

I appear on behalf of Wai 3409, a claim by Moerangi Potiki on behalf of herself, her whānau, and Te Rūnanga o Ngāti Whakaue Incorporated, for and on behalf of Ngāti Whakaue ki Maketū hapū.

Today, our witness, Roana Bennett will be presenting the joint brief of evidence of herself and Ms Moerangi Potiki, and so, I will just lead the witness through their evidence.

MR LUKE EVISON CALLS

ROANNA BENNETT (SWORN)

Q. Firstly, please confirm that your name is Roana Bennett.

A. Yes.

Q. Thank you, Ms Bennett. I understand that you have provided a brief of evidence, dated the 7th of March 2025, appellation Wai 3325, #A032, with annexures #A032(a), and #A032(b)?

A. Yes.

Q. Thank you, Ms Bennett. Can you please confirm, to the best of your knowledge, that the contents of that brief of evidence are true, and correct?

A. Yes, I can confirm.

Q. Thank you, Ms Bennett. Please proceed with your presentation.

(11:01) ROANNA BENNETT: (#A032, #A032(a), #A032(b), #A032(c))

Ko Te Arawa te waka. **Te Arawa is the waka.**

Ko Te Kaituna te awa. **Te Kaituna is the river.**

Ko Ōkurei te maunga. **Ōkurei is the mountain.**

Ko Maketū te papakāinga. **Maketū is the village.**

Ko Whakaue te marae. **Whakaue is the marae.**

Ko Whakaue Kaipapa te tangata. **Whakaue Kaipapa is the autonomous ancestor.**

Nō reira, tēnā koutou e rau rangatira mā. **So, thank you to all.**

I wish to speak to our written brief of evidence filed on behalf of Ngāti Whakaue ki Maketū.

BEGINS SPEAKING TO PRESENTATION #A032(a)

Let me start by stating a few facts.

First, we live in a world that is rapidly heating.

Second, we know that the cause of global warming is human activity.

Third, we also know that that human activity is driven by only a few.

Four, tangata whenua and indigenous peoples around the world are on the frontlines of climate change impacts.

Climate change is inextricably linked to colonisation. It is the inevitable consequence of colonisation. Instead of seeing the earth as a taonga that sustains life. Colonial systems have treated it as an endless resource. Something to extract from, exploit, and then discard. As climate scientists in indigenous academics have acknowledge, colonialism is both an historic and an ongoing driver of the climate crisis.

For the first time since its inception in the 80s, the inter-governmental panel on climate change, the IPCC, mentioned the term colonialism in a 2022 report, and I quote: “Officials and scientists from around the globe now recognise the significant role colonialism has played in heating our planet and destroying its many gifts.”

Colonialism was and is motivated by the promise of plundering the environment and subjecting populations, and the pervasive and persistent institutions of colonialism make it far more challenging to address the climate crisis and implement solutions. Especially in a just and equitable way.

We see this here in Aotearoa. The obstruction of our native forest, the loss of biodiversity and the shrinking of our wetlands are all consequences of an extractive mindset imposed on our whenua.

Here in Maketū, we have a precious, historic, and ecologically important wetland called Whakapau Kōrero. It was once part of a vast 8,000 hectare

wetland, now reduced to just 23 hectares, and yet here we are fighting to restore it.

This is how our whānau assert mana motuhake and tino rangatiratanga. This is hapū rangatiratanga in action.

Maketū is the landing place of the Te Arawa waka. In former times it was the food basket for iwi, hapū, and whānau. The degradation of our environment due to decades of wetland drainage, river penalisation, farm and orchard land use intensification, contamination run off, a lack of buffers, leaky septic systems, and an adequately treated sewage. Had done serious harm to our waterways and our estuary.

This is our home. This is our food basket. We used to collect plentiful kai here, we can't anymore.

The impacts of climate change threaten to further degrade our environment and make our home potentially unliveable. Maketū is at the frontlines of the climate change challenge.

I will now present to you our climate adaptation plan, and the process of bringing it together through an iwi led, whole community process. This is the story of our response to the threat of climate change and our ongoing, intergenerational fight against colonialism.

I'm about to show you our Maketū climate change adaptation plan. The kaupapa is to plan a survivable future for Maketū. This is an iwi led, community driven approach to climate change resilience.

That top photo on our left is the cover of our plan, and the bird there is the Kotuku. Which is a tohu here in Maketū. If the Kotuku are plentiful, then our environment is healthy.

Why are we doing this? Well, as I said earlier, Maketū is our home.

If you have a look at the map on the left, that's the Maketū peninsula and you can see we have estuaries on both sides. We have low laying homes, including the marae, the circle in the middle there is our marae, where I am now. And there are houses there, and then on the right with that other circle, there are more houses there. So, the sea level rise, that's forecast, will inundate 40 homes. Then there are another 30 homes out along the peninsula that are at risk of erosion.

These are our homes, and we are quite clear with our children and grandchildren that the homes we enjoy today may not be there when they are adults. We are dealing with the reality that the marae may one day also need to move. Those photos on the right hand side, that is the actual water inundation line and that is what we're predicting, what we are facing. And as we have come to realise what the impacts are, we know that we have to do something.

Further to our why, why did we do this? Those are the cliffs on the left hand side. Our wāhi tapu are at the top of those cliffs. But those cliffs are at serious risk of erosion, and often, the kōiwi, they fall down the cliffs and are left on the beach, and we have to gather them, do the appropriate karakia, and reinter them.

There are some photos in the middle which show recent floods over the last five to 10 years. So we are already facing being underwater, and the photo on the bottom left, that's our marae which sits on the edge of the estuary.

I want to talk about our approach. Our approach, we know that iwi have to lead this. We won't allow ourselves to be in a position where we are being told what to do in our own homes. So, we put together a process of five wānanga, but we knew that the first wānanga needed to be an iwi only hui. There's a lot of anger amongst our people, about climate change. We have been fighting the battle, a battle, for decades. You know, for our language, for our land, for our education, for access to health services.

Now the fight in our generation is climate change, and we are really angry about that, because it didn't need to be this way. So we knew that before we invited our Pākehā neighbours and friends form our wider community in Maketū, we had to have an iwi only hui. Where we could just talk about how we felt and what our approach to climate change was going to be.

We had a wānanga and we got all of that mamae out, we talked about it, we did waiata, we did karakia, and then we said, right, how are we going to move forward? So what we did is we said, if we're going to do this, then it must be centred around our values. We cannot be the tick box, the add on, the don't forget to talk to iwi piece of a climate change plan for Maketū.

We put together a series of values, so that's what you see in the centre of the screen. Then we went on with the rest of the wānanga process. So, for the rest of our wānanga, our whole community were invited to attend.

Our second wānanga was called climate change 101. The reason for that is that amongst our community, there is a wide range of people on a continuum in terms of their acceptance of and knowledge about climate change. We invited a friend of ours, Justin Ford-Robertson, who has worked in a climate change space globally, and was one of the authors of one of the early IPCC reports.

Interestingly, he actually has a bulk hole of his own in Ōpotiki, up to two hours drive from anywhere. He knows what's coming, and so he's setting up a safe space for himself and his family. But he came to Maketū for the day and spent the day, again, in wānanga, but with our whole community. Taking us right through, what is climate change, what's the science behind it, how did it happen, what can we do to mitigate it, what are some of our adaptation options. That put us all on the same page.

The third wānanga, we invited all the agencies to come and present their data and their strategies. We didn't have time to go around all the agencies. What

is your climate change strategy, what's your climate change data? So we got them all to the marae, and we had the three councils that are in our rohe. We had half a dozen government agencies, and we had a few private companies come in as well.

They laid out their data, and it was a bit hard for them because we questioned them and drilled them. But they were there with us, and by the end of the day, we had the relationships with them. We had their information. We had their contact details if we needed any follow ups.

Then that took us into the fourth wānanga, and that looks more like your traditional strategic planning type day, and that was a really fruitful experience for the whole community.

Then the final wānanga was more of a celebration wānanga where we signed off the plan and had a nice big kai to celebrate coming together.

I'm telling you about this process because what came out of the end of it was a plan for our community that everyone supports. It's centred in kaupapa Māori, it's centred in mātauranga Māori. But everyone can see themselves in it.

We came up with a vision of priorities, I'm not going to go into these next couple of slides in any depth, everything is on our website if people want to see anything in more detail. But our vision is: “Me toka tū tonu tātou.” The Maketū community is prepared for, can adapt, and be resilient to a changing climate.

We set five priority areas:

a. Haumarumaru - Security and self-sufficiency;
b. Te Puna Mātauranga - collective knowledge and wisdom;
c. Manaaki Kainga - caring for our home;
d. Manaaki Whenua – caring for our lands; and
e. Manaaki Wai - caring for our waters.

Out of those five priorities, drops down 12 projects and here they are here.

Our communities' approach to climate change is that we want to do everything. We want to do the mitigation approach. We also know that we need to do the adaptation approach. Adaptation is a thing we have to do, mitigation is a thing that gives us hope that it will be a better future for our children and grandchildren. So, there is an example of – I won't go through them. There are our 12 projects.

We have already kickstarted on them, and that photo in the middle, that was a summer internship with rangatahi. They are doing some monitoring of our tītiko, and our tuangi, and our pipi in the estuary. So, we have already kick started.

Like any good collective project, we have enabling actions that sit in the background. Having back bone support. Reporting, communicating, continuing with the strategic relationship's collaboration. Advocacy, and influence, and of course funding.

I just want to talk through some of the highlights. Probably the most fruitful thing and even we didn't foresee just how well this would go when we first started out. Was just how connected and mobilised our community would be. What you see on the left hand side is one of our community days that we had. It was sometime after we completed the plan. And we get together for a kai, and we talk through where we are at and what we are doing. I mean, everyone knows everyone in Maketū, but not often do we get a chance just to sit, have a kōrero, have a kai together.

Those middle photos, our plan won a couple of awards with the Planning Council in New Zealand. We won the award for best community plan, and we won the supreme award that year, and that's against the big firms like Becca and what have you. So we were quite proud of that. We've also had the opportunity to have some international exposure with the work that we have done. We are really happy to talk about what we do and to reach out and help other communities.

Another highlight, we held our first community climate change day last year. There are some photos from that, and we held that at the marae. You can see in the top left, we set the dining room up with booths, like you would in a trade show. You go in – we are a small community, but we seem to have hundreds of community organisations, so it was an opportunity for all the community organisations to set up their booths and talk about their contribution to climate change.

Our rangatahi were deeply involved on that day and you can see that on the photos on the right hand side. Central to that was a really good kai, which is that photo on the bottom left.

Other highlights are engaged rangatahi. So, in the photo on the top left, our rangatahi age from eight to 18, are playing one of NIWA's serious games, if any of you have come across that. It's a fabulous initiative. The NIWA people that came and were absolutely astounded at how on to it our tamariki and rangatahi are, and they asked questions, right, what should happen about climate change? They say things like, we need to get money in the hands of the families that need it. We need to build more wetlands. I mean if they could be advising Ministers right now, we'd probably right on the button in terms of our country's climate change approach.

Just some reflections. This is what we tell externally. So we do a lot of work internally because that's what we're here to do. but externally, we tell government, we tell the councils, don't plan for us, partner with us and support us along the way. Provide us with technical advice, provide us with data information, and provide us with funding. A small amount of funding goes an awful long way. This plan that I'm talking about started with a $15,000 grant from Environment Bay of Plenty, our regional council. So we can make a lot happen with a little bit of funding in our communities.

Our second reflection, our connection to place will remain unchanged. We know the reality is that our beautiful wharenui, our beautiful marae, will have to

move at some stage in the future. But that is never going to prevent us from retaining our connectiveness to this whenua and to this place. So don't talk about a treat, and certainly don't talk about manage retreat because that is not how we see the world.

Third reflection, our cultural infrastructure is infrastructure. The councils, they like to make big plans around, you know, infrastructure planning and you don't see our wāhi tapu, you don't see our marae, you don't see our urupā. They are saying that when you talk infrastructure, you must include naturally. Not as an add on, but naturally, our cultural infrastructure.

Fourth reflection, take an intergenerational view when it comes to climate change planning. That's how we see the world. We don't see the world just for us. We see the world going back through to our tūpuna. We see the world going forward through to our moko and our moko mokopuna.

Finally, the key element to collectivism, to collaboration is having a great kai.

Finally, just closing, we will be resilient like Takaparore. Takaparore is our anchor stone for the Te Arawa waka, or one of the two anchor stones for the Te Arawa waka. We are saying, be strong and steadfast against the elements and tides of change and uncertainty. Regardless of what happens, as the result of the changing environment, we will remain standing.

Just some final comments from me. We here at Maketū will bear the branch of rising seas and extreme weather. It is disheartening to hear our government roll out policy that will result in increased fossil fuel extraction, fast-track coal mining and rolling back freshwater protections.

I single out Shane Jones here and his drill baby drill attitude to the environment. He knows better, but he has been completely captured by the few. Those that will walk away from these developments with absurd profits. Leaving us to adapt. Iwi, hapū, whānau, marae, we must be involved in all aspects of the decision-making with respect to climate change. We must be recognised by

government as having valid views. Climate justice cannot exist without addressing the colonial harms that we have faced, and until we dismantle the exploitative structures and change some mindsets, true environmental justice will remain out of reach.

In closing, I just want to say that decolonisation is the key to a different future. One where we honour and restore rather than exploit and destroy. Our mahi to protect and restore whakapau kōrero, along with all the other iwi that are connected to Maketū.

The wetlands, the gullies, the waterways of Maketū, that's all part of this vision. Collectivising and mobilising the whole community is part of this vision. Engaging our rangatahi is part of this vision. Asserting our mana motuhake and tino rangatiratanga is fundamental to achieving this vision. We are reclaiming our whenua, our wai, and our future.

Tēnā koutou, tēnā koutou, tēnā koutou katoa.

LEGAL DISCUSSION – FILE FURTHER EVIDENCE WITH THE TRIBUNAL (11:23:12)

(11:23) MS SREEN TO ROANNA BENNETT:

Q. Tēnā koe, thank you very much for that kōrero. I was very interested having read the climate change adaptation plan that was part of your evidence. It is clearly a very well thought out, and a lot of hard work has gone into that, so, wanted to acknowledge the mahi that has gone into that in the first instance. The question I had was around the priority projects that have been recognised from page 15 onwards of that document. Wanting to understand from Maketū's perspective, what are the principal barriers in carrying out, or realising projects. Specifically looking at the examples that have been listed along column three and how is Maketū overcoming those barriers. Because these are clearly fantastic action points, so I just wanted to hear your views on that.

A. Well, the first thing that I would like to say is that a lot of that mahi is underway, and it was actually underway before the climate change plan came about. Certainly, there is some projects that have accelerated because of the climate change plan and the level of exposure we have managed to get. But we have iwi entities in Maketū, like Maketū entities that are working really hard in the environment. Really hard bringing people together around education. We have emergency response crews. So, your question is, what are the barriers? So the first thing I wanted to say is that actually, we're doing a lot and we can do a lot with the resources that we have. We are a very motivated, mobilised, connected community. The pieces of work that we'd like to do more on, there some barriers, like I'll give you an example. We'd like to have all our homes insulated, and all our homes air conditioning. The threats that we have here are around inundation, extreme water events, and extreme heat events. Many of our homes are still not insulated, still do not have air conditioning. So, I mean, there's a marae project that we are looking at so that we can have a cooling seat at the marae for example. But one of the pieces that prevents us from getting all our homes insulated in Maketū, and this is an example of a barrier. Is that the programmes that are out there, for some reason they have drawn this random line down one of our roads and said, well all the houses on that side of this line qualify. And all the houses on the other side of the line don't qualify. Now we don't want half of our homes insulated, we want all our homes insulated. We have elderly, we have young babies, we have, you know, we have people that are vulnerable to these extreme events. So that's one issue, is that there is these funny little finicky policies in place that prevent something that is really forward leaning and – because you're only talking about, say, the difference of 30 houses for that particular policy. Another example is, you know, a lot does get down to funding. For example, we want to our own spatial planning exercise in Maketū. We want to do our own infrastructure plan in Maketū. We're very happy to partner with the councils because it's primarily their role. But we want to be driving it ourselves because we know that we could do a better job at that piece of work. So, there's a piece in there about councils and

government agencies releasing control and allowing us to lead something. Even then we could do it, probably cheaper than they could do it. What I mean by that is that we will run our own community processes, instead of community consultation being an add on by engineers that really don't want to do it. Plus, we'd like to be in-charge of directing the consultants that come in. You know, like the Becca's of the world. We do need to have funding for that, so there's a lot of money that washes through the councils, but we think, again, with some decent funding that can come to the communities that we can actually manage a lot of that ourselves. To the standard that it can then link back into what the councils have to do, and they can use some of our stuff for their work. We just want to break down some of those walls and barriers when it comes to funding, boxes of funding.

Q. Tēnā koe, that was all my questions. Thank you again.

(11:28) MR VINCENT TO ROANNA BENNETT:

Q. Tēnā koe Ms Bennett. Thank you very much for your evidence. Just building on what you have been saying before. What are some of the other key areas you can expand for us, where you need more Crown funding and support for the Maketū Climate Adaptation Plan?

A. There is a very simple potential government policy that will just really accelerate the preparedness of communities when it comes to climate adaptation. That policy would be putting in place, throughout all the communities, enough funding for the communities to select and appoint a community climate change co-ordinator. That funding looks like 50, 75,000, per annum, for two to three years. That would be the capable person within each community, everyone, you could go into any community and say, now who is who when it comes to climate change? That community will tell you who is who. Being able to have that person at home, working on that mahi, instead of having to go outside of the community for work, and then come home and do all the climate change work in the community on a voluntary basis would make a significant difference. It certainly has made a significant difference here where we have in place now, as part of our plan, because it wasn't in our plan. A

climate change co-ordinator for Maketū. So that's one piece of funding that we would say, look, this is really good. I think that there's the plethora of projects that any community would want to put up, again, around emergency planning, wetland restoration, the housing, you know, insulating houses. Each community will come up with their own solutions. The councils are working hard to try and channel some money into that space, but their grants are sort of two to 5,000 amounts. Which really don't go far enough. What needs to happen is that, you know, we need to get together with those government agencies and there needs to be a lot of funding available in that 40 to $50,000 bracket. That we can actually do something really substantial inside our communities.

Q. Thank you, I don't have further questions for you. Thank you very much.

HEARING ADJOURNS: 11.31 AM

HEARING RESUMES: 11.38 AM

(11:38) MS SEELEY TO ROANNA BENNETT:

Q. Tēnā koe, Ms Bennett. Ko Grace Seeley tōku ingoa. **Thank you, Ms Bennett. My name is Grace Seeley.** First, thank you for your evidence on the Maketū Cliamte Adaptation Plan. Some of it was additional to the written evidence that was filed, so I just had a few questions on that. Firstly, the images you showed in the presentation of the projective sea level rise and the water line, and the impact on papakāinga. What was the source of that information?

A. I'll have to go back to get the specific source of those specific images. But they're the result of, so NIWA did a big piece of research for the Bay of Plenty Regional Council, so some of those images came from that. Then there's an online tool that we used as well. So it's a compilation of data that has been put forward by people that have been working in the climate change space for many, many years. I think, probably the best reference point would be the NIWA study that was done for the Bay of Plenty Regional Council. But if you can, through Luke, I can find the specific reference and get that sent to you.

Q. Sure, thank you. Just on the online tool that you mentioned, do you know the source of that online tool?

A. No, not off hand. I will need to go back to my notes and don't have them in front of me.

Q. Sure, understood. Thank you. Then, you mentioned as well, I think in relation to the third, that half a dozen government agencies attended to discuss the Maketū adaptation plan. Who were those agencies?

A. MFE, MPI, we had a rep from Ministry of (inaudible 11:40:38), TPK, DOC, can't remember the other one.

Q. Kei te pai. And in that wānanga, what was the response you received from those agencies?

A. They were really pleased to be invited. I think that at the level that we operate inside those agencies, they do sometimes struggle with community engagement and iwi engagement. So for them to receive an invitation to come to the marae, they were very welcoming and open to that. Some of them that came did say that they, you know, that they didn't have anything specific that they could present at that stage, because they needed to go get sign off from managers, and they couldn't do that in the timeframe that we had given them. But the actual engagement, person to person engagement that we had was really valuable, it was very good.

Q. Thank you. And so, from your answer I take it, did you have follow up engagement with some of those agencies after that wānanga?

A. We have developed ongoing relationships with, I won't say all, but a number of those agencies. We work on the model of identifying where the intersection is in terms of their strategic priorities and our strategic priorities. So we know that there's areas that we don't agree on, so we just focus on the areas that we do agree on. Certainly, with the big up (inaudible 11:42:12) that's happened inside the government departments over the last year little while. We have lost some of the relationships that we developed from back then. But for those people that still are in their positions, or in new positions, we maintain that relationship with them.

Q. Thank you. When you say you maintain that relationship, what does that look like?

A. It means the odd text every now and then to see how you are doing. It means we have another hui coming up, are you available. It means then reaching out to us and letting us know something that their doing in the climate change space. So it's getting to that collegial stage where, our philosophy is that change doesn't just happen between organisations, it happens between people. By developing those relationships, particularly when they start turning into collegial relationships, you actually start getting a bit further ahead on your kaupapa.

Q. Understood, thank you. That's very helpful. It might be useful to have some of the additional information in writing, as I have found it really helpful, and it might assist the Tribunal. But in your hands as to whether that would assist.

JUDGE MILROY ADDRESSES MS SEELEY – CLARIFICATION OF ADDITIONAL INFORMATION TO BE SUBMITTED (11:43:40)

MS SEELEY TO ROANNA BENNETT: (CONITUNES)

Q. Thank you, Ms Bennett. Moving to your brief now, do you have a copy of that in front of you?

A. Yes, I do.

Q. Staying with engagements in relation to central government, you say at paragraph 26 that you do not recall ever being contacted to engage, specifically, as the Ngāti Whakaue iwi in policy development on climate change. But instead, you have been given the same opportunities as the general public. Is that correct?

A. Yes, that's correct.

Q. I just wanted to delve into that a little bit more. You mean that you have engaged with the Crown, for example, the Ministry for the Environment or Ministry for primary industries. But you consider that that engagement has been insufficient?

A. So let me be clear, when I say we have engaged with these ministries in terms of the Maketū Climate Change Plan, we have reached out to the ministries and brought them in. It's been at our behest. What we're

saying in that paragraph is that actually, the ministries have an obligation to come out to us.

Q. I understand, thank you. I understand that the Crown evidence, which has not yet been filed, but when it is, we'll cover engagement with iwi Māori, driven by the ministry for the environment. For example, including on the national adaptation plan in 2022, and I understand that that would cover engagement with iwi Māori, including from Maketū and Ngāti Whakaue. Do you recall that engagement?

A. Yes, I don't recall that specific engagement. But we have been forward leaning, so that people know to come to us when they have a piece of work going in the climate change space.

Q. Ka pai, apologies, I wasn't trying to test you, it was just a question as to whether you recalled. I understand your answer, so thank you. I want now to focus on the emergency management, emergency response part of your evidence. For example, at paragraph 23, you say that the Whakaue marae is the civil defence centre in Maketū, but it's not set up to be one. In what situations or emergencies has the marae been the civil defence centre?

A. I can't feel off the exact dates, but when we have had floods, we had floods in Maketū in 2023. We had a couple of floods in 2023, and the immediate response was to open up the marae for people. We had our team that run the kitchen, we had them in there providing kai. We had, you know, mattresses, everything was ready to go for anyone that needed it and people did come to the marae, they know that. COVID is a prime example of when the marae became, you know, a functional centre for that response. So it really goes without saying that the marae is the unofficial centre for the response. I know that the – and that's absolutely valued by the people that, you know, like our volunteer Fire Station team. They know that the marae is the centre and that's where people come.

Q. Ka pai. Has the marae received any support before, during, or after from central or local government in relation to those events?

A. I can't give you categoric answer on that.

Q. Okay, thank you. At paragraph 40 of your brief, this is a similar sort of question. You say that the Crown only seeks to engage with you after a

disaster or during an election campaign. On engagement during a disaster or disasters, are you able to specify an event that you are talking about there, or events?

A. Look, I don't have, like with this and the previous question, I don't have the people in the room right now that can answer those questions with the specificity that you're inquiring about. If you can address those questions through to Luke, and I will get a written response out to you. There will be dates, there will be records of any payments made. I will be able to give you that information, but I can't do that right now.

Q. Ka pai, understood. Thank you. Is it fair to say that your evidence is that the emergency management system as a whole, should enable responses at a local level?

A. Yes, it is, yes, absolutely and we were absolutely called out again, I can't reel off the exact date. But it was in one of those 2023 floods where our people needed assistance. They were phoning up to the civil defence centre, I think it was based in Tauranga. They were saying, no, don't worry, everything's fine and things weren't fine, so our local people here got their gumboots on, and their hi-vis on, and their oil drives and we just did it.

Q. Thank you. The evidence from the Crown, again, hasn't been filed yet. But it's likely to cover the emergency management system including the three layers of that system being the national, the regional, and the local layers. Are you familiar with that system?

A. Not personally, no.

Q. Okay, thank you. Then, in respect of your evidence, from paragraphs 41 to 44, you talk about the positive engagement experience you have had with the Bay of Plenty Regional Council in respect of the Maketu plan. Are you broadly familiar, at a high level, with legislation such as the Resource Management Act and the Local Government Act, the Civil Defence Emergency Management Act?

A. At a high level, yes.

Q. Understood, thank you. Are you aware that the legislation delegates responsibility to local authorities like the Bay of Plenty Region Council,

responsibility for providing a wide range of outcomes including emergency response and planning roles?

A. I'm vaguely aware of that, yes.

Q. And based on your evidence, is it fair to say that you consider that the Bay of Plenty Regional Council are well placed to continue to carry out that role in your community?

A. I'm not going to say, categorically, yes, on that one. Our experience with the Bay of Plenty Regional Council has been with one team inside Bay of Plenty Regional Council, and they have been very forward leaning. And we have worked very well with them. I know that there are certainly other instances where we have not agreed with the actions of Bay of Plenty regional Council. We have probably got similar things to say about the Western Bay of Plenty District Council and the Tauranga City Council. Our rohe includes all three councils. From what we have seen and experienced with Bay of Plenty Regional Council, in terms of this climate change adaptation plan, that process of putting it together. I would say yes, they have been very forward leaning when it comes to working with us to develop our climate change response.

Q. Thank you. Just so that I have understood you. You would consider that the team that you worked with would have been very helpful and good to work with. But because you haven't had experience with the wider council, you can't speak more broadly?

A. Yes, that would be correct. Actually, this goes for any organisation. Where we have dedicated staff that are iwi engagement staff. Where we have dedicated staff that are climate change staff. Where we have staff that are dedicated to environment restoration, which is a big part of Bay of Plenty Regional Council's role. Then we have really good collaborative engagements with them. So that's the Bay of Plenty Regional Council and our district and city councils as well. Once they have those staff in place, then that whole engagement works really well.

Q. Understood. Tēnā koe **thank you**, Ms Bennett. Those are all of my questions. Thank you very much for your evidence.

MS SEELY ADDRESSES JUDGE MILROY – SEEK LEAVE TO PUT QUESTIONS IN WRITING (11:54:02)

LEGAL DISCUSSION – TIMING FOR FILING FURTHER EVIDENCE (11:54:29)

(11:54) BASIL MORRISON TO ROANNA BENNETT:

Q. Thanks, Ms Bennett, for your brief, and in particular, the work you are doing. I really do appreciate, and I have an understanding how difficult those sorts of issues are to bring a community together. I was particularly interested in you paras 42, 43, in which you talk about the relationship that you have with both the district councils and the regional council. My question to that is you mentioned the long term plan or plans of the councils. What sort of response have you had going forward over the next 10 years of these long term plans in regards to funding? You talked about trying to get a community advocate, I guess, to be funded, to enabled to take the pressure off the volunteers, et cetera. Understand that. Have you been able to inculcate that into the long term planning decisions of both the regional and district councils? I realise the raiding implications of that, and I am just wondering whether you were getting some push back. Other than, you mentioned here, some minor funding, so the bigger funding for that community response in particular, to drive the, shall we say, the co-ordination of issues for Māori at that local level with that person. What sort of support have you had for that?

A. So I can say that we have had very good support from the Bay of Plenty Regional Council and also the Western Bay of Plenty District Council. That support has resulted, you and this is that we have spent several years working with people and understanding what their processes are and then understanding what our priorities are. And our climate change co-ordinator that we have for Maketū is funded through the Bay of Plenty Regional Council long term plan. We have not yet accessed it, but we understand that the Western Bay of Plenty District Council have now, community grants that would lend themselves to the mahi that we are doing. So I can say that

despite the rating issues and rating pressures that those councils are facing. They have recognised what needs to be done and have also recognised the value that we bring to the table. So if I go back to that Maketū – to our plan, that was a $15,000 investment by the regional council. If you were to value the hours that have gone into the plan and the reach that it's had, which is now an international reach. You couldn't by that with a cons budget. So they have recognised that partnering with iwi, partnering with communities, allowing us the space to do things the way we need to do things, or a way that we see things need to be done, has value for them.

Q. Look, I congratulate you. I have an understanding of those sorts of debates and issues, and for you to have been able to achieve that, tells me that you are pretty persuasive in getting your concerns across to local government in general. And of course, that filters up, hopefully, into some central government agencies, so congratulations. That's a huge win and well done.

(11:58) KEVIN PRIME TO ROANNA BENNETT:

Q. Good afternoon, or – it's still morning by two minutes. Good morning. In your discussions earlier with counsel, the first question was really earlier in your oral presentation. You talked about the three councils attending your wānanga. What were the three councils?

A. We have in our rohe, we have one regional council, that's the Bay of Plenty Regional Council, Toi Moana. We have the Western Bay of Plenty District Council, and we have Tauranga City Council.

Q. I see, okay.

A. So when you look at our rohe, it coincides with three councils.

Q. Yes, good. Thank you, I understand that now. The other thing I wanted to, in your discussions with the counsel for the Crown, about the interaction between yourselves and the Crown agencies. Is your issue that they should be making the approaches to you rather than you always making the approaches to them?

A. I think where those comments were coming from, and I acknowledge that I've had a similar question earlier in the questioning, I think where that concern's coming from is that, you know, as a – coming from a small community, when we see these big government departments rolling out these big, flash plans and strategies and – with their own visions, and we're saying, "Um, that's going to impact us and you haven't been to see us, to see what our input is on that", so I think that's – so I think you need to understand the place that it's coming from. Yes.

Q. Yes.

A. Does that answer your question?

Q. No. Yes, yes, it does. Thank you. Appreciate that. And I also wanted to congratulate you on getting the award from the national planning institute, that was awesome, and if anything, I think your organisation is very well organised and I do admire it and your get-up-and-go attitude, so my comments is kia kaha, kia ū, well done, kia ora.

A. Thank you. And if I can just take this as an opportunity because I didn't really pull it out when I was presenting, that when we talk about iwi-led, we had three iwi entities in particular that led out the Maketū climate change plan process, and that was the Ngāti Pikiao Environment Society, the Whakaue Marae Trustees, and Te Rūnanga o Ngāti Whakaue ki Maketū. All the iwi that are connected to Maketū were invited as part of the process, and some had the capability to engage, and some had the capability just to be bystanders, but certainly were fully supportive of what we did.

Q. Kia ora. Ngā mihi.

(12:02) PRUE KAPUA TO ROANA BENNETT:

Q. Kia ora, Ms Bennett. I just had a couple of questions that I just wanted to clarify. Were you aware of evidence that was given by Jean Yern at our last hearing in November of last year?

A. No, I'm sorry, I'll have to admit to the fact that I haven't had an opportunity to read previous evidence.

Q. Well, she gave evidence about Maketū, and we clarified that we were talking about the same Maketū that you are talking about here, and she

talked about the issue you raise in paragraph 17, and had a PowerPoint display where she talked about the kōiwi and the fact of the erosion that meant that the kōiwi were exposed as a result, which I am assuming is the same matter that you are referring to here.

A. There have been more found since then, too.

Q. Is that right? So the judge and I both are very familiar with Maketū, so I just – in terms of the marae, the urupā that you are referring to in terms of the kōiwi is where in relation to the marae?

A. We have – so we have wāhi tapu throughout Maketū, but on the peninsula, there is an ancient – a very old urupā, so we've got the new cemetery, we're not talking about that; that's sort of further along and has its own set of issues. But out on the peninsula, on Ōkurei, there is an old urupā there, and the cliff's just eroding away, coming further and further, closer, and closer.

Q. So is that further around and looking out towards Mōtītī?

A. Yes.

Q. Right.

A. Yes, if you go to the top of Town Point Road and then walk out along the farmland, and then face Mōtītī, it's about halfway along.

Q. Right. Okay. Yes. No. Got you there. So the other issue I just wanted to ask about in terms of the marae is: is the marae on a floodplain?

A. The marae is on the wrong side of the inundation – the water inundation lines that we've seen from the data that's been provided to us by the scientists, by NIWA. I'm not going to call it a floodplain, that's probably a technical term that I don't want to assume that I know how to use, but the prognosis is not good for the marae. There was a piece of work done in 2011 where the marae committee and the marae trustees at the time have actually lifted the wharenui up, so that's part of our sort of early resilience planning. We, in those times, when that piece of work was being done, a lot of people didn't want to talk about or acknowledge the pending impacts of climate change on the marae, so that's as far as that project went, but since then, people here in Maketū are quite knowledgeable, and as mamae as it is, accepting of, you know, the future predictions for Maketū, and so we're actively putting together – we're at the discussion stage of

saying, “Right, what’s our plan going forward on 50- to 100-year timeline?”, and we’re, yes, when we’re not being sad and angry about climate change, we’re flipping into a really positive mindset about, “Okay, here’s what we’ll do”, and we’re coming up with some really, yes, innovative ideas which – yes, could see us – could hold us in good stead for the future.

Q. So I mean, I take it from that there’s no categorisation at this stage at all in relation to the marae.

A. Not – no, I don’t believe so.

Q. And the final question I just had, I noticed in paragraph 4 of your evidence, I think it was, you talked about climate change as a consequence of colonisation, and at the end of your evidence in 45, you talked about it as a symptom, and I just wondered if there was some reason for the slightly different use of terms there.

A. No, probably not. Maybe we should have had another proofread and kept our language consistent.

But, I mean, at the end of the day, I think what I gave in my verbal evidence today, and that’s why we chose to focus on climate change being an inevitable consequence of colonisation, that is really what our message is, in that the impacts of colonisation are historically ongoing. We’re still feeling the impacts of that, and it’s just making – I mean, we’re in a climate emergency, right? And people that aren’t in that space yet to accept that aren’t doing us any favours. We need to respond. You know, we need to respond to climate change, and we need to respond quickly, we need to respond collaboratively, we need to have enduring solutions. But the systems that created the problem in the first place are still the systems that we’re battling to get any kind of sensible response to climate change. I mean, of all the important things that, you know, I’ve done this year so far, I’m really hoping that this one moment in time where I get a chance to talk to you good people might actually make a difference in terms of getting that message into the decision-makers that we need to respond and we need to respond quickly, and it’s not good enough just doing superficial quick fixes, because that’s just not going to cut the mustard. We’re on the frontlines of climate change. We know what’s

happening. So if you don't know what's happening, come and talk to us, please.

Q. So I will take it from that, that "consequence" is probably the word, rather than "symptom".

A. Thank you.

Q. Kia ora. Kia ora, Ms Bennett. Thank you.

(12:09) JUDGE MILROY TO ROANA BENNETT:

Q. Tēnā koe, Ms Bennett. I have to admit that I am just wondering which of Bishop F Bennett's children you whakapapa to, so…

A. So my father is Selwyn Hemana Bennett, and he's the youngest son of Frederick Augustus and Rangioue.

Q. Kia ora. Thank you for that. I have just got a couple of questions which came out of your oral presentation, and I can't help wondering, because I have been to that marae so many times, but don't live there anymore. Where the discussion is at in terms of the possibility of having to move the marae and where it might move to?

A. So we're still in the discussion stage, but one of the ideas that seems to be gathering momentum is the concept of developing a second papakāinga, he kāinga rua, so we're not in a hurry to move this marae. It's beautiful. You've been here. It's beautiful sitting on the side of the estuary. It's our home. We don't want to move. So the concept is to develop a kāinga rua, a papakāinga that for all intents and purposes we use. It might have a wharekai on it, it might have a kōhanga on it, it might be a place for wānanga and education. And it just holds us in really good stead that if things happened faster than we'd like to believe they're going to happen. We've got a second place that we can move the marae to. There's another concept that we might never move this marae but actually build a second marae on that second papakāinga. So those are the sorts of ideas that we're talking about. This is in, it's somewhere in my evidence. That's where the principle comes from that we will never be disconnected from this place. Know that the words "retreat" and "managed retreat" are really, you know, certain government departments love using that term. That's not us. Don't use that term with us because

we will never retreat. We will never leave this place. We will always be punga tiaki of where we are today, but we are very happy to consider a second home that, you know, if we need to, we can move to.

Q. Thank you for that. And I am also just wondering, because we used to go out and get pipi and flounders and along the point, to get mussels and so on. How are those pipi beds and the estuary, what's the health of the estuary at the moment?

A. So the pipis are there. They do move around, but they – we have whānau that, you know, you can get a bucketful of pipis. You certainly can't get the sacks full that we used to be able to. The nana, the seagrass, is almost completely gone. The seagrass is almost completely gone, buried by the sediment. Where there's been a long-term fight by Maketū residents to reopen the gates at the Kaituna, when the cut was put through and the Kaituna was diverted out, basically, that just – the slow decline of the estuary was just so apparent since those days. There's been a big fight by whānau here at Maketū to get those gates open.

The gates are now partially open, so we've got water now coming back through the estuary. That's starting to wash some of the sediment out, but that is going to be a really long-term fix. Unfortunately, that sediment's coming out and a lot of it's settling on those mussel beds that you refer to. So that's something that is being monitored through – there's a process under – a project underway to do regular kuku monitoring, but again, we're expecting that that sediment's settlement on our mussel beds is temporary, like, temporary in a matter of a few years, and so I think the philosophy is that we're just trying to do our best to (a) stop the deterioration of the environment, and (b) help the environment recover herself. But we've certainly got a very long to go, and the monitoring exercise of Te Arawa ki Tai Trust, the monitoring of the taiāpure, the work that our community people are doing in terms of the wetlands, wetland restoration, it's all part of that greater effort to make sure that one day, Maketū will be the way that you remember it.

Q. Thank you. Thank you for that. My next question is just about the infrastructure assessment that was part of your management plan. Can you just tell me a bit about that? Because I remember when my

grandmother had to change from using her spring water to – which she was glad about, to get the town supply, so can you tell me what the infrastructure assessment is about?

A. So this is a comprehensive thing that we would like to do. This is the next sort of big project that we'd like to do in terms of the climate change plan. You know, there's lots of these other smaller projects that are happening or will happen, but this is the next big one that we'd like to do. We think that it would look like an infrastructure planning exercise that a council would do, but we would run it, so we would lead it. But there'd be spatial planning exercises. We'd bring the community together and say, "If we had a choice, how would we like to look after our gullies? What are we going to do about these drains that are always overflowing? Do you know, if there's housing development, where would we put the houses? Where would we put the kāinga rua for the marae? Do we need a kōhanga? Do we need another kura, or do we want to expand the kura? Where might that be?" We want to have those discussions as a community, without external influence. We're fiercely protective here in Maketū about our way of life, and we don't want our way of life changed, but we also know that there's things that we need, so that would be part of that spatial planning exercise. We then would like to team up with one of those big consultancies that, you know, advise the councils, but they'd be advising us this time. They'll start drawing up the plans of how we can do things better in Maketū and what our future looks like. We want those plans to be of the quality that we can then give them to the council and say, "Here, we've done this part of the job for you. You guys can pick it up from here." Now, we've costed that. The spatial planning side of things we could do in that $50-70,000 bracket. To go any bigger and get the actual infrastructure plans drawn up to the steps that council would be able to find useful. You're looking at a minimum of about $300,000; more like $500,000 to get it right to that top-notch level. That's big money for anyone, but we're absolutely determined that that is our next big piece of work that we need to do. So we'll just keep chipping away at it, finding partners that want to join up with us, and we will get there.

Q. Yes, because there are a number of houses along the road past the marae that will be in a similar situation to the marae in due course, and so that change to the infrastructure will need to happen. Have you got any tips or advice to others – to other iwi Māori in other localities, particularly in the more remote localities, as to how they can achieve the same sorts of relationship that you've had with the councils and you know, even to get that little bit of funding? Have you got any tips as to how they could go about it?

A. We try not to give advice to other iwi, but we're very happy to talk about our plan and the process that worked for us. So when you think about the process that worked for us, one of the things that was really important was having that iwi only hui first to get all of that out, but also to get ourselves together. You know, in Maketū, you know, we've got MACA claims going on, we've got Waitangi claims still, you know; it's still very raw and hard. And so there are relationships that have been damaged that need to be repaired. So bringing whānau, hapū, iwi together around the climate change kaupapa without our Pākehā neighbours, without any agencies, is a really good place to start. Probably the next piece of advice is link in with those – if you're linking in with the councils, find their iwi relationships person. Like, all councils and all government departments should have those teams in place, and if they're not then they need to get them in, but that's our connect with the councils.

Q. Well, thank you very much for your evidence today, Ms Bennett. Those are all our questions, but again, a very insightful and fruitful evidence that you have given to us, so thank you very much for that.

A. Kia ora. Thank you.

QUESTIONS ARISING FROM MR EVISON – NIL

JUDGE MILROY ADDRESSES MR EVISON AND MS PAUL – SCHEDULING (12:20:55)

MR PREBBLE ADDRESSES JUDGE MILROY – SEQUENCING OF EVENTS (12:21:32)

HEARING ADJOURNS: 12.21 PM

HEARING RESUMES: 1.21 PM

MS PAUL OPENS

I would like to call on our first witness for Wai 3409 and Wai 3346, Mr Haukapuanui Vercoe. He will be speaking to his written brief at Wai 3325, appellation #A036, and an accompanying presentation by power point. He will be joined online by academic supervisor and colleague, Mr Tūmanako Fa'aui, from Auckland University. He will be slightly late this morning as he is still currently teaching.

MS PAUL CALLS

HAUKAPUANUI MALCOLM VERCOE (SWORN)

Q. Can you confirm your full name please.

A. Haukapuanui Malcolm Vercoe.

Q. Can you confirm your brief of evidence filed on the 10th of March, and your accompanying power point presentation. That the contents are to the best of your knowledge, trust, and correct?

A. Yes.

MS PAUL:

Before we proceed Ma'am, I would just like to note that Mr Vercoe has made a couple of amendments to paragraphs 13 and 14 of his written brief. But we will file those corrections shortly after.

(13:23) HAUKAPUANUI VERCOE: (#A036, #A036(a))

Tēnā tātou katoa kua huihui mai nei i tēnei ahiahi. **Greeting to all who have gathered this afternoon.**

Kia koe, e te Kaiwhakawā, me tō pae tapu, tēnā rā koutou. Otirā, te toenga o tātou kua hono mai mā te ipurangi nei, tēnā huihui mai tātou katoa. **To you, your Honour, and the esteemed panel, greetings. And to everyone else who has joined online, greetings to everyone.**

Ko Haukapuanui Vercoe tōku ingoa. He uri ahau nō ngā iwi o Te Arawa, no Tūwharetoa, Te Atihaunui-a-Pāpārangi o Ngāti Raukawa, Ngāti Kahungunu, Ngāti Pāhauwera, o Ngāi Tahu anō hoki. **My name is Haukapuanui Vercoe. I'm a descendant of Te Arawa, Tūwharetoa, Te Atihaunui-a-Pāpārangi, Ngāti Raukawa, Ngāti Kahungunu, Ngāti Pāhauwera, and also Ngāi Tahu.**

I tipu ake ahau i Rotorua. I reira haere ai ki te kōhanga reo, ki te kura kaupapa Māori. Ā, i tēnei wā kei te Whare Wānanga o Tāmaki-Makaurau ahau, Waipapa Taumata Rau, e whai ana i te tohu kairangi i te ao pūkaha e rangahau nei i ngā marae, me ngā pānga o te taiao, me ōna tūkinotanga ki o tātou marae puta noa i te motu. **I grew up in Rotorua. I attended kōhanga reo and kura kaupapa Māori. At this time, I am at the University of Auckland, Waipapa Taumata Rau, pursuing my PhD, researching marae and the effects of the environment and damage upon our marae throughout the country.**

Kia huri ake ahau ki te reo pihikete kia mārama ai tātou katoa. **I'll turn to the English language so that we can all understand.**

Kia ora everybody. My name is Haukapuanui Vercoe. I was born and bred in Rotorua. Where I attended kōhanga reo and kura kaupapa Māori. I am now at the University of Auckland, pursuing a PhD in civil engineering. Looking into the resilience of our marae across the country, in response to antural hazards and climate change.

I will be joined shortly by my lead academic supervisor, Dr Tūmanako Fa'aui.

Now, I would like to proceed with my presentation.

BEGINS SPEAKING TO PRESENTATION #A036(a)

My research looks into the resilience of our marae and today I will be presenting a comparative national study on exposure of marae to natural hazards across Aotearoa.

Just a quick overview of today's presentations. I will be going over the research motivation. What are some of the research aims and objectives. How we are going about it in terms of methodologies. What are some of our critical findings from our analysis. And just the conclusions to tie things together.

Without further or due, let's get started.

The motivation for this research stems from the increasing frequency and intensity of high-impact weather and natural hazard events. A natural phenomena, such as flooding, earthquakes, liquefaction, landslides, tsunami, and alike. In the context of marae or pā, what makes these places of significance, especially susceptible, to you know, weather, or natural hazard events. Particularly, it would be geographic location.

Many of our marae, situated across the country, are located near bodies of water. Such as rivers, lakes, streams, or coastlines. Back in the day, this made sense as these were our food baskets. But with the accelerating impacts of climate change, many of our marae are now put in the difficult position. And also, important to mention that some marae have also had to relocate due to land confiscation, and forced relocation that are now in hazard prone or low laying areas. Whereas, if they had remained in their original locations, they would be in a less vulnerable position.

Isolation is another issue for many marae in remote, or rural areas. For example, if there is one way in and one way out. For example, in a flood event, if that one way does give way, such as a bridge, that marae or community is isolated, so that is another issue.

As we all know, and may be able to relate to, lack of resourcing is also another challenge for many marae. Not all of our marae are millionaires, and as such, this can result in inadequate or aged infrastructure. These pieces of infrastructure are critical in responding to natural hazards and the impacts of climate change with increased precipitation and such.

But despite the things I have just listed, what we have seen is that whānau, marae, hapū, are still the ones leading the response. Mobilising, you know, immediately, and contributing hugely towards civil defence efforts. Even though sometimes it's not really acknowledged or recognised in the literature, or anywhere.

The argument is, if we want to continue to use our marae as communal response sites, civil defence hubs, civil defence centres, however you would like to turn them. We need to ensure that our marae are supported and adequately resourced. So that they can sustain, not only themselves, but also the broader community in the aftermath of hazard events. Because when these events happen, we don't open up to just our own whānau and hapū, but we open up to the broader community as well.

Just to quickly brush over some of the aims of this research, we want to investigate the role of Māori wisdom, Māori knowledge systems, mātauranga Māori in a natural hazard and climate change context.

We want to investigate the current status of marae resilience in relation to natural hazards and climate change.

We can do this by identifying how exposed our marae are to a range of natural hazards, and therefore better understand their vulnerability and fragility.

On top of this, we can also assess the impacts on the infrastructure and any other on site assets that service marae.

From here we can develop solutions that are not only culturally suitable, but also practical and address the short and long term needs of our marae in response to natural hazards and climate change.

If you refer to this taniko pattern on the right hand side. We have, marae infrastructure at the top. Supported by natural hazards and climate change.

This research was underpinned by the interweaving of plural knowledge systems, so our taha Māori, mātauranga Māori, Māori knowledge, as well as the Western paradigms of scientific research.

But of course, at the heart of this research was whānau, hapū, and iwi, which is represented at the centre.

In terms of the methodology, we are doing this at two levels. On a broader more national scale, we have conducted a high level geo special hazard assessment of marae and the infrastructure utilities that service marae. To better understand the spatial extent of their con activity to each other, but also how they relate to marae. From here we can overlay the different hazard data sets that we have.

Then moving from a broader scale to a more localised level. We collaborated with Te Arawa Lakes Trust one or two years ago. As they were developing marae emergency preparedness plans for 26 marae within the region. Our role in that particular project was to provide the research, or some research insights that were data driven to help inform these plans. So they were individual tailored site specific assessments which highlighted the key hazards that these marae were prone to. But it also identified some of the gaps in the infrastructure and processes that could help enhance their resilience in response to natural hazards and climate change.

By doing it this way on the national scale but also the localised level, we could provide insights for marae individually. But also, for many other marae that may share the same challenges and are maybe prone to the same natural hazards.

So when we went to marae in urban areas, this is typically what we would see. They would have access to, you know, the local power grid, some of them may have gas. They would be connected to the Three Waters infrastructure from the council. They would have internet and reception and their roads would be nice and sealed.

But when we went to rural locations, this is what we might expect. Decentralised infrastructure systems such as water tanks, rainwater collection systems. They could have their own independent water supply such as a bore, sometimes water without drinking water treatment, and septic tanks to manage their wastewater. Some of them may not have had internet, or reception at these locations, and sometimes you would need uncles four wheel drive to access the marae as well.

In terms of the initial geospatial assessment that we conducted. We used Te Puni Kokiri's marae data set, which had 1,063 individual marae points across the country. Also, important to mention that all the data sets that are listed here, have been largely developed through the Resilience to Natures national science challenge. We'll work across several institutions such as, universities, Crown research institutes such as NIWA and GNS. Who have been working to piece together information from different regional sources to provide a national picture in terms what these different hazards look like.

Starting at the top we have coastal erosion. From the analysis, it showed that there are six marae that may experience a partial and exposure to it within 20 metres over the next decade.

For tsunami and inundation for a 500 year event, it identified 72 marae in these, for tsunami inundation hazards.

For landslides that were induced by an earthquake for 500 year event. There were 110 marae across the country.

For tsunami evacuation zones, across the red, orange, and yellow zones, there were 168 marae locations within these.

For liquefaction, for 500 year seismic or earthquake event, 307 marae were identified as potentially experiencing liquefaction in a design earthquake.

Lastly, but perhaps unsurprisingly, flooding for a 100 year event, there were 373 marae identified within these zones. Which is about one in three marae across the country.

We also have some data from our research colleague, Akuhata Bailey-Winiata. Who has just completed his PhD at the University of Waikato.

Starting on the left hand side was his master's research, where he identified 191 coastal marae within one kilometre of the coastline. Of these marae, there are 41 marae exposed to a 100 year extreme sea level event such as a storm surge, plus three metre sea level rise.

Building on this work, where he transitioned to his PhD. If you refer to the figure in the centre. This particular article focussed on historical pā relocations in response, or due to natural hazard events. In this analysis, he identified 51 examples of where pā had either discussed or completed a relocation. These were only the documented example.

I guess the key message here is that climate change isn't going anywhere and based on his research, we should plan for adaptation now.

Referring back to the work in collaboration with Te Arawa Lakes Trust, where we worked with 26 individual marae. Here is an example of some of the hazard maps that we provided whānau to try and inform those plans. In this example here, we have the individual marae point locations, the building outlines, parcel boundaries, roading. And if we were lucky enough to have the council data, such as the Three Water infrastructure networks.

As shown in this image, this is the level of resolution that we could achieve, and of course, we have the hazard data set. So in this particular are earthquake induced landslide susceptibility. In the green areas, these would be more flat areas, as this data set is based on slope, and so, as you can see, in the more yellow areas that's where you would expect it to be hills and such.

If we cycle through, for the same map extent. Here we have the flooding extent for 100 year flood events. This is a NIWA data set that was provided. I guess, it's just important to mention that these models are only indicative, and they are not perfect, and they are based on a range of underlaying assumptions and parameters. But are to give place to start the conversation in terms of marae resilience, emergency management response.

When we showed these maps to our marae, it actually prompted a lot of discussion in terms of what they would do across these different hazard events.

Here we have liquefaction susceptibility. Again, this data set is based on the underlaying soil conditions, ground water table level as well. On the left hand side, we can see it's in the red zone, so liquefaction would be highly possible in a given earthquake event. On the right hand side, in the green zone, which means it could be unlikely.

But I think what this slide also shows is that there are also regions that have no colour assigned to it. So it shows that there are imperfections in these models, but again, it's just a good place to start the conversation in terms of emergency management and planning for our marae.

Here we have peak ground acceleration, which is an earthquake metric for how much damage a building might experience in a given earthquake event. If you refer to the scale bar on the right hand side, you see Wellington right at the top, which is a highly tectonically active region. In this map we can see that it's rather blue or purple, so if you look at the scale, we are sitting at about 0.4, so moderately seismically active.

Again, even though peak ground acceleration isn't directly linked to a western understanding of climate change. If we consider the impacts such as landslides and liquefaction. They are directly related if we consider increased rainfall and storm events.

That was for marae in urban areas that were connected to centralised, you know, council infrastructure systems.

Here we have another example of a marae located in a rural and coastal area, Ōtamarākau. Again, on the left hand side, we have the coastal flooding, fluvial flooding extent measure. We can see, on the right hand side, there is a river, the Waitahanui river. Then the figure on the right there are tsunami evacuation zones. So, again, two water born hazards for the marae to consider in terms of adaptation.

Cycling through on the left hand side we have liquefaction susceptibility. Again, based on the underlaying soil, the conditions, and ground water table. The right hand side indicates that it's green in the landslide area, so relatively flat.

Again, peak ground acceleration, still blue, purple, so a moderate level of seismicity and we also have a geology map from GNSs soil map.

We thought it would be okay to present the 2D – there was actually a video presented here, that showed us transforming the 2D maps into 3D. I'll probably have to skip over that, as it won't play. But again, it was just another way that we could convey this information, as many of our people are visual – oral people. So it was another way to improve their understanding of the extent of climate change in these natural hazards.

In addition to the quantitative findings, it was also important to understand the qualitative aspects through interviewing, kōrero and wānanga with the whānau from the marae. To better understand the, on the ground aspects. What we have here listed are the key things that came out of those conversations.

Redundancy or back up options was a reoccurring theme throughout. I mean, all of these solutions came from the whānau and there nothing groundbreaking, but they are just simple, practical solutions that they though would enhance their resilience. You know, in terms of climate change and also natural hazard response.

- Water tanks for storage
- Gas bottles for cooking
- Solar and generators for energy supply

For example, if there's an earthquake or a flood event that takes up the energy grid. If marae have onsite generators or solar system with batteries, they can immediately power up the marae and start to serve the community.

- Starlink for communication

This was another key learning following Cyclone Gabrielle. As some of us may be aware, there were many marae down the East Coast who lost communication with the rest of the country for some time. So I guess, the key findings from Cyclone Gabrielle is that after power or energy, communications is the next critical infrastructure utility. Because if you can't communicate with your whānau in an emergency, for example, to your nan or your koro, or to your mokopuna. There are other health and mental health implications that can come from this.

Lastly;

- Emergency pods (EPOD)

As you can see in the figure at the bottom. This is something that came out of Cyclone Gabrielle where there were multiple of these deployed around the country. They are pretty much a container with a lot of infrastructure utilities that would help support the first 72 hours of an emergency. They have solar systems, Starlink, emergency supplies and medical facilities as well.

Aside from this, another key them was;

- Lack of resources supplied from the Government agencies

On top of this, if there are resources available, there was a lack of awareness of where to find or access these.

Lastly;

- Improved collaboration and communication between Councils, CDEM and marae warranted.

In conclusion, recent hazard events, even over the last decade or so, have highlighted that marae and Māori communities are at heightened vulnerability in response to natural hazards and climate change. But what we have identified with this research is that there is an opportunity here to utilise available technology to help inform some decision making, to mitigate some of these impacts. Where we can come up with solutions that are, you know, appropriate in terms of infrastructure or adaptation and such.

Lastly, as this is research, it was important to recognise the issues around data sovereignty and needing to ensure and uphold the integrity of the mātauranga, or the knowledge that was shared with us from whānau, hapū, and marae.

I think that brings me to the end of my presentation. I would just like to thank you for your attention and welcome any questions when the time is right. Kia ora tātou.

JUDGE MILROY:

Kia ora, thank you Mr Vercoe. We have some questions coming from the Crown for you.

MR PREBBLE:

Tēnā koe, Mr Vercoe. **Thank you, Mr Vercoe.** Thank you very for your evidence. We actually don't have any questions. It was a very informative presentation.

QUESTIONS FROM THE CROWN – NIL

MR PREBBLE TO JUDGE MILROY – SEEK LEAVE TO PUT QUESTIONS IN WRITING (13:45:12)

(13:45) PROFESSOR DAVID WILLIAMS TO HAUKAPUANUI VERCOE:

Q. Tēnā koe. All the best for your doctoral studies. I hope I will address you as Dr shortly. Now, I was brought up in southern Hawkes Bay, born in the 1940s and the Napier earthquake was what everyone used to talk about in terms of natural hazard events. But it wasn't until the Christchurch earthquakes that I ever heard of the word liquefication. You have this map from Rotorua city here, where an enormous area around Utuhina is red on your map. So my simple minded thought, that liquefication in Christchurch was because Christchurch was built on a swamp. This is a thermal area here, what form is the liquefication?

A. I'm not really sure how to answer that question in terms of what form of liquefaction. But I know that the data set is based on the underlaying geology and the ground water table as well.

Q. Right, so you'd be having muds paring up into the streets around Utuhina and you'd have to clear it out the way they had to in Christchurch?

A. Yes, most probably.

Q. That's really interesting. Secondly, I've only been there once, but my memory of Ōtamarākau was that it's reasonably high up, so the suggestion that it might be within range of a tsunami, that's also all form that same scientific data set. That the tsunami would get as high as that cliff Ōtamarākau?

A. Yes, that's what it would suggest. And I would just like to say that this particular marae has relocated a couple of times, so relocation isn't anything new, and they used to be at a higher point. They had to move.

Q. They look down on a really sad story of a few fights back in the 1860s, but that's another story. So thank you very much for bringing your civil engineering skills, and expertise and mātauranga Māori, and acknowledging that, taking both bear contributions. You have educated me quite a lot, so thank you very much.

(13:48) JUDGE MILROY TO HAUKAPUANUI VERCOE:

Q. Thank you, Mr Vercoe. I just have a couple of questions, but I will just comment that when I saw the maps here with Tunahopu and Te Papaiouru marae, and the different risks around those marae. Apart from the fact that the geothermal sometimes, you know, the geysers pop up in unfortunate places. But that there are all these other risks, the flooding risks as well. But my question is much simpler than that. you mentioned Genius, we have certainly heard of NIWA. But can you just tell me what Genius is, or who they are?

A. I meant to say GNS.

Q. GNS, okay. I do know who they are, so thank you. My last question is just in relation to that last photograph you have with your conclusion. I am just wondering where that is, where all that flooding is?

A. I believe that was in Hawkes Bay.

Q. It looked like Wairoa, but yes. Hawkes Bay, anyway. Your evidence is very clear and very informative, so thank you very much for that. I too wish you the best for your completion of your doctorate, and yes, thank you again for your evidence.

A. Thank you very much.

QUESTIONS ARISING FROM MS PAUL – NIL

TIMETABLING (13:50:35)

HEARING ADJOURNS: 1.50 PM

HEARING RESUMES: 2.00 PM

MS PAUL OPENS

I would now like to introduce the claimant for Wai 3346, Ms Kataraina Skeritt-White. She will be speaking to her written brief at appellation Wai 3325 #A033, and her accompanying power point presentation. She has informed me there have been a couple of corrections made to paragraphs 34 and 37, and I will file those shortly after.

MS PAUL CALLS

KATARAINA PIRIHIRA GAIL SKERRETT-WHITE (SWORN)

Q. Can you please confirm your full name.

A. My name is Kataraina Pirihira Gail Skerrett-White.

Q. Can you confirm your brief of evidence filed on the 10th of March and your accompanying power point presentation. That the contents to your knowledge, are true, and correct?

A. They are true, and correct. Thank you.

Q. I now invite you to share your kōrero.

(14:02) KATARAINA SKERRETT-WHITE: (#A033, #A033(a), #A033(b))

SPEAKS TO POWERPOINT PRESENTATION #A033(b)

The title page is of the island, that's where we land, and we grew up on the island, and the photo of the gentlemen is actually my father, Kevin Skerrett. I am the third daughter, one of seven, and I have two younger sister and two brothers, and two older sisters.

We will go to page two, this is Ramon Skerrett, beside him is Warren Skerrett, there's myself, and there's my sister Robin. Now this was taken 32 years ago, in 1993. It's always a passion to go back on to that island and around about November, December. The passion is that great we actually caught mutton bird fever.

This next page is my grandparents and my great grandparents. There's George Skerrett, Anna Skerrett. The people in the middle are visitors to the island and on the other side of them, the tall gentlemen, is Claude Skerrett, and Kora Skerrett, my grandparents. The house behind, Kora and Claude built that in 1922. At the time, that house was built, there were still three round houses on Taukihepa.

We will go to now, the survival and harvest of mutton birds. We have a long history and back date 900 years of working within these islands. But my main

point to this is, what is happening with the sea life, the bird life, and the amount of krill, it has actually taken out of the sea. So the whales eat a ton of feed a day, and we now have around the likes of krill tablets being sold at the chemist shop. Which I think is of no value to the Court, but see this, $120 a bottle, I think that would be better in the puku of the mutton birds because last season was a very, very poor season and I'll show you this.

This is what the birds were feeding on, sticks. So there was not enough krill and feed for them last year and the previous year. That is due to several reasons. The southern waters are being fished and I don't think there's any control in the southern waters for that type of activity. You have your Ukrainian boats and what not, in those waters. And because of climate change itself, with the weather patterns.

Now, this is actually my father in the arms of his grandfather, George Skerrett. So that's George and Ramon Skerrett. He was found out on that island as a baby, and it was his life. His life revolved around the early trips to that island, and he wanted to continue that kai gathering with his children and his grandchildren. So most of the moko have actually had that experience. It was an experience that every child should have but don't have.

I will speak to the spiritual side of things. It is a very spiritual place. We love the culture of it, and we have always been concerned with the pipi harvest, and condition of the birds and global warming, climate change, Antarctic ice melt. That too has a detrimental effect on all life forms.

This is Hurae White, my son who went down earlier this year, just to check out the bird life. That is a koriri, and they are a beautiful bird that will come to the torch lights. It's just wonderful for the interaction with these birds and the younger moko, they just love to come back and hole one of these birds in their hands. It's something very, very special and unique to that island for our moko. Can't speak for anybody else, but just for these ones, it's very unique.

Now, this is what we see when we first land on the island. Either by boat, or by helicopter. This is where we go and watch the birds fly from, and we watch the other mollymawks and what not feed on extra kai down in that area. This is where the krill is gathered, this is where the pāua is gathered from. This area, so it's a very unique –

TECHINICAL DIFFICULTIES (14:09:13 – 14:11:47)

KATARAINA SKERRETT WHITE: (CONTINUES #A033(b))
Slide 7 is the area that we see when we first land, either by helicopter or by sea. This is the area where we gather our pāua and our kina.

TECHNICAL DIFFICULTIES (14:12:14 – 14:12:30)

KATARAINA SKERRETT WHITE: (CONTINUES #A033(b))
(Audio begins at 14:12:30)… our traditional knowledge accumulated through generations of observation and interaction with the natural environment provides some valuable insight to the management ecological systems. Understanding climate phenomena. Where paired with scientific research, these insights form a powerful partnership that can address modern environmental challenges. Including climate patterns and their effect on wildlife breeding cycles, such as influence of El Niño.

Traditional knowledge for Ngāi Tahu encompasses practices, beliefs, and understanding, passed down orally, and through practice. The indigenous communities, this knowledge is interwoven with their culture, heritage, and identity. Te Rakiura Māori management of the Tītī islands is a prime example of this. Their sustainable practice ensures the thriving population of Tītī while preserving cultural tradition.

Climate patterns significantly influence ecological systems, changes in temperature and the – sorry – cycles can alter habitats through availability and breading behaviours.

For instance, the Rakiura Māori have long observed the seasonal shifts and the impact on the population of Tītī. Their traditional knowledge includes understanding of timing of migrations, breeding habits, and nesting sites. Scientifically, these observations can be analysed by tracking long term climate trends, providing a broader context for understanding how climate change effects all birds.

Data collected throughout the year by whānau, my uncle Michael, is well versed with such valuable knowledge and he will probably be able to reiterate what I'm saying and do a more scientific sort of – his knowledge. Because he's good at those cycles and he's practiced a lot of preservation of Tītī and the island, and well versed with climate change. He's also well versed with the breeding cycles. In which, their cycles that's impacted by the climate change factors and temperature rising, and food available for them to actually feed themselves, and feed their chicks. The timing of breeding is crucial for the survival of their offspring.

The Rakiura Māori deeply understand these cycles, which ensures the harvest practices, do not disturb the breeding processes. Hence, that's why there is only a limited time on the island prior to the harvest. Which, it's from March to the end of May. This is to protect the manu and the birds, and the nesting, because they burrow underground for about 10 metres. So, it's important that that is upheld, that we honour those traditions of protecting the manu.

I mean it has a detrimental effect and the warning of the ocean surfaces temperatures in the central and eastern pacific, it disrupts the weather patterns globally. Causing increasing rainfall in some regions and droughts in others. The wildlife, including Tītī, El Niño , can pose significant challenges.

Traditional knowledge offers insight into El Niño events have historically affected local eco-systems. Te Rakiura Māori may have observed changes in bird populations shifts and migration patterns. A variation in breeding successfully during El Niño years. These observations can be helped, scientist

understand certain patterns there, but they haven't lived the years of experience coming from kaumātua that have birded on those islands.

The partnership between traditional knowledge and modern science, in which is, our understanding of the ecological system, the climate phenomena. By blending the wisdom of indigenous practices with scientific analysis, we can address contemporary environmental challenges more effectively. The Rakiura Māori stewardship of the Tītī islands exemplifies how much partnership can lead to sustainable management and cultural preservation.

As climate patterns continue to evolve, the phenomena of El Niño becomes more frequent. These partnerships will be crucial in safeguarding the bio-diversity and cultural heritage by respecting integrating traditional knowledge with scientific research. We can create resilient ecology practices, and benefit both the natural world, and the communities that depend on it.

The loss for indigenous species, impacting and cultural practices. Now I say that as, well, we haven't released the Tītī, those spiritual practices, as well as the whenua and how special that is impacted. We can't hand those down to our children. The bird life isn't there, so that's a very, really important issue with climate change.

Understanding mauri as a concept deeply imbedded in Māori culture. Representing the intrinsic life force that exist within all entities. It is a historic and interconnection notion that encompasses physical, emotional, and spiritual well-being. The health of mauri is essential with a flourishing of natural eco-systems and cultural practices. Climate change, with its destructive effect on the environment poses a significant threat to mauri, impacting both the land and its people, and the life force of nature.

I'll talk about the decline in mauri, the environment destruction. Climate change seems to alter new weather patterns, rising sea levels, increasing frequently and extreme weather events. These changes can degrade eco-systems, reducing bio-diversity and disrupt the balance of natural cycles. As mauri is

entrenched, linked in health of the environment, it has declined and is inevitable when nature suffers. For instance, the degradation of marine eco-systems due to warming oceans impact the mauri of the marine species effecting the population and their health.

The decline of mauri is profound in cultural implications, tikanga, which encompasses the traditional customs and practices passed down through generations. Is tightly interwoven with the environment. The destruction of natural cycles and the degradation of eco-systems hindered the ability to perform these practices effectively. For instance, the harvesting of traditional foods and materials.

Transmission of knowledge.

Knowledge transmission is a corner stone of Māori culture, evolving and sharing the wisdom, skills, the values through storytelling, rituals, hands on learning. The decline of mauri disrupts this transmission by altering the natural context in which these practices occur. The traditional environment markers and cycles are no longer reliable. The ability to pass down accurate and relevant knowledge diminishes. This erosion of cultural knowledge weakens community cohesion and identity.

Addressing the impact.

To mitigate the spiritual, cultural impact of climate change, it is crucial to integrate traditional and ecology knowledge with modern scientist approaches. By respecting and incorporating Māori wisdom into climate action strategies understanding of environmental changes can be achieved. Collaboration efforts between indigenous communities and scientists can lead to innovative solutions that honour both cultural heritage and scientific rigor.

Community empowerment.

Empowering Māori communities to lead climate change initiatives is essential. This involves providing resources support, a platform for indigenous voices to be heard and policy making processes. By centring Māori perspective and resilience to mauri can be strengthened. Ensuring the cultural practices and knowledge transmission continued, despite environmental challenges.

Restoring eco-systems.

Efforts to restore and protect natural eco-systems is vital to the preservation of mauri. Preservation projects, sustainable land management practices and the protection of sacred sites can help revive the life force within these areas. Collaboration between indigenous communities and environmental organisers can enhance the effectiveness of these restoration efforts.

As the decline of mauri due to climate change presents a serious threat to spiritual and cultural well-being of Māori communities. By addressing these issues, should the integration of traditional and scientific knowledge in indigenous voices and restoring eco-systems. The negative impacts can be mitigated. It is imperative we recognise the interconnection of environmental health and cultural heritage, ensuring that both are preserved for future generations. Through resilience and culture sensitive practices, we can safeguard and transmit knowledge and tikanga. Maintaining a profound relationship between the land and its people.

Protecting Tītī for future generations.

Research and develop must continue alongside the holistic approach of eco-system management. Māori knowledge and experience being lived experiences, provided in valuable facts that enhance the effectiveness of these efforts. Collaboration between indigenous communities and the environmental organisers can lead to the innovative solutions that honour both cultural heritage and scientific figure.

That's protecting everything that living, and we say that is the water, because on the island, we also say it's vegetation that's on island. The sustainability of the other bird life that's on the island, it's not just the **(inaudible 14:25:01)**, it's all the other bird life that is there.

Integrating Māori wisdom with modern scientist approach and conservations efforts can enhance the effectiveness of protecting these creatures. This creature here, this is a young chick. That photograph was taken last year when I was just meant to fly off the island. It was sad to see this bird was fully drowned, it was weak, it was floppy. It had not been fed. The mother had not come back to the hole. It had come out of its hole, and it was struggling to survive, so that bird would have died.

That's the sadness of it, to see what's happening when there is, not a quill around or the temperature is too warm, the mother birds, or parent birds have gone too far out. Can't find food, or they just leave because they just leave. So, that was very sad to see, and we'll go into the next one.

This is the video here –

VIDEO EVIDENCE PRESENTED (14:26:21 – 14:28:01)

KATARAINA SKERRETT WHITE: (CONTINUES #A033(b))

That's the conclusion of my power point. My father is no longer with us. He went back for about 26, 28 years after he died at the age of 60. The year he died he actually was on the island, and he got sick. But he was sick probably before he went and wouldn't listen because he was going back no matter what, and sadly he never made it back to his home. But these islands were his life, and now, they've become our responsibility to maintain, look after, teach the younger ones, pass on the traditional knowledge of what we know, and my uncle is the last one standing. He has great knowledge of this.

Since I have been down the island we have lost, first of all, my aunty Theresa, she was really good at showing us what to do, so I acknowledge the memory

of a few people. That is Noel Skerrett, Theresa Skerrett, Ray Skerrett, Winston Skerrett, and Tom Rautahi. We have lost them since I have been going to the island, and they had a big impact on our lives, so that's the conclusion of mine, and I wouldn't want to see it disappear, but I thank you for listening to me.

LEGAL DISCUSSION – COUNSEL TO FILE SPEAKING NOTES (14:30:30)

(14:30) MR PREBBLE TO KATARAINA SKERRETT-WHITE:

Q. Tēnā koe, Ms Skerrett-White. Ko Jeremy Prebble tōku ingoa. Kei konei ahau mō te Karauna. **I am Jeremy Prebble, and I am here for the Crown.**

A. Kia ora.

Q. Kia ora. Thank you very much for your evidence today. Just had a few questions about it. I just – firstly, some questions around the tītī, which – you refer at paragraph 7 and 8 of your summary to the potential impacts from climate change, and from your evidence and the evidence of your uncle, I was really just interested to understand whether – you referred to pressures, other pressures, such as fishing pressures, but these are a migratory species, so presumably they're also under pressure in the northern hemisphere, is that correct?

A. That's absolutely correct.

Q. And what kind of pressures are they facing there? Is it habitat loss, or climate change as well? Do you know the pressures they're facing?

A. Well, my uncle can speak to that. He's well versed with – with the history of that, because I know some of the birds died earlier this year, flying back, on the coast of Australia. So, I don't know the effect of that and what the cause was. There were thousands of birds died on the coast of Australia. There's been oil spills. There's been fishing boats. There's lots of things that actually contribute to the loss of tītī, as well as climate change.

Q. Yes. Yes, okay, no, that is helpful to know.

A. – taken out of the sea is phenomenal, and for what reason?

Q. Yes. Thank you. Thank you for your answers. So in essence, what you are saying is the cumulative effects – climate change is one of a number of significant pressures on the birds, on the manu.

A. Absolutely. Yes.

Q. And from your evidence, you are obviously talking there about the significance of the cultural practices of the harvest and how interlinked that is, as I understand what you are saying, with cultural identity, so I assume there would be a significant body of tikanga that is – that has built up around this cultural practice, right?

A. Yes.

Q. And I assume from what I am hearing that as well as being obviously very concerned about the loss of the manu, you are also concerned about the loss of the tikanga around that as well.

A. Yes, there will be a loss of tikanga around that if we lose the birds with climate change. If the whole ecosystem breaks down, right from the plankton at the bottom of the sea to the krill on the top, it will affect everything. Every living thing.

Q. Yes. And obviously that is of great concern to you, and I can understand that. Is the iwi, or are you taking steps to record and preserve that tikanga, or is it more around the protection of the manu?

A. We protect the manu as much as we can, but I will let my uncle speak to that question, if you don't mind.

Q. No, absolutely. Thank you. You also refer to, at paragraph 16 of your summary evidence, to advocating for more meaningful engagement with the Crown, and just interested, do you have an ongoing dialogue or working relationship with the Crown? And if so, is that a particular agency, such as the Department of Conservation?

A. Your questions can be answered **(inaudible 14:34:24)** with my uncle who's here to give his statement after me.

Q. Kia ora.

A. He has the knowledge more than I do. I mean, although we talk about it on a yearly basis, maintaining the houses, what the bird life is, have the birds come back. We ring often, you know, everybody gets that mutton bird fever, they all want to go down, can't afford it. But at the same time,

we've got **(inaudible 14:34:53)** happening in the southern waters as well, as well as –

Q. Kia ora. No that's –

A. – **(inaudible 14:34:59)** melts there's a whole lot. It's all intertwined for the survival of the species.

Q. Yes. Thank you. Thank you for that. I will ask your uncle some of these questions. Thank you. I just had a final, just a couple of questions about your main brief, which is the one that is dated 10 March. Do you have that in front of you?

A. Yes. Yes, I do.

Q. Thank you. You talk there at the end, at paragraph 40, about the need for policies, legislation, and strategies to be designed at the national, regional, and local levels. I will just let you catch up.

A. Well, I – under the Treaty principles, we actually need a good speaking voice. We need to be at the table, because our tūpuna have lived these lands long before the signing of the Treaty of Waitangi, and it's my opinion that we don't want people to sit around and say, or come up to me and say, "You Māori, use it or lose it, your lands." We want to be there at the table to talk to these issues that may arise. I mean, we've had foreigners coming over wanting to buy islands in our area, so as far as I'm concerned, nothing's for sale.

Q. Thank you. I take it from your evidence that you see the engagement needing to be at all of those levels, but when you do refer to local and regional levels. Did you mainly have in mind there regional and local councils as being where you would be having those conversations?

A. I live here in Maketū. I reside in Maketū. I work with the Western Bay District Council. I work for the combined tangata whenua group on Tauranga City Council. I sat there for three years and listened, and nothing happened. So no, I don't think working with them is a good idea, and that's my opinion.

Q. No, no, thank you. I understand the answer. Absolutely. I was just more interested in, when you talk about a need for engagement at a local, regional and national level. I assume you would agree that when you are dealing with the Crown at the local and regional levels, you are dealing

with, if you like, institutions such as the local government, you know, the regional councils, and then at the national level. You would be dealing with relevant agencies such as the Department of Conservation, the Ministry for the Environment. Is that also your experience?

A. Look, my experience is dealing with, especially with Tauranga City Council. I think it is tokenism for Māori. They just want us there to write their policy and documents as a sign-off and see you later. I believe that it really should go back down to speaking with landowners, hapū – not iwi, go back to hapū level, whānau level, when it comes to maintenance and climate change with different blocks of land around – well, Maketū, **(inaudible 14:38:44).** See, basically, I was raised in the North Island, born in the South Island, and this was an absolute pleasure to go back to see relations and visit relations in Invercargill and the chance to actually go over to Kanawera, Taukihepa**,** or Upokopotete, Big South Cape. So that was just a little bit special to our whānau, because my mother was Te Arawa, Tainui, and my father is Ngāi Tahu. We have the best of both worlds and watch the climate change challenges not only in Maketū, Rotoiti, everywhere. So, we're fortunate to have a foot on both islands.

Q. Thank you. Thank you again for your evidence. Those were my questions.

A. Thank you.

(14:40) PROFESSOR DAVID WILLIAMS TO KATARAINA SKERRETT-WHITE:

Q. Tēnā koe. Thank you for your contributions to our enquiries. I have just got two questions. On your slide 9 and paragraph 35, you talk about eradication of rats and Weka. Can I just clarify that they are both introduced species? This is not the kiore, rat? It's the Norwegian or ship rat that you are trying to get rid of?

A. **(inaudible 14:40:30)**

Q. And the Weka was not there initially, but were introduced at some more recent time?

A. That's correct.

Q. Right. Right, so the –

A. Ship rats, yes.

Q. So they are both part of the natural order, but they have been introduced onto that island to the detriment of Tītī, is your big problem.

A. Yes, but we're lucky to have the rats eradicated on our island.

Q. Right?

A. There were other islands close by. Due to an oil slick off the coast of the Straits – so that's another thing that my uncle will talk to – because they had to help fund the eradication.

Q. Right. So my second question relates to a question that the Crown counsel has already asked you. It relates to paragraph 20 of your initial brief of evidence, which I think you have got with you, and you are referring to research that Ngāi Tahu and the University of Otago did together, and February 2002 research. So there's the comment on weather patterns changing, and then you make the point that there's a strong link between tītī harvest rates and climate change weather patterns, so –

A. That's correct.

Q. – what we know is that people have become more aware of climate change in recent years.

A. Yes.

Q. But does this – well, firstly, and counsel might be able to assist, but is this research filed with the Tribunal? The University of Otago research?

A. No, I don't think so.

Q. Well, if it is not, perhaps I would suggest that you might think about doing that, because we in this Tribunal have to find the link with the climate change, so sure, there are weather patterns over the centuries that change, the El Niño comes and goes, El Niño, and then becomes Niña, or whatever it is, but it would be very helpful if we have got some research which includes both mātauranga Māori and University of Otago expertise that can link the ups and downs of the health of the birds to climate change weather patterns, not just weather patterns over the centuries.

A. I have a person in the room and he's going to be speaking to you next. We have lived that knowledge.

Q. All right. Well, good. Thank you for that, and we will look forward to that next lot of evidence. Kia ora.

QUESTIONS ARISING FROM MS PAUL – NIL

HEARING ADJOURNS: 2.44 PM

HEARING RESUMES: 2.51 PM

MS PAUL OPENS

Thank you, Ma'am. It gives me great pleasure to introduce you to our mātauranga witness for Wai 3346, Mr Michael Skerrett. He will be speaking to his written brief at appellation Wai 3325 #A037 and the accompanying PowerPoint presentation.

MS PAUL CALLS

MICHAEL RICHARD SKERRETT (SWORN)

Q. Can you confirm your full name, please?

A. Yes. My name's Michael Richard Skerrett.

Q. And can you confirm your brief of evidence filed the 10th of March and your accompanying PowerPoint presentation, that the contents are to the best of your knowledge true and correct?

A. Yes, I'm absolutely confident, and very much aware of the importance of that. I worked at the RMA Commission in training. One of the key things picked up from that is you deal with facts, not assumptions, so all my stuff, I've got to make sure it's factual.

Q. Kia ora. I shall now invite you to share your kōrero.

(14:53) MICHAEL SKERRETT: (#A037, #A037(a))

SPEAKS TO POWERPOINT PRESENTATION #A037(a)

Yes, well, I first went down to the Tītī Islands around about 1952, maybe 1954 at the latest, so it's over 70 years now, and I haven't missed a year in the last 38, but I really started to understand about climate change from about 1983 on.

At that time, my wife and – Winsome and I had a fish shop called Fresh Seafoods, and tio, oysters, was our main business. In fact, opening day in 1984, we went through 42 sacks, which is close to 38,000 oysters, and at that time, the quota for each of the 23 boats was 5,000 sacks. Now, they're only getting about 900, I think, and in fact, it's looking very likely the season will close this year because of the devastating effects of the El Niño last year, which I will explain as we go along.

And I was a member of the Foveaux Strait oyster advisory committee to the New Zealand Fishing Industry Board at that time, and that year, there was a big outbreak of Bonamia. It's a parasite which devastated the oysters, and so I was witness to the science that went on, and in 1984, the fisheries scientists were in and became involved, and quickly established that the 1983 outbreak of Bonamia was not a new thing, and high mortality recorded back as far as 1914.

And one of the scientists, Mike Iron was dissecting oysters and counting the parasites under the microscope. About three times in the following years, he thought they might be recovering, because they were big, and fat and he couldn't hardly find any Bonamia. However, they'd look like recovering, then they'd collapse again, and so finally, they closed the fishery in 1991.

At that time, the Ministry of Fisheries people said they knew it actually didn't do any good closing it, because it was mainly killing them when they got to a takeable size. Younger ones survived a bit better. Bob Street was the local scientist, and I said to him, "How big are they when they start spawning?", and he said, "They start spawning when they're about 50 mil' in size", and I – if it wasn't for that, there wouldn't be any there at all now, in my opinion.

At the same meeting, Bob Street, who was the local scientist, who wasn't with the Ministry, he came back from the Chesapeake cray fishery outside New York with a paper by a Dr Karl Rask, and that paper was saying it's there all the time, and they live around it. Now, we knew that, but because there'd been these flare-ups in the past, and in the mid-60s the boats were all out all day to get 20

sacks, really struggling. But by the mid-70s, the boats were back at ten to twelve every day with 96 sacks on board. That's going out there, caught them, **(inaudible 14:57:24)** them, put them in the sacks and back at the wharf. And so there was huge potential in the fishery, but as I will explain as we go on, because of the increasing incidence of El Niño, they're just not getting a chance.

So that paper from Dr Karl Rask also said it wasn't a problem unless – they work with them, live around it, not a problem unless there's a shortage of plankton. That immediately caught my attention, because that's the bottom of the food chain, and I thought, "Crikey, this looks like a tohu for the tītī", because they're feeding on those little animals at that end of the food chain, krill and those little sardine-type fish and everything. And of course, you can't take away the bottom of the food chain without affecting the whole food chain. Everything, one lives off another.

So there was no more meetings, but two years later, in 1993, middle of February, I saw in the paper that NIWA were doing a population survey of the oysters. They said there was an outbreak of Bonamia in the straits, and I thought, now we're going to find out, because it's only six weeks until we start harvesting tītī. Which is equivalent, which I knew that obviously there was a shortage of plankton, because of the Bonamia, and now we'll find out if there's a link. Got to the island, and it was the same year that Gail mentioned before. The birds were absolutely starving. Tiny wee things. They had sticks in them; they were that hungry they were eating sticks. And they were obviously very young, because they were tiny – the size of them. If you picked them up, you couldn't even hardly feel it, they were that light.

Also, later that year, there was a mass die-off of toheroa on Oreti Beach. They're filter feeders too, the same as the tio, the oysters, and the population of them, according to NIWA surveys, went for toheroa over 80 mil' in length, 1.3 million to 300,000. I think that photos in my PowerPoint coming up, which shows – the PowerPoint that shows the beach absolutely covered in dead toheroa. Some were taken away and tested, and they couldn't find any disease. It didn't rule out starvation, which it obviously was.

It was a few years after that that I got invited to come hear a talk by Professor Tim Flannery, the renowned Australian scientist, palaeontologist, environmentalist, mammologist, and author. It was him that said that when we get El Niño conditions, production of plankton around New Zealand and Australia drops, and our fisheries become much less productive. Well, it's climate – made the link that it's climate.

So since then, I've been watching the climate forecasts all the time, their quarterly ones. There's a spring one, a summer one, autumn one and winter one. And of course, the ones that are really relevant for our tītī is the spring and autumn, because once you get to about the middle of April, the bulk of the parent tītī, the tāiko, start leaving the Islands, so the feeding's pretty well mostly done by then. If you get those months in, you're able to get a reasonable season.

Yes. So I've been wrong once in my predictions of what the season would be like. It was a strong La Niña. The fishermen round the West Coast were saying the water was two degrees warmer than normal, and I went to the islands expecting to have a good season, but it was terrible, but afterwards, talking to two very good fishermen, long-established fishermen, both said the feed was very deep. Now, the krill and those little animals that our tītī feed on obviously don't like that warmer water, and they go deeper. Well, of course, when they're deep like that, it makes it much, much harder for our manu to get to the feed.

Now, the year before last, it was predicting a very, very strong La Niña, and I thought, here we go again. And people out Oreti Beach were talking about how warm the water was out at the beach, and as I expected, it was another terrible, terrible year.

In 2005, 2006, as has been spoken of, we've been working since about 1995 with Otago University with research. They came to us. They knew we'd been harvesting mutton birds for hundreds of years, and it was obvious, sustainably, so – sustainable, so, of course, they're about teaching young ones to be

scientists, and they – all the time, they're looking for projects, and I'm all for helping young ones to train, and so they were going to match the Western science with our mātauranga, and so that's where that started.

Anyway, as part of it, they put telemetry on some birds one year, not a lot, because they were pretty expensive; they had about 14. So each one would represent hundreds of thousands of tītī. Well, I should say tāiko. Tītī are the chicks.

Now, normally, they come back and feed their chick about every third night, in normal conditions. That year, and it was an El Niño year. They were away up to 11 days, that year. They often go down to feed down around the southern Antarctic islands, which is a couple of hundred miles south, which is not a big distance to them, and that year, one bird went from there to the Chatham Islands before coming back to the – to feed the chick, and another one was over in Tasmania. And of course, the amount of food they'd need themselves to keep themselves going, you know, there'd be virtually zero recruitment that year; that terrible. And that's the worry, more so than our harvest. The harvest's nice, nice to go and come out of it if you can and have the opportunity to carry out, you know, that – those traditions, and that, and yes, but that's the big worry, is recruitment to the base stock.

When our tāiko return from the northern hemisphere, they fly a thousand k's a day for nine days without feeding, and like all those migratory species, they lose 30% of their body weight, and then they've got to get in condition to breed, or they can't lay an egg. So if they arrive back here in El Niño conditions, they really struggle, and numbers of eggs laid will be down, but also another thing is you tend to find that their young, because they're such great parents and persevere, like last year, in a really strong El Niño year, some of those chicks were more than two months too young, and of course, the parents leave again, the bulk of them start leaving about the middle of April, and if the chick isn't developed enough, it's got no show. And nature's very, very cruel. Only the strong survive. There'd be nothing – it keeps the breed strong, of course, but

if they're not developed enough, nothing's medically wrong with them, but they don't make it.

We tagged and weighed about 40,000 adults and chicks, and we found that nothing that was under 900 grams at fledging week which you will never see again. They might seem to be quite a robust, strong, smaller bird, but the thing is, they haven't got those reserves of the hinu, fat on them to make that – they've got that huge 9,000 k's to fly, and they've got to be in really good condition to be able to do that.

So there's various effects, depending on the timing of the El Niño effect. As I said before, if it's coming on the spring, numbers of eggs laid will be down, the numbers are lower, and a lot of them will be young. But some years, there can be not many, but they're all fat, so the climate's changed, the feed's turned up, and what there is are fat. And then, other years, there might be heaps but they're skinny.

And then I've seen it during the season when we're on the island. After you land – if you go for the full season, you're on the 15th of March. You've got a fortnight then, before the season starts, to cut your tracks and repair houses and all that sort of thing. And as soon as you're well unpacked and you go out and pull a few plugs – we have plugs, puru, they're called. Where you can't reach the bird, you can dig a hole over it and bring it out that way. Make sure you plug it up good, so it doesn't leak or anything, so you check a few of those to see what they're looking like. They might be looking quite good, but then plenty of birds coming at night, and then suddenly they're not coming. They're not coming in. And then it becomes a very ordinary sort of season. When I say, "not coming in", the bulk of them aren't; you're not seeing the bulk of them like you should be doing.

And then other times you go there and they're not looking too good, not many birds coming in at night at just on dusk, and then suddenly, they are coming. And of course, their food, you know, obviously very powerful, because they virtually improve overnight. It won't be a good season, but they're not – it may

not be a disaster, and so yes, so as I say, the stronger the El Niño, the worse, and La Niña, not too strong seems to be good, and – but strong La Niña's just as bad as strong El Niño, and – yes.

So I think it was mentioned before – Tangi a Tauira manage Te Ao Mārama, our resource management agency, for the last 20 years of my working life, and one of my jobs was to drive the development of our plan, Te Tangi a Tauira, and in that, I had a climate change section, and that was published in 2008, and I think that was the first RMA plan in the country to have anything about climate, because I was well aware of what was happening in – what had happened. Now, I've got a PowerPoint that I'll talk to, and it comes about because I'm working towards a thesis, and I'm encouraged to write about the stuff I know, and it comes about with frustration with the scientists, and they don't seem to be really interested in the mātauranga Māori side of it at all, as far as I'm concerned. I've been trying for over 20 years to get them to understand, and they've come out with some ridiculous things, like – well, I'll explain that with the PowerPoint, now, I think.

HEARING ADJOURNS: 3.12 PM

HEARING RESUMES: 3.31 PM

MICHAEL SKERRETT: (CONTINUES #A37(a))

I will make a couple of comments that are triggered by Gail – mentioned a couple of things about the **(inaudible 15:32:07)** and what those islands mean to us.

When we go there, we really feel like we're home and I think of words, the **(inaudible 15:32:17)**, there's, tauwhiria ngā tapuwae o ngā tūpuna kia kore koe e ngaro. Walk in your ancestors' footsteps, down there, there's no bits, there are no concrete roads or spreads or anything. Cracks are worn into the ground that have been there for centuries.

A lot of us, warned by the birds marching to the sea every morning. It's the greatest, like, lesson for you that the world doesn't owe you anything. Those birds, they wait at the sea, on day break every day, rain, hail, sea, or shine to do their work.

The other thing about it too, it's something, the special thing about it that not many people can experience. Myself, I've had four generations of us all living together and also working together. My wife and myself, our daughter, her son, and his son, and standing on a box, a bench trying to help. This is the way traditional knowledge would be passed on, down through whānau like that. It's a special thing that not many people are lucky enough to experience.

Anyway, we'll move on to the power point.

As I said before, it's triggered by frustration, as the scientists who they – you know, I've been working with them for over 20 years, and they just largely ignore a lot of what I say and trying to come up with other things. I think because they are trying to be break through scientists or something, I don't know. Because they are coming up with silly theories like the – somethings happened the year before in El Niño and parent birds are dying with no evidence whatsoever. Why would they be dying in a year when there's plenty of food? It just absolutely no sense whatsoever.

Anyway, so, worse than that. They come up with these theories and they go overseas, the accomplices, and they say these things, and people take it as gospel. And we have our publication, Tītī Times, and they're putting these things in there. I told them, don't do that, you are misleading the people and they come back, you can have a response in the next one. But it's too big to put in one or two pages in the Tītī Time and because, first off, you have to do like, I didn't explain how I know what I know. But it's credible, and then it goes to the rest of it.

Research is when the factor in climate change, and we agree on that. their computer modelling has predicted that adults will die the year before in El Niño,

and that the year before, La Niña would be good for bird numbers. But we have the approach with mātauranga Māori. The **(inaudible 15:36:35)** result is from El Niño, is from La Niña.

Now, you probably saw last year, quite early on, there were parent birds washing up, dead and dying, on the coast in Kaikoura. The same thing was happening on the beaches and that in Australia. You'd see, there was over a thousand seals starved to death around Kaikoura.

In 2012 there were parent birds washing up dead at Orepuki in the southern coast quite early in October. Now the birds start arriving the last week of September, but mostly the first week of October. They are dying already, maybe they started off in poor condition in the norther hemisphere. I emailed our committee on the Rakiura, Tītī island, the administering body, explaining what I saw. And to Hendrick Moller, the lead scientist leading the training with these young ones and that. He come back and said, no, plenty of feed there in July. I'm thinking, what does July have to do to with it, you don't leave till after the 20th of September.

Two years later, I got asked to go to Cape Town to sea bird conference and present on working with the mātauranga Māori, with the western science. While I was there, I spoke to the California people, they call themselves **(inaudible 15:38:31)**. They are the ones that Gail mentioned before. They helped us with the funding to eradicate the rats. They knew we were doing research and they alerted us that there was funding available for the enhancement of sea birds.

What had happened was, a ship called The Command left northern California leaking oil all the way down the coast to get repaired in central America, and a lot of birds got killed. Amongst them, some without tags on them and knew that they were ours. They got time to – maybe 10 million or something, put into a trust for the enhancement of sea bird. The Californian people, **(inaudible 15:39:28)** people thought, well the best place to enhance them is where they breed. So, they encouraged us to put in a submission to get some of this funding, and also, it had to go through a hearings process. They went along in

support at the hearing for us, and also, they encourage, I think it was the equivalent of a fish and game, or one of those sort of groups, and they also supported. So that was great. We got that funding. We eradicated rats off four islands all at one time. So anyway, when I spoke to them and asked them what it was like, you know, late September in 2012, and they said it was terrible, so I was right.

This one up on the screen here, you see the typical university type thing with a preselected data, and it was only a couple of inputs. I've looked at diaries, seen the decline in catch, and come up with an assumption, or something, and it improved that maybe there's parent birds dying off. Then they preached us which was really annoying for me.

With mātauranga Māori, we flipped the narrative, lived experience, 70 years is I've been going, and I've seen all those different things that happened depending on the timing of the climate events and everything. Those are my observations, recordings, shared knowledge with others. As I said before two of those fishermen told me the feed was very deep and that's from La Niña. The other mutton birders is the **(inaudible 15:41:23)** people, is **(inaudible 15:41:26)** from NIWA climate scientists.

As I said, I'm going to work towards a thesis and he's willing to help, the **(inaudible 15:41:38)** people are willing to help and the oysterman, fisherman, we are getting all these different sources of knowledge. And of course, we are very much aware that we are continually learning that name of our plan Tangi a Tauira is reflecting that we are learners. They are translating it as a **(inaudible 15:42:01)** people, which is not my idea. Some of them I can't refer, and I'm a bit whakamā about being called students, but this is what we are. We're all students, all the time. And we'll do some computer modelling too.

Those diaries that they use, I want to get them and match them to the climate part of the – to match the years that record and where they've got it out and everything. And I'm absolutely positive that it will be consistent. They will suggest that the **(inaudible 15:42:44 – 15:42:47)** the birds would predict the –

or harvest even, would predict the future. Well, that's nonsense too, how they come up with things like that, I don't know.

So as I said before, the Tītī harvest and recruitment is a result of the timing and severity of climate events prior to and during the breeding season.

- Spring: critical for parent birds to gain condition and breed on time.

TECHNICAL DIFFICULTIES (15:43:17 – 15:43:24)

MICHAEL SKERRETT: (CONTINUES #A37(a))

(Audio begins at 15:43:25)… Summer, into Autumn, **(inaudible 15:43:28)** and develop. In the Autumn, breeds and be fully developed with sufficient reserves on them to successfully fledge **(inaudible 15:43:40 – 15:43:43)** massive migration.

Impacts of climate change, and particularly, El Niño, and La Niña. The reduced pattern of prey available for the birds. A whole success, the breeding and pledging, everything is around food supply. So, normally, in neutral conditions, where the warm current around New Zealand meets the cold, so the Antarctic currents. There's an upwelling of nutrients which stimulates the production of plankton and the whole food web goes from there.

Here are graphs of what La Niña looks like, which is cooler conditions. You'll see there, and you can see that there's this warming with El Niño.

This here, you can see normal conditions and see that yellow or the shake on the graph of those colours, and there's a paper that goes with this, it's not on here. But it's saying the El Niño is triggered in the equatorial waters around central America. You can see it effects the whole of the Pacific, so, that's again, backing up what I'm saying about them starting off in poor condition when they fly here. You can't have El Niño here and not up there. In which the **(inaudible 15:45:31)** people confirmed with me.

Now, here is a 100 year graph, which – I'll get this expanded. I had a job to find it, I had it earlier on, and it's showing El Niño and the neutral line in the middle, and La Niña. Where you have those lines up above and below the neutral, that's when it really starts to affect this when it gets stronger wither way. If you can read it back there, you'll see that patch of El Niño back around that 1910, where that high mortality, and this was recorded. You'll see where this arrow is right along, towards the other end. That big El Niño in 1983 was when we had that high mortality and NIWA couldn't find this graph again for me, but now that I've found it, I can show and get them to expand on it and bring it up to date.

Then, it shows here what the climate was doing and some good and bad years, just as an example. I've been sitting, talking to Janette and she's very, very good at doing the research and downloading the data and she's finding it all is matching.

Then, this is about the disruptions of the food web, and all the different things that rely on everything, and that it's vital to the whole thing.

Sea surface temperature is critical to the ocean food webs. The surface layer of the ocean is where most primary production occurs. That is in the form of phytoplankton, small photosynthesising algae.

Phytoplankton form the base of the food web, from which all other species depend.

As the in El Niño and La Niña is from La Niña, that is the impact of the ocean mixing and sea surface temperatures, which in turn affect primary production and the oceanic food web.

The neutral conditions, as I said before, there's the upwelling of cold, nutrient-rich deep ocean water provides food for phytoplankton.

Phytoplankton is an abundant food source for zooplankton, which in turn are a food source for many other ocean species.

Tītī feed on species like krill, fish, and squid, but of course, they prefer, not always necessarily deeper water but colder waters. But will go down into deeper waters in the wrong conditions.

During neutral conditions, cold water is within easy diving reach for Tītī.

During El Niño, the surface layer of warm water becomes much thicker.

That's what prevents the cold waters that are carrying nutrients from reaching the surface, it stops that upwelling, which is so critical. So, it's just like a car that's been flogged and never having renewal **(inaudible 15:49:27)**, things like krill, but the oceans would prefer the colder waters in El Niño conditions. Which is too deep for Tītī to reach.

But it's more so, it doesn't even exist because it's just not there. There's a lack of productivity and one of the comments that people talk about are fishing in the quota and all that stuff. We probably have some of the best managed fisheries in the world, but when the productivity isn't there, in those years, well then, they are part of fishing.

They're a well-researched coming up with the quota and that, and there are some formulas like, a lot of species, the most productive is when you fish down to about 40 percent of the **(inaudible 15:50:27)** population. Because they'll grow quicker and in good nick. But then when you haven't got productivity, that doesn't work.

TECHNICAL DIFFICULTIES (15:50:40 – 15:50:52)

MICHAEL SKERRETT: (CONTINUES #A37(a))

(Audio begins at 15:50:50)… so what I'm saying is we need to embrace mātauranga Māori approach to understand the fine balance in Tītī and other

species in the place in the food chain. And how the oceanic food chain is being altered by global warming, climate change.

Further, we need to understand how the increasingly extreme impacts of SOI climate events are affecting Tītī prey species (numbers and distribution), and therefore Tītī numbers and recruitment.

That's it, but a bit of a brief. That's a lot of information, I've got another one, that's a bit of a snapshot. There's a lot, a lot, of information data behind that.

There was a couple of slides I didn't see there. One has downloaded the years, like El Niño, in the years, El Niño in the spring, El Niño in the summer, El Niño in Autumn, and also La Niña in all those years. Then match them up, the good years. I don't know what happened, because those two slides were on there, but I don't see them.

So there's a lot of data behind all that.

JUDGE MILROY:

Thank you very much for that presentation, Mr Skerrett. We now have questions from the Crown. But I think we might just take our micro break before we ask the Crown to question.

HEARING ADJOURNS: 3.53 PM

HEARING RESUMES: 4.01 PM

JUDGE MILROY:

Kia ora anō. We are now at that time for questions from the Crown.

MICHAEL SKERRETT: (CONTINUES #A37(a))

I'd just like to say, before we do that, I meant to do that before.

It's what things are like this year under the neutral, slightly La Niña condition. Where there is plenty of food supply and this is showing you, the parent birds are returning at night and it used to be like this all the time, except an average of one in seven years when you'd see hardly any coming in.

VIDEO EVIDENCE PRESENTED (16:02:29 – 16:03:59)

MICHAEL SKERRETT: (CONTINUES #A37(a))

Yes, that's probably enough.

That's what it's like – should be like and you know, what it used to be like. But that's rare now. We had, from 2007 to 2020, we never had one, what I'd call a good year, when I know, more importantly than the harvest to be lots of chicks fledging and surviving. You know, so, not many people will be aware of just how severe these effects are. Thank you.

JUDGE MILROY ADDRESSES MS PAUL – FILE VIDEO EVIDENCE (16:03:39)

(16:03) MR PREBBLE TO MICHAEL SKERRETT:

Q. Tēnā koe, Mr Skerrett. Ko Jeremy Prebble tāku ingoa. Kei konei ahau mō te Karauna. **Thank you, Mr Skerrett. My name is Jeremy Prebble. I am here for the Crown.**

A. Kia ora.

Q. Kia ora, thank you very much for your interesting evidence. Obviously, we have heard, today, a lot about the pressures that our Tītī face from climate change and the impacts of the weather systems. Just checking because I often get these weather systems mixed up. But in terms of the two, El Niño is the one that results in the warmer pacific seas and that has a negative impact on plankton. Which then impacts on the feeding for the Tītī, is that right?

A. Yes, exactly. That's the bottom of the food chain, it's critical to the productivity. It doesn't just effect Tītī, it's effecting the whole fisheries.

Q. Yes, yes, right. In terms of that, that's because the impacts on the breeding season, when they come through, after their migration, through to when they leave again in April?

A. Yes, it's the timing, it just depends. You know if it wasn't at that time of year, it wouldn't affect them, you know. It just depends, and these can be different depending on when it comes and when it goes.

Q. Right. And I think you also mentioned that in addition to that, La Niña also has a negative effect. I just wanted to understand, what was the negative effect that arises from the La Niña?

A. That's only when it's a very strong one. Neutral, mild La Niña seems to be alright. Three years like that, 2021, and 22, and they were quite good seasons. Which was the first of 13 years, and then we had a strong La Niña and went into 23, terrible. I expected it to be because I knew that it was gone, and the waters were going to be too warm, and it has that same effect of the feed being deep. Those little animal apparently don't like that warmer water and they go deeper and our Tītī can't reach them. But of course, if I can remember, their breeding colonies for others, there are koriri, pararā, and kūaka, and all sorts breeding on that. They are all reliant to and under pressure from all those sort of things.

Q. Thank you.

A. And penguins, the pressure on penguins, is they're not flying looking for feed, they've got to swim. You know, penguins are in real trouble throughout the country.

Q. Thank you for those answers. Just on a slightly different topic at para 8 of your evidence, that Tītī migrate from the northern hemisphere. I asked a question of Ms Skerrett about this as well. But are there various pressures that they are experiencing in the northern hemisphere that you are aware of that are also contributing to the decline on their numbers?

A. Well, yes, they can do. The climate can affect them up there too. When I went to South Africa, it was a good chance for a yarn with those scientists from California. They were talking about high mortality there. I said, well, they'd be the older birds, and they said no, young ones. So, even the young ones can starve to death, you know, it just depends on the timing. When our birds fledge and go north, they go to three places.

Some go off Japan, some go off California, some go off Alaska, and we've had **(inaudible 16:08:09)** on them to see where they go in the migration. One pair, one went off to other side of Alaska, I think, then they come back together in **(inaudible 16:08:18)**. That's six months up there, six months down here. The only place they touch land is here. Yes, so, until their about four years old, the young ones stay up there. They're there all year round and most people in California look at them as being their birds too. But the only place they touch land is when they come here to breed, down on that island.

Q. Thank you, that's very interesting. We have heard that there are studies that have been done, and you have referred to some of these studies. For example, there was a study done with the University of Otago in 2006. I guess I was just interested in whether or not those studies have been updated to take account of the warmer years that New Zealand has been experiencing?

A. No, they are doing another programme right now and, in that study, they put those telemetry on birds to see where they went, and we found where they feed when they are down here. Also, where they went in the migrations at certain times, of course. But in El Niño year, and so they're doing those massive journeys. They normally wouldn't have to go that far to feed, at all, and of course, it was a terrible year, and our birds were absolutely starving. And I would think there would be more telling in the parent birds too, not that we could see it.

Q. And I understand, or it sounded like those studies might be put into evidence on the record. But to your knowledge, do they draw a link between climate change and the losses in Tītī?

A. Do they what? Sorry, I didn't quite catch that.

Q. Do those studies that have been undertaken, and it sounds like there are more on their way. But do the studies that have been undertaken with Otago University, do they draw a link between climate change and the negative impacts on Tītī?

A. Yes, they do now. They didn't for a start. Like, I've known about this stuff for quite a while, starting back in the 80s, and particularly after hearing Professor **(inaudible 16:10:48)** talking. They came about 1995, asking

if they could do a study. They knew we had been harvesting birds for hundreds of years, and of course they'll always come looking for something, for students to study, to learn to be scientists. That's fine, I support that, and they said they knew it was for **(inaudible 16:11:11)**, or it had to be, and they wanted to match western science against it to prove it. They got started and weren't looking at the climate, I said, look, if you don't look at what's happening, what we do is nothing. We harvest about 14 percent of the chicks, which is not much, and compared to a farm that harvests most of its stock. But there's a big thing happening offshore, you know. And they said, no, we got no expertise in that. I said, well, you're not going to get the picture. Then Mike Williams from NIWA come onboard, only for a short period, and then it became the big thing. Then they started coming up with these other silly assumptions, and that, instead of looking at the obvious, what it was, and Mike Williams didn't go around, I got a feeling because, well I might be wrong. That it's because of the silly things they were doing because they are not climate scientists, he is. So that's quite a few years ago. I got asked to go on the Southern Oceans Projects. It's a team of scientists that are studying mammals and that down in the rough seas, southern Antarctic Islands and they wanted to expand into sea birds. They rung me up because Mike Williams, the climate scientist in NIWA, recommended that they get a hold of me. So, going on board with them, **(inaudible 16:12:51 – 16:12:55)** funding which you know is right up everywhere at the moment. So, for my thesis, they kind of just said to me, just put plenty of that sort of rubbish out there. That goes out there and they get dockets and whatever. But we've got to get published to be taken any notice of, and I'm trying to do that, and it's mātauranga Māori. I just, because I know a bit more than the average, but there are things that haven't gotten involved in and being on the **(inaudible 16:13:37)** advisor committee. Seeing what stuff that came back from **(inaudible 16:13:44)** Bay. Seeing Professor **(inaudible 16:13:47)**, and that sort of thing. Observing, from learning all that, watching the climate forecasts and becoming a real variation, the different effects depending on the timing on these events, how they effect.

Q. Thank you, and I think you are certainly making, as I understand, the point that almost a sense of frustration. But one of the things you would like to see more of is the incorporation of mātauranga Māori into some of these studies, right?

A. Yes, well, it strikes me with the trouble I've had trying to get them to take notice, you know. That clip I showed you, of the birds coming at night and they're talking about a big **(inaudible 16:14:45)** the year before in La Niña. I showed them that clip, I said, now, how come they're like this, if this big knock back is happening as well as El Niño, you know. Then he couldn't answer, and he was still putting back down. And it brings to mind, what **(inaudible 16:15:07)** said to me and I don't totally agree with it. I was flown to Christchurch to te rūnanga one time and the fellow sitting next to me on the plane he owned a water company, I think it was Water Force. He told me, he won't employ anyone that's come out of a university because you can't teach them anything. I understand what he meant now. I don't think everybody's like that, but I'm striking that in this.

Q. Yes, well, hopefully not. Thank you. Just a final few questions, changing the topic slightly too. I guess the tikanga around it and you refer to the fact that you've obviously been collecting Tītī for hundreds of years. So it's fair to say, isn't it, that there's a considerable amount of tikanga that would be built up around the harvest?

A. Yes, yes. There are certain things, with the islands and all. It's looking after the islands, and like, you don't touch **(inaudible 16:16:11)**, only stuff that's bared and fallen would you use your fire and that. And old things that are common, Māori, you know, don't chuck fire on the shore. We don't touch the adults, they're extremely tapu. Because if you kill one of them, you are taking out generations. You know, they live long, my grandfather thought they lived to about 14. I know a bird was tagged, years ago, in a study that was done, and they said it was about 37 years old. How long can they breed, I don't know, and that's something out of my studies that I want to work on. Another thing is, and I've got a theory, which I shouldn't be doing because I'm against assumption. But why they don't feed and that went nine days, flying a 1,000 Ks without feeding. But with what I learnt, after this whole La Niña, the birds going deep, I think

it's quite likely because it sort of **(inaudible 16:17:30 – 16:17:32)** in the tropics, the waters too warm and it's deeper. This is only a theory at this stage and it's part of what I'd like to know. There's always plenty to learn.

Q. And I guess just in terms of what you're saying there about the tikanga around not taking adults and so on. Is the tikanga going to need to change, do you think, with the changes that you are seeing with climate change? Maybe putting it another way. Are you concerned about the implications of the cultural harvest, and do you think NIWA needs to change that in light of what you're seeing happening to the birds?

A. With what's happening, it's so big, if we didn't harvest a chick for 50 years, I don't think it would make a difference in the big picture. You know because it's so minor. Our science says we harvest about 14 percent of the chicks. We've got Weka on the island and I'm wanting to either transpose or eradicate, and our scientist told us, because they are harvesting about 20 percent of the chicks. Their top predators when the chicks are only a week old and got **(inaudible 16:18:57)** down on to keep warm. Both parents are away, feeding and the Weka go down the burrows, they drag them out, pick their brains out and then go on to another one, they just eat their brains. When they were eradicating kiore off Codfish Island, **(inaudible 16:19:18)** is the proper name, you hear it called Whenua Hou nowadays. The people find a **(inaudible 16:19:26)**, found the last Weka, found that, but there were dead chicks all over the place. They saw Weka predating on them, and they are a top predator. They were taken there mistakenly as an alternative source of kai.

Q. Thank you. Just finally, obviously here for the Crown. Do you have much of a relationship with Department of Conservation in relation to the Tītī and how is that at the present moment?

A. We have worked closely with the Department of Conservation for years. Prior to the department being formed, there was always a permit day for those ex Crown islands, with the Commission of Crown Lands. So, we're used to working with him, and then the department took over that, so we were working with the department from the time they were formed. Then, I chair the kaitiaki rōpū. We meet with the department every six weeks, and we have a great relationship with the people. A lot of great people in

the department. Bureaucracy gets in the way a lot. So, you know, and they haven't got enough funding to do what they need to do because it's such a vast area, conservation as such. Especially where we are, because conservation will stay with Murihiku, and our takiwā as far as Murihiku goes, from the Matau, the Clutha river, the Whakatipu Waitai in the West Coast, all the way south, Rakiura, and the southern Antarctic Island. Massive, massive area that's involved in a lot of that. We were treated as an advisory committee for long enough and I've been driving, getting it to be operating more as a partnership. And more **(inaudible 16:21:41)**, we are emotionally, and it's taken a lot to get it **(inaudible 16:21:47)**, but we are getting there now. Our meetings should be about strategy and policy, and particularly, input into the annual business and our settlement provide for us to have input into the business plans and it was through that. When we got rats invaded back in 1964, what **(inaudible 16:22:14 – 16:22:17)**. Those islands were **(inaudible 16:22:19 – 16:22:23)** the first thing that struck me when I landed there as a child was the noise of birds. The Tūi, Kōmako, Parakeet's, all those birds, Rifleman and Tomtit's and Robin's all over the place. Then, the rats, and you hear silence. Incredible what one predator can do, and so that was a big mamae from 1964, through till about 2004. I was on the department all the time about helping us get rid of the rats, and they had their programme leading up to the eradication of the Macauley Island before they could attend to us. So, we went through that and then, in 98, when we got our settlement provided for our input, then I was putting it in the business plan every year, about helping us. You know, it's funny on which islands were feasible. Then, once they got the Macauley Island done, they did one more year at Pearl Island, because they wanted to shift some Kākapō, older males. Because they thought they might be interfering with the breeding, and Kākapō were on the brink of extinction, it was touch and go whether they could be saved. So we put up with that, and then **(inaudible 16:23:45)** we got – the department then helped with the eradication, they managed it. We sourced the funding, luckily, from America, and California. That **(inaudible 16:24:08)** saved our New Zealand funds which was a great result, and we eradicated four

(inaudible 16:24:13) at once. Three were so close together you had to eradicate them, because the rats would of swam from one to the other and the other ones about **(inaudible 16:24:23 – 16:24:27)** carried out in one. So, yes, so no we do **(inaudible 16:24:35)** people dealing with our concerns and there are still frustrations in the government. I think it's more in Wellington, I think, very, very, very slow, of like, we want to put these scientists working. They were going to do a study on Weka, the effect they're having, and part of that is making an offer area as a controlled site to compare. And **(inaudible 16:25:18)** wouldn't do it because they don't have the customary rights. I spoke to Tama Potaka when he was in Milford. I've been offered opportunities, and I said about it, that because in the wildlife fact, it provides the harvest – Weka in the Chatham's and the islands around the Foveaux Strait. There's a written **(inaudible 16:25:47)** minister and of course, they've always been harvested. It's customary right, it's never been taken away. Months ago, so I wrote to what I said I would. The department locally come and seen me and got all the details and it was working well. But in the meantime, thousands, and I mean thousands, no exaggeration, baby chicks are being killed. Koriri, those brown nesting birds, those Kūaka, pararā, all those birds are being predated on by Weka. Unnecessarily, so, that's another thing, to ensure that, you know, we have got – acknowledge our right to harvest them and **(inaudible 16:26:41 – 16:26:44)** that. It's not about eradicating, it's saving. Doing a simple – and you know, the departments stopped protecting these species and the same as the Crown's job under the Treaty, to protect Māori species. But this, no, it's a global thing, you know, this is government, I think, the government. You know, with the global warming, it's **(inaudible 16:27:17)** response. But it's going to take huge, strong leadership to gain **(inaudible 16:27:26)** said that years ago. People **(inaudible 16:27:29)** and short term governments won't help because it's hard for them to make hard decisions that need to be taken. **(inaudible 16:27:42 – 16:27:50)**, for our mokopuna, unless it's dealt with. He was saying, at this point in time, low energy bulbs and like heat pumps, won't do it. There's only one clean source of energy and that's nuclear, not that we need it here in

New Zealand, and the threat of melt down and terrorism is absolutely minor as the threat of climate change, global warming. That was quite a while ago, we said by 2020 people start to wake up, which grew, there's 24, tomorrow it will be well into **(inaudible 16:28:29)**, trying to work our way through. They won't have water and I've done a lot of studies. I had a cruise to Alaska and there was a scientist on there doing a presentation. **(inaudible 16:28:45 – 16:28:48)** and he was saying, first time ever. Fires burning out of control in the **(inaudible 16:28:53 – 16:28:55)**, up there and at that particular place, it was 10 degrees lower than it had been in years before, 10 years before. That changed all the time, but it was pointed out. Those sort of changes took hundreds, not decades. Pointing out that water and ice stay constant, but land warms up. So the more land they reveal, the more warming you've got contributing, it helps accelerate. The amount the arctic shrunk **(inaudible 16:29:33)** the white ice reflects the heat back up to allow more heat into the centre weakens the earth. And that's the same in the Antarctic too, it's shrinking.

Q. Thank you and thank you so much for your evidence. I might have distracted you somewhat away from Tītī. But it's been a pleasure listening to your evidence on the impacts that you are seeing and experiencing. Those were my questions, thank you very much.

A. Thank you, yes, you got me going there.

Q. No, it's fine, and I won't tell you where I'm sitting, sounds like you have it for Wellington.

(16:30) PROFESSOR DAVID WILLIAMS TO MICHAEL SKERRETT:

Q. Tēnā koe, thank you for your wide ranging evidence. This is not strictly about climate change, but about tikanga. So, there's a lot of people of Ngāi Tahu descent. Do you have, sort of, whānau that have to sort of keep up ahi kā, have to make sure they keep on coming back? How do you distribute the rights to come to each of these islands and harvest the Tītī? Do you have some strict rules around that or is it just whoever turns up can go and get some Tītī?

A. We have two systems. **(inaudible 16:31:17)** islands that were reserved at the time of the **(inaudible 16:31:20)** at Rakiura. So, you go there by

whakapapa and of course not all whānau go. I've got some whānau that go over the year, but then some whānau sort of will drop off and of course, people are worldwide nowadays too. They're not all around and then there's the others, ex Crown Islands. They were accessed by permit, through the Department of Conservation and the, I mentioned it before, the rest of our lands. Before that, and now, when we had our settlement, the islands came back and titles held by Te Rūnanga o Ngāi Tahu on behalf of Rakiura Māori. There were conditions we had to develop the constitution and by-laws, and a management plan. The management plan required that apart from providing, to be able to harvest Tītī, is to be managed as if it was a nature reserve, which is no problem, with the way we looked after them anyway. So they're accessed by permit and we developed a register of who were eligible by researching the families that had gone. All Ngāi Tahu don't have that whakapapa to go there. Through intermarriage though, there's getting more I suppose. But it's not growing exponentially, I wouldn't say. Another thing that's going to happen is that with these terrible years, some whānau just won't be able to afford to go. That's what's going to happen, they just can't go, it's expensive. There's generally five of us, go, for some, and family, and it cost us about 17,000 to go down there. There's a boat, cost about 3,600, for that. Then each lift you have on the boat cost about 270, I think. Then it's the same for the passengers, then you have to do it on the way home again, and then the helicopter lifting off. That's about 270 a lift. As well as all your supplies and everything like that. It was the heart of the economy back in the day, particularly down south, the props that Māori brought from Hawaiiki, they wouldn't grow south of the Banks Peninsula, the kumara, and taro and that. So they were hunter gatherers and prey, and Tītī was the heart of the economy, back then, and of course people do sell them to hopefully come out of it. But when we get runs of years, and particularly, as bad as it was last year, Tītī just won't be able to go. You are Mr David Williams, are you?

Q. Yes.

A. There was a nice young lady in Christchurch the other day, said to say hello. The girl, Down, I think her name was, Sarah Down, is it?

Q. Yes, yes, thank you very much. You been watching some water case?

A. Yes.

Q. Yes, kia ora, thank you for that.

(16:35) KEVIN PRIME TO MICHAEL SKERRETT:

Q. Tēnā koe.

A. Kia ora.

Q. I just had one question. Why is the Weka being the pest?

A. Weka?

Q. Yes.

A. It's where it's not meant to be. Apart from that, it's a **(inaudible 16:35:41)**, but someone had taken, I think, in about 1920 and the pressure of this climate effects are just important. Hopefully, we'll be able to translocate them off, as I was saying. And hopefully, the department will, you know, get an island or somewhere to put them. But of course, they **(inaudible 16:36:08)** themselves, because all these different places, it might have a lizard in some place, and something else somewhere else. Because they are such predators, they are not keen on putting them anywhere much.

Q. Sorry, what are they predators of? What are they eating? What are they killing?

A. Tītī chicks.

Q. I see.

A. They go down the rua and drag them out when the parents are – when they are about a week old and they have enough down on them to keep themselves warm, then both parents are away feeding. So the Weka are going down, grabbing the chicks, dragging them out of their rua, and picking their brains out. They'll just pick the brain out and then they'll go and do another one, and they keep doing it. We harvest about 14 percent of chicks, but our science tells us that their killing that way, about 20 percent.

Q. Do they just kill them and leave them? Drag them out, kill them, and leave them or do they eat them all and move on?

A. It seems that they initially eat their brains and do numbers like that. But I think they come back and clean them up, maybe after they've got a bit, decomposed.

Q. Yes. No, that's all my questions, thank you very much, much appreciated, and thank you for your evidence.

A. They do like the hinu on their chest, they'll pick away and eat that.

Q. Okay, thank you.

QUESTIONS ARISING FROM MS PAUL – NIL

JUDGE MILROY:

Those are all the questions of the Tribunal Mr Skerrett. Can I just thank you very much for your evidence. It has been very interesting to hear from you and to be hearing from somebody who is so steeped in the knowledge and lived experience of, you know, the Tītī and the Tītī Islands. I wish you the best for your thesis and hope that if you finish it soon, that you might send the Tribunal a copy. So, again, thank you very much for your evidence, it has been very useful and helpful.

MICHAEL SKERRETT:

Thank you very much, I very much appreciate the opportunity. I love talking about the **(inaudible 16:38:56)** of mine.

LEGAL DISCUSSION – TIMETABLING (16:39:05)

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING ADJOURNS: 4.40 PM

HEARING RESUMES ON THURSDAY 10 APRIL 2025 AT 9.00 AM

JUDGE MILROY:

Mōrena tātou. I will just hand over to our kaumātua for our karakia.

KARAKIA TĪMATANGA (KEVIN PRIME)

JUDGE MILROY:

Kia ora. Thank you, Kevin. E mihi ana ki a koe, Professor Kelsey. **I want to greet you, Mr Kelsey.** Just before we ask your counsel to take you through your presentation today –

JUDGE MILROY ADDRESSES MR LYALL – TIMETABLE (09:00:49)

MS SYKES:

Mōrena tātou. Kei te tukuna te rākau ki a Mr Potaka, māna hei whakatau i ngā kōrero whakapuaki i ngā kerēme mō Ngā Toki Whakarururanga. **Good morning. I will be passing it on to Mr Potaka who will make the opening submissions for the claim for Ngā Toki Whakarururanga.**

May it please the Tribunal, there's a bit of a batting order in our firm today. I will be leading Professor Kelsey, but I seek leave of the Tribunal for my junior Mr Potaka to deliver our opening submission. Kia ora.

JUDGE MILROY:

Kia ora, ka pai.

MR POTAKA:

Tēnā tātou e te Taraipiunara. **Greetings to the Waitangi Tribunal.** Can everybody hear me clearly?

JUDGE MILROY:

Yes, thank you.

(09:02) MR JACK POTAKA: (#3.3.014)

Tēnā koe e Kaiwhakawā otirā tēnā tātou katoa. E tū ana a Potaka hei māngai mō Ngā Toki Whakarururanga i tēnei rā ki te whakapuakina i ngā āhuatanga o te wā. **Thank you, your Honour, and greetings all. Potaka appearing, counsel for Ngā Toki Whakarururanga this morning, to make the opening submissions.**

I mua i taku tīmatanga, tēnei te whai whakaaro ki ētahi o ngā mate kua pā nei ki ā mātou kiritaki i tēnei wā, a koia tērā ko te whaea a Moana Maniapoto, ā, a te kuia rā a Bernie inatahirā kua hinga atu, kua mene atu ki te pō, ā, hei te rangi nei ka whakaeke ki runga i tōna marae a Waitetoko. Ā, me te whai hoki i ngā mihi ki te māreikura o te Tai Tokerau, ki a Ms Harawira kua mene atu ki te pō. Ko te rāngai o te mate ki a rātou, ā, ko te rāngai ora ki a mātou e mahue tonu nei, a tēnā rā atu tātou katoa. **Before I commence, I want to pay respect to some of the deceased that have affected our clients such as Moana Maniapoto, her mother Bernie who passed away yesterday, departed to the world of death and today she will be taken to the marae Waitetoko. And also, following on to the acknowledgements to the matriarch of the north, Ms Harawira, who has also departed this world. And so, we pay respect to the deceased, and we the living who are left behind, and so greetings to all.**

May it please the Court. Mr Potaka appearing on behalf of Ngā Toki Whakarururanga. As my colleague Ms Syke has alluded to, I will be taking you through our opening submissions today.

The opening submissions that I refer to was filed on 27 March and it has been prepared for Ngā Toki Whakarururanga and it has an appellation number of #3.3.014. With the Tribunal's leave, I would like to take you to page 2 of our opening.

REFERS TO OPENING SUBMISSIONS #3.3.014

The claimants of this, of our claim, are Donna Kerridge, Pita Tipene, Moana Maniapoto, Dr George Laking, India Logan-Riley, Dr Maria Bargh, and

Aroha Mead, who all make up and on behalf of Ngā Toki Whakarururanga. Nō reira, e te Taraipiunara, kia ruku atu tātou ki ngā mahi o te wā. **And so, to the Tribunal, let us dive into the current mahi.**

Ngā Toki Whakarururanga is a by-Māori, of-Māori, with-Māori, and for-Māori entity, established as a result of mediation in the Wai 2522 Inquiry on the Trans-Pacific Partnership Agreement. Its mandate is to protect and advance Māori responsibilities, duties, rights, and interests under Te Tiriti o Waitangi me He Whakaputanga o te Rangatiratanga o Niu Tireni **the Declaration of Independence**, and to hold the Crown to account to meet its responsibilities under Te Tiriti and He Whakaputanga in the arena of trade policy, negotiations and agreements.

Ngā Toki Whakarururanga, through its governing body, Ngā Kaihautū, and its pūkenga, bring their mana, knowledge, and obligations as mana whenua to this Inquiry, providing a unique Tiriti-based lens on the climate crisis in the international arena.

The Tribunal will recall in the first hearing in this Inquiry, we focused on the thematic scene-setting for the claim, opening submissions and evidence from tangata whenua. The evidence presented by Professor Bargh for the claimants addressed the ideology, process and substance of international trade and investment agreements and of the Conference of Parties to the United Nations Framework Convention on Climate Change, as they relate to and impact on Te Taiao **environment** and Te Ao Māori.

In this second hearing, evidence from the claimants' expert Professor Jane Kelsey provides factual information and analysis of the process and substance of international trade and investment agreements with respect to the climate crisis and the Crown's Tiriti obligations.

Professor Kelsey's evidence addresses three matters in particular:

(i) The denial of rangatiratanga in the international treaty-making space;

(ii) the process and substance of trade agreements that purport to address the climate crisis; and

(iii) investor-state dispute settlement as a tool to challenge or chill the adoption of measures to address the climate crisis and te Tiriti o Waitangi.

In addressing Rangatiratanga in the international treaty-making space, Professor Kelsey cross-references the evidence of Dr Moana Jackson in a series of Waitangi Tribunal inquiries, which Professor Kelsey discussed with him at length. This explains that the authority to make treaties between nations is inherent to the mana of the Rangatira and has never been, and could never be, ceded by Rangatira to the Crown. It remains an intrinsic element of Rangatiratanga today.

The Crown's assertion of Crown prerogative to make international treaties unilaterally, whereby the Crown purports to act on behalf of all Aotearoa, is a breach of the principle of Rangatiratanga and exceeds the limited authority conferred on Kāwanatanga under Te Tiriti o Waitangi.

That unilateral assumption of power has especially prejudicial consequences because of the normative, disciplinary, and often binding and enforceable nature of international trade and investment treaties.

The claimants acknowledge that previous tribunals have deferred the matter of international treaty-making authority to the Constitutional Kaupapa inquiry. It is nevertheless important to this inquiry, especially when considering the principles of Rangatiratanga, Kāwanatanga, and Mutual Recognition and Respect, to recognise that the Crown has prevented Māori from exercising their rights and responsibilities to negotiate international rules, obligations and solutions in relation to the climate crisis.

Professor Kelsey's second point is that international free trade agreements entered into unilaterally by the Crown address the climate crisis, if at all, by advancing concepts, legal and economic instruments, technologies and

techniques, and practices, such as extractivist and financialised “solutions”. These reflect western worldviews and capitalist interests and are antithetical to tikanga, Māori values, mātauranga and kaitiakitanga. The inclusion of references that purport to reflect and give effect to Māori and Indigenous Peoples’ values and knowledge in some agreements compounds those contradictions and is of cosmetic value at most. The recently adopted Indo-Pacific Economic Framework agreements illustrate that.

Thirdly, investment agreements, or investment chapters of trade agreements, confer special rights and guarantees on foreign investors to protect their assets and future profits from measures taken to mitigate the climate emergency, including compliance with Te Tiriti o Waitangi.

The mechanism of investor-state dispute settlement (which is ISDS) empowers foreign investors to enforce those rights extra-territorially through controversial private international arbitral tribunals, where investors may claim hundreds of millions or even billions of dollars in compensation, including for loss of future profits. Investor-state dispute settlement is increasingly being used by investors involved in natural resources, fossil fuels and renewable energy to challenge government actions to address the climate crisis.

Despite the policy of the Crown since 2017 not to include the ISDS mechanism in new agreements, ISDS continues to apply in a number of existing agreements. That renders Tiriti-based decisions and actions of central and local government, courts, and tribunals on climate change at risk of an investment dispute.

The goal of investors bringing ISDS disputes is not simply to secure compensation. It is also, perhaps mainly, to deter or “chill” the adoption of policies, laws and decisions that impact negatively on the investor. That would include Tiriti-compliant climate strategies in Aotearoa, a risk recognised by the Waitangi Tribunal in its Third Stage report on the Wai 2522 Inquiry on the TPPA in relation to mātauranga in the digital domain.

Two examples illustrate these risks. Four ISDS disputes have been brought by Australian Clive Palmer and his company Mineralogy, now incorporated in Singapore, claiming A$420 billion against Australia over environmental and climate-related measures, using an agreement to which New Zealand is a party. Mineralogy has mining operations in Aotearoa New Zealand and has been the subject of protests by mana whenua. Clive Palmer is notoriously litigious and could well resort to ISDS under the same agreement to challenge any Tiriti-compliant initiatives that impact on his company.

As a second example, former Climate Change Minister James Shaw has said publicly that the Government's ban on offshore oil and gas exploration in 2018 was limited to future permits because officials warned of the risks of an investment dispute.

Trade and investment agreements create actual and potential prejudice to the claimants and other Māori by legitimising inaction and advancing harmful "solutions" in the guise of addressing climate change, deferring necessary action to address the climate crisis, denying their role and responsibilities in addressing and mitigating the climate crisis, and deterring or chilling the Crown from taking effective steps to meet its obligations to Māori in relation to this crisis.

Professor Kelsey's evidence shows this is not purely hypothetical. There is a real and present risk of grave prejudice to the adoption of Tiriti-based solutions to address the climate crisis.

E te Taraipiunara, **the Claimants seek definitive findings that:**

The constitutional authority and responsibilities of Mana Motuhake and Tino Rangatiratanga need to be exercised on at least equal terms with the authority of Kāwanatanga in international treaty making, including on matters relating to the climate emergency. The Crown has failed to do so.

The climate crisis is a global emergency that requires a synergy between actions the Crown makes commitments to in Aotearoa to mitigate and reverse that emergency and those it commits to through international treaties on trade and investment. The Crown needs to comply with its obligations to adopt Tiriti-compliant responses to the crisis in both jurisdictions. The Crown has failed to do so in the international trade and investment sphere.

We reiterate the Claimants seek recommendations that:

The Crown adopts a mechanism that re-empowers Māori to exercise equal authority in the international domain when addressing the climate emergency, including in the making of international trade and investment treaties;

Pursuant to this recommendation, the Crown takes proactive steps to review existing provisions in international agreements that purport to relate to climate change to make them compatible with the exercise of rangatiratanga and tikanga and consistent with Mātauranga Māori; and

The Crown takes immediate steps to remove the potential liability of Aotearoa New Zealand to investor-state dispute settlement in existing trade and investment agreements, if necessary renouncing such agreements, and passes legislation that prevents a future government from adopting or maintaining such a dispute mechanism.

E te Taraipiunara **Tribunal**, that concludes our opening for today. I am going to pass it now to my colleague Ms Sykes.

MS SYKES:

I am assuming, Ma'am, that there are no questions, and can I just say as a matter of process, in light of the Crown's information, overnight I had taken instructions from Ms Kelsey, we will try and bring her back once the Crown does have their evidence at an appropriate time if that's available to us. Although, it will really be dependent when the Crown's evidence arrives, and so that they

can have the opportunity of viva voce cross-examination with the Tribunal's leave.

In terms of the rubric of our claims, her evidence is a connecting evidence for a number of the claimants that we're representing here. It's very important to us that we get an opportunity to test the Crown's propositions with our expert at some future opportunity accordingly.

Just to assist the Tribunal, we've tried in the intervening period since the last hearing to bring together all of the evidence that Professor Kelsey has helpfully prepared for the claimants. Her first affidavit, appellation #A014 and the table of exhibits there at appellation #A014(a). Her second affidavit appellation #A029 with the table of exhibits at appellation #A029(a). Her third affidavit which is appellation #A038 with the appellation #A038(a) with table of exhibits, we know that's significant material, so we attempted, and this is the most important document for us all today, is to have appellation #A038(b), which is her speaking notes, with the Tribunal's leave I will ask Professor Kelsey to read verbatim.

Yesterday afternoon we filed a PowerPoint, and that was done mainly, Ma'am, to take cognisance of your opening remarks earlier this week, how you asked me in particular to try and focus things to ensure that we weren't covering material now that had previously been reported on in the Wai 2522 claim, and we believe that – two matters. We don't think the material as a whole as it sits does that anyway, and it's fundamental to the theory of our case that we understand that those free trade agreements are interlocking arrangements that impact on the rangatiratanga of Māori and their ability to exercise their own planning, their own understandings, their own actions to combat the effect of climate change.

So, there is a general understanding that's required, notwithstanding the Wai 2522 agreements we highlight, and there will be a submission filed later this afternoon for the judicial conference that the CPP-TPPA agreement itself did not include climate change issues, so that's why these matters in our view are

live and very important for contextual understanding in the Tribunal ultimate reporting.

I don't have an appellation number for the climate change. I'm not too sure who is controlling the electronics behind you, Ma'am, but I discussed with Professor Kelsey that as she moves through her speaking notes, if we have those PowerPoints up at an appropriate place that we can all see. We may be able to do a parallel dimension rather than going through both things in sequential basis. So, I'm hoping that one of my best friends in the registry down there is going to be able to assist me in that regard.

JUDGE MILROY:
She has just nodded to say that she can do that, Ms Sykes.

MS SYKES:
Thank you.

JUDGE MILROY:
Perhaps if Professor Kelsey also, if we're – sort of the timing of the change of the PowerPoint slides, it gets out of joint, if she can just indicate that is the time to change or whatever as well. Thank you. And also, just for Professor Kelsey's benefit so that she knows, we will be taking the micro breaks, so there will be interruptions at certain periods. And I have been given the number for the PowerPoint presentation which is #A038(c).

MS SYKES:
Thank you, Ma'am. Before I hand to Professor Kelsey, we are all sitting in a kapua pōuri here. Moana Maniapoto is the co-chairperson of Ngā Toki Whakarururanga. Her mother died suddenly yesterday after a long illness, so I just want to reiterate for the record that she was a matriarch of Te Arawa, her mother, Pākehā woman, who is travelling back to her home territories today, and all of us are very – our thoughts are with Moana at this time, at this very sad time as she takes her mum back to Waitetoko where she

will lay, and I think the funeral's now been organised for Saturday. I know Moana would have been here otherwise to support these matters.

MS ANNETTE SYKES CALLS

PROFESSOR ELIZABETH JANE KELSEY (SWORN)

Q. Professor Elizabeth Jane Kelsey, can you introduce yourself to the Tribunal please?

A. Tēnā koutou e te Taraipiunara me ngā rōia hoki. **Greetings to the Tribunal and also the lawyers.** I am a retired professor of law from the University of Auckland. You will have seen from the three affidavits that I have presented to the Tribunal, I have set out my various qualifications in relation to the matters that my evidence covers. Which include 35 years of expert work on international trade and investment agreements which relates not only to academic work and analysis but to advising governments to participating in reform processes. As well as engagement outside government in trying to educate people about the implications of these agreements. The second area of my expertise in relation to te Tiriti o Waitangi dates back to 1979 when I first joined the faculty. I've written extensively on te Tiriti over that period of time, given evidence to a number of Waitangi Tribunals, including in relation to several of the matters that are in my evidence here. And I should say that the first affidavit and the third affidavit are long and there are lots of attachments. The reason for that is that in particular, because when I was the claimant's expert in the Wai 2522 inquiry on the Trans-Pacific Partnership Agreement, it was clear that the Tribunal itself struggled rather with the alien world of internation trade and investment agreements. So I tried to provide enough context there for the Tribunal to understand the climate change specific elements that I'm addressing in my evidence.

Q. Before you commence at your speaking notes, you have read the rules relating to expert witnesses and you have affirmed in your affidavits that you prepared this evidence in accordance with those obligations, is that correct, Professor Kelsey?

A. That's correct. I have performed that role on a number of occasions in previous Waitangi Tribunals and have pursued that same independent approach here.

Q. Would you like as you present to have the PowerPoint up now or as I suggested, or would you like to read first and then go through at that point?

A. I think if it would be all right with counsel and the Tribunal, I would like to talk more to the PowerPoint and draw on elements that are in my speaking notes rather than read my speaking notes.

(09:26) PROFESSOR JANE KELSEY: (#A038, #A038(a), #A038(b), #A038(c))

Thank you. Well, we can move to the second slide.

BEGINS SPEAKING TO PRESENTATION #A038(c)

The Tribunal's Statement of Issues is potentially quite wide ranging.

My evidence in particular addresses Issue 3 of the Statement of Issues:

"Has the Crown's conduct (including actions and omissions) in response to climate change been consistent with Tiriti/Treaty principles?"

And the principles that I have focussed on are the principles of rangatiratanga, kāwanatanga, mutual recognition and respect, and active protection. And so, I will refer to those as I go through the issues. Next slide please.

So, the Statement of Claim from Ngā Toki Whakarururanga is concerned to create the connection between what happens in the international domain and what happens in domestic policies in relation to the climate crisis and Tiriti compliant approaches by the Crown to that crisis. And so, that connection is deeply relevant to this inquiry. A number of other witnesses, in particular Professor Bargh, India Logan-Riley, Alison Cole, have talked about the internation climate change agreements and the space in which Māori have sought with relatively little success to be able to exercise rangatiratanga.

The allied area that I want to focus on is perhaps less obvious because it's dealing with trade and investment treaties, but is in many ways more potent because those agreements are, to a large degree, binding and enforceable and have consequences in the domestic domain, not only legal liability or international law obligations and then legal liabilities that attach to them, but can also therefore directly influence domestic policies in relation to both climate change and te Tiriti, and in this case te Tiriti compliant approaches to climate change.

And a second element that makes this more significant in a legal sense is, and I will come to this later in my presentation, that these negotiations are generally conducted in secret. Unlike what occurs in the international climate space or in the UN Declaration on Rights of Indigenous Peoples and other UN processes where part of those negotiations may occur in private, if you like, between states, the processes is generally more open.

When we're dealing with the trade and investment negotiations, those are a closed space, which makes it much more difficult for Māori to be able to have effective influence over what the Crown does, not seat at the table, but also often not even finding out what has been negotiated or agreed to until the negotiations are concluded and signed.

And so, I've given that preface there to try to explain why this, from the perspective of those who monitor this process, why that is a really significant and relevant matter to this inquiry.

So, my evidence as counsel indicated, covers three aspects, and I will come to those in the next slide, but when I went to the Statement of Claim from Ngā Toki Whakarururanga I wanted to highlight in particular three elements of that that my evidence addresses.

The first is the failure of the Crown to take adequate steps to mitigate, adapt to and address climate change through these agreements.

The second is the Crown's failure to support the authority of Māori to mitigate climate change.

The third is the failure to partner with Māori to enable tikanga and Te Ao Māori perspectives to assist in the discharge of Aotearoa's international obligations to prevent and mitigate the effects of climate change. Could I have the next slide please.

JUDGE MILROY:

Professor Kelsey, just before you start your discussion of the next slide, it is time for a micro break so we will take that. Thank you.

HEARING ADJOURNS: 9.32 AM

HEARING RESUMES: 9.40 AM

PROFESSOR JANE KELSEY: (CONTINUES SPEAKING TO #A038(c), SLIDE 4)

Thank you, Chair.

So, as counsel in his openings identified, I am going to focus on three matters. The first being the authority to make international treaties being an intrinsic element of rangatiratanga, including the making of international trade and investment treaties that relate to the climate crisis. So, the rangatiratanga argument.

The second is a conceptual argument that international trade treaties embody a western capitalist worldview and associated "solutions" to the climate crisis that are antithetical to tikanga and fail to actively protect Māori in terms of Te Tiriti o Waitangi.

The third point or the third matter is that adopting climate measures that are Tiriti compliant and recognise mana whenua are at serious risk in particular

from what we call investor-state disputes settlement in international investment treaties.

Rangatiratanga in treaty making is a matter that is often not part of the standard debate around rangatiratanga. Often, the debate on rangatiratanga is limited to the domestic domain and the exercise of constitutional authority within the boundaries, the territorial boundaries of the state of Aotearoa New Zealand.

But of course, is an intrinsic authority that is not predetermined by its territorial space. It's determined by the authority and mana of those who exercise the power or authority to treat. And in my evidence, I refer to work that the late Dr Moana Jackson had prepared in a number of Waitangi Tribunal inquiries: Te Rohe Pōtae, Paparahi o Te Raki, as well as Wai 262 TPPA, explicitly addressing the "power to treat", the power of polities, of hapū based polities to make arrangements or treaties or pacts with each other. One such polity obviously being with the Crown under Te Tiriti o Waitangi. And Moana's argument, and we discuss this on many, many, many occasions, is that because that power to treat is intrinsic to the mana of the rangatira in exercising their responsibilities to their hapū. It is not something they would or could cede to another entity.

Yet Kāwanatanga claims that it has exclusive Crown prerogative to enter international treaties, with no right of Māori to have any seat at the table under some assumption of Crown sovereignty.

Now, that issue is going to be addressed in its constitutional dimension before the Constitutional Kaupapa Inquiry, but as we've seen from the evidence in relation to power and process already from a number of the witnesses in the Climate Change Inquiry, it's the conduct and operationalising of that Crown prerogative is fundamental to understanding whether there has been a breach of the principle of rangatiratanga and whether there has been an exceeding of the authority of kāwanatanga in the international treaty space as it relates to the climate crisis.

And so, I would refer the Tribunal to the evidence of India Logan-Riley, the evidence of Alison Cole, the evidence of Professor Bargh, making it clear that the way that these processes have been working, everything is mediated through the Crown: Access to information, rights to participate in discussion, seat at the table, the ability to voice and advocate for tikanga-based approaches for mātauranga, for kaitiakitanga and the protection of te taiao, to raise issues and concerns about the approaches that are being taken. Even in initiatives that are supposed to be protective and advantages to indigenous peoples. They have talked about that predominately in the space of international treaty-making on climate. The same applies when we are dealing with international trade and investment treaties as they relate to the climate crisis and as they relate to indigenous peoples and the interface between the two.

That is a concern that has been raised in many different forums in the past. It was raised in Wai 262 in relation to the treaty-making processes, because international trade treaties were a part of the Wai 262, in particular the WTOs agreement on intellectual property rights, and the Wai 262 Tribunal raised concerns especially about a 2001 Crown strategy for engagement with Māori on international treaties. The Trade for All Advisory Board that was established after the TPPA raised issues again about rights of Māori participation in the international treaty-making process, including proposals regarding rights to a seat at the table and rights in fact to act as advocates in matters of importance to Māori. And then the issue came up again in Wai 2522, especially in relation again to this 2001 Crown strategy on engagement on international treaty making. So, this is not a new issue and it's been raised in various different specific contexts.

As part of some research that I was doing I came across a reference to there being a review of the international treaty-making process as a follow-up to both the Trade for All Advisory Board Report and Recommendations and Wai 262 as part of Te Pae Tawhiti that Minister Mahuta had set up, and then the Wai 2522 as well. And so, I made some Official Information Act requests and received a kind of drip feed of documentation which I am currently putting into a narrative form because it covers the period 2021-2023 where there was within

MFAT and TPK and some other Crown agencies and the Minister work that was done on how to change this internation treaty-making process, including participation of Māori in delegations and the ability to exercise more influence over the process. It was interesting that the direction of the review was explicitly reduced to incremental and pragmatic changes to the current approach of not questioning Crown prerogative to make treaties explicitly to avoid having to address what was seen as the tricky constitutional questions around rangatiratanga and treaty-making, and it was acknowledged that many Māori would feel that this was short of the Crown's obligations under te Tiriti.

What then happened was that there was a Cabinet document that was signed off by Minister Mahuta but which was never presented to Cabinet. I understand because of concerns relating to the backlash on He Puapua and on Three Waters and so on. And so, as a consequence, not even that incremental pragmatic approach that the Crown itself was discussing internally has changed, and we're still back at that 2001 engagement strategy with Māori, which is basically if a Crown agency thinks there's an issue, it then decides how serious the issue is and what level of engagement is required. Hence, as we've seen from the narratives in relation to process from Ms Logan-Riley and Ms Col and Professor Bargh in the climate space, but also in relation to my own evidence in relation to trade and investment treaties, there is without doubt a breach of the principle of rangatiratanga and exceeding of the authority of kāwanatanga and a failure of active protection, including active protection of the right to exercise mana in the international space.

And I might just note finally on that point that previous Tribunals when they've actually referred to the Crown's role in the international space have referred to it as in a kind of contingent way, but in relation to foreign policy, not in relation to these kinds of agreements that have such direct domestic impacts. Over the next slide please.

So, moving on to the agreements themselves in relation to climate change, as I've indicated in my affidavits, I've worked in the area of trade agreements since 1990, and it's very noticeable that for the vast, bulk of that time climate change

was not an issue. Even the environment was not an issue for much of that period. But as climate change became more of an issue as we had Kyoto and then Paris agreements, the question of the interface between those agreements became more important.

But in the trade agreement space, the primary interest is advancing commercial interest. And so, in addressing the climate crisis, there were two visible elements. One was to promote commercial benefits, and the second was to avoid obligations to alter practices that were being challenged as harmful, especially in terms of the emissions. And then what we started to see in the agreements, and I saw this first in the CPTPP, but it certainly expanded as this is evolved in later agreements, we saw the climate crisis referred to through euphemisms.

So, we had low emissions economy or green economy or blue economy or green investment, and then the use of market mechanisms such as carbon offsets and trading's, and CCUS.

And so, this has become more common in recent agreements, and some agreements even are explicitly purporting to address the climate crisis but through those mechanisms which are effectively mechanisms that seek to neutralise or cancel out environmental harms rather than actually reducing emissions.

Sometimes, however, they are also opportunist of purporting to address the climate crisis while actually seeking to advance other trade objectives. So, I've referred to a number of them in my affidavits, I just want to refer briefly to three of them here.

A recent one is the Agreement on Climate Change, Trade & Sustainability. So, one would expect this to be directly engaging with climate change. It has four pillars, two of which are actually about removing tariffs on a whole long list of goods that are deemed to be environment and climate related goods, and a whole long list of services likewise which include things like engineering and

consulting services and so on. These are actually activities that have been pursued in the WTO with no progress for a couple of decades and this agreement has become a mechanism for advancing that. There is an attempt to phase out harmful fossil fuel subsidies but are defined in terms that would, for example, not address the expansion of effective subsidies to New Zealand high power use producers as we've seen recently, and it's very, very weak. And the fourth is voluntary eco-labouring.

So we're seeing climate change being used as a trojan horse for other objectives, and indeed the Minister's announcement on it said this is going to help us export more forestry products et cetera. New Zealand has taken the lead in this. New Zealand, Singapore, and Chile.

The Indo-Pacific Economic Framework advanced by the US, the Supply Chain and Clean Economy agreements advance the kind of extractive, green extractivism that Professor Bargh referred to, and it's all about market and technological solutions, and I'll refer to the critical minerals dialogue again shortly.

One that has gone further is the EU New Zealand FTA which consistent with EU Domestic policies and concerns that its producers are at a disadvantage because of its climate policies, it makes the Paris agreement NDCs enforceable. However, the language is very ambiguous, and it's judged by my colleagues in Brussels as being very unlikely that the US would actually take enforcement action on it. And I note in my evidence that when this advice was put to Minister Jones in relation to some of his policies that were to reduce environmental et cetera protections to attract mining and other fossil fuel companies he just shrugged off the advice.

So, my point about these agreements is that they are, in many ways, rhetorical, but actually seek not to address the kinds of practices that are engaged in by states involving those treaties, including – involved in those treaties, including New Zealand, but to advance their own interest through that. Over the next slide please.

There have of course been a lot of criticisms about this, and what we've seen in recent agreements is rhetorical references to sustainability and inclusion, especially of indigenous peoples, as a way of trying to counter the criticism that this is really an attempt to bypass taking real action whilst promoting forms of green extractions.

And the example that I'm giving here, because it links to the next specific case study, is that the IPEF Clean Economy & Supply Chain agreements which were concluded just in the last couple of years, include nine references to indigenous peoples. And this was referred to in the Nation Interest Analysis when the treaties were tabled in Parliament, making it look like this was something that was going to engage with Māori but also benefit Māori as well as other indigenous peoples, who of course had no role in the negotiations except Ngā Toki Whakarururanga did in a purely confidential or secretive basis having input which had relatively little effective influence.

So, the nine references include a recognition of:

- Indigenous worldviews;
- the important role in transition to clean economies;
- the intention to partner, drawing on traditional knowledge and practices.

But this is all in the fluff part of the agreement. It's in the preambles or in the non-operative parts of the agreement. The substantive parts of IPEF reflect none of those factors. They're all back in the old Western capitalist, technological, financialised, commodified model. Nor is it reflected in the implementation of those agreements.

The example I want to use is the Critical Minerals Dialogue. Now, Critical Minerals are an essential part of the new green technologies that are supposed to provide substitutes for the old fossil fuels and high emissions forms of resource extraction production investment et cetera. And of course, the search for those has become more and more important, and Tribunal will have noted

for example that it is seen as a very significant factor behind the current US administrations moves in relation to Greenland and Ukraine and so on.

The Critical Minerals Dialogue is aligned to those two IPEF agreements I just referred to that talked all about indigenous peoples, worldviews, importance of their knowledge, participation et cetera.

There is a work programme that was established under the IPEF agreement, and MFAT is responsible for IPEF, but MBIE has been responsible for this Critical Minerals Dialogue that is a part of the IPEF Work Programme. And I must say, I only found out about this not because wearing an advisor to Ngā Toki Whakarururanga's hat that was raised there, but because I read about it in some other documents.

So, what became apparent was that in a mixture of domestic processes in this IPEF process, MBIE has been mapping mineral reserves, resources, and processing capacity in Aotearoa. And there was a call that was held with MBIE and MFAT once this issue was raised to say, well: Where is the Māori participation in this that was promised in terms of IPEF? Where are the indigenous worldviews in this? Where is the recognition of the role of indigenous peoples in transitions to clean economies?

And it became clear that there even being a Tiriti o Waitangi element to this had not occurred to the officials who were addressing this. There was no IPEF indigenous partnership or participation. There wasn't even an alert that this was happening. Now, this is not a criticism of the officials. This is a systemic problem. Because when we've been looking at these issues in the International Trade space, it's become clear that there is a commercial investment, economic and geopolitical agenda behind how the climate crisises are dealt with, and other references are basically greenwashing, nature washing, indigenous washing and so on.

The response that came from officials about the mapping exercise was: "Well, this is just a technical exercise in mapping and there's room for that kind of

participation subsequently." To which the response, and I think it was India Logan-Riley on this call with the officials was: "Well, that's what they said about survey pegs in the 19th Century." That this is clearly an intention to engage in extractivism of the kind that Professor Bargh was talking about without there being any free, prior and informed consent out there in any involvement or authority by indigenous peoples, but also adopting a model that is antithetical to those that indigenous peoples would bring to a climate crisis. Next slide please.

JUDGE MILROY:

Professor Kelsey, just before we go to the next slide, we have got another micro break.

HEARING ADJOURNS: 10.06 AM

HEARING RESUMES: 10.13 AM

JUDGE MILROY:

Welcome back, Professor Kelsey. On to the next slide.

PROFESSOR JANE KELSEY:

Thank you. I was just thinking actually, could we go back to the –

(10:14) MS SYKES TO PROFESSOR JANE KELSEY:

Q. Can I ask, before we go to the next slide, I'm reading – in the micro break I read from your speaking notes from paragraph 16-19, could you just elaborate a little bit about the concept of nature-based solutions and how they have deeply problematic implications which you've discussed in passing in this slide, but spoke more deliberately about in your speaking notes please?

A. Certainly, Ms Sykes. The critique of notions such as "nature-based" solutions and "blue carbon" and "carbon sinks" and "carbon capture, utilisation and storage (CCUS)", are addressed I think really well in a number of the submissions from others who have climate expertise. If I

could just refer to a couple of those to assist the Tribunal. Alison Cole's affidavit talked in terms that I referred to a little earlier about how things like offsets and market approaches and financialised approaches to emissions such as trading systems and so on, are a means of avoidance of actually having to address the actual causes of climate crisis, and often lack integrity, something that India Logan-Riley raised as well. In her paper that's attached to her affidavit, India Logan-Riley talks in particular about nature-based solutions and blue carbon as being a kind of commodified logic that treats the climate crisis not in a holistic sense to which there need to be holistic solutions in the way that that would be approached by te ao Māori but seeks mechanisms or instruments that again do not address the real causes. They suggest that you can somehow cancel out the impact of bad practices by these instruments that commodify, for example, sub-sea, sub-ocean plants and corals and so on that might absorb and hold carbon. And she makes a point, and I've seen this up near where I live at Pākiri that the consequences often of those offshore processes such as mining or dredging or whatever are actually to erode the nature-based options that are intrinsic to nature, such as the sand dunes and the vegetation that can act as proper absorption. So, by fragmenting and commodifying, there is not actually a picture of the whole. Emily Bailey's evidence in relation to Taranaki raises some more of these nature-based approaches and seeking to find alternative mechanisms that are in themselves destructive of te taiao, such as hydrogen economies, she used the example of the wind turbines which are basically commercial ventures that have no real commitment to addressing the climate crisis. No free, prior, and informed consent. But often actually displace indigenous peoples not just from the whenua or from the moana but from the ability to exercise mana whenua and mana moana, and that of course all comes together in Maria Bargh refers to as the new face of colonisation through green extractionism. So, it's that kind of critique that underpins the reason why those solutions that are put forward in those agreements are seen as antithetical to a te ao Māori approach but also to the exercise of rangatiratanga, mana motuhake, kaitiakitanga et cetera. Does that answer the question?

Q. More than adequately, thank you. Can you go to the next slide please.

PROFESSOR JANE KELSEY: (CONTINUES SPEAKING TO #A038(c), SLIDE 9)

So, the third element that I wanted to discuss is what I see actually as the most immediately potent threat to a Tiriti-based, Tiriti compliant approach to the climate crisis in Aotearoa, and that is through the right of foreign investors to directly enforce special protections that are given to them in either bilateral investment treaties that only deal with investment or in the investment chapters of free trade agreements.

We are fortunate here in that we only have two of those bilateral investment treaties. They date back to the 1990s which was the time when UNCTAD talks about these being really problematic because they're very crude, blunt instruments that give foreign investors very expensive protections and have virtually no exceptions or other mechanisms that might mitigate their impact. And the two that we have are with Hong Kong China, and China.

Then we have investment chapters in a number of trade agreements, and those include with countries like Japan, Canada, South Korea, Indonesia, Singapore, Mexico, who are big investors, including in the fossil fuels area. And there are a couple of really important things about these investment agreements, and I outlined in my first affidavit why these have become so controversial, and I'll just very briefly touch on the bullet points of that.

I mean, they give very expensive special protections that don't exist in domestic law to foreign investors, but they are very vaguely worded. They don't have any corresponding obligations on the investors that can trade off against them in almost all the agreements. And these interpretations of these open-ended rules are done in ad hoc arbitral tribunals established under those agreements, which are offshore tribunals that have no system of precedent, have no appeal structure.

The arbitrators are unfortunately renowned for having conflicts of interest of acting as counsel in some cases and judges in other cases. They have varying and unpredictable interpretations of various rules, but which are usual pro-investor. They can award damages that are not only damages for what the investor has invested to date, but for lost future profits for the entire period of the projected investment with compound interest, and we'll see the consequences of that shortly.

But also, these often take place in secret. In some cases, we talk about the number of known disputes because many agreements don't require disclosure that there is even a dispute let alone of the documentation or the outcome or the amount of an award. Now, that has changed a bit in more recent agreements, but it remains very variable and very problematic.

This was a big issue during the TPPA. And as a consequence of that, the Labour/New Zealand First Government when it came in in 2017 said: "We will not have investor state dispute settlement in any future agreements." And to give them credit and the current government which has continued that policy, there has not been ISDS in new agreements, and that's because of the potential legal and fiscal risk of policies that governments take that investors say impact negatively on the value and profitability of their investment, but also the internalised concerns that officials have been giving advice, what we call the "chilling effect" that I'll refer to a bit later.

But we still have many agreements with ISDS, including one that was just renewed recently with all the ASEAN countries that includes ISDS. This is a real significance in the climate change area because UNCTAD which is the entity that is largely overseas these agreements, its data shows the rising use of investor state dispute settlement by investors to challenge climate measures.

In some research that I quote in my first affidavit by Nicholas Perrone from Chile, research that's been done on indigenous peoples in ISDS cases which largely involve environment and most recently environment, it's indigenous peoples' resources that are generally those that are involved in these disputes,

yet indigenous peoples have no power in these disputes because the state operates the defence and even the possibilities that **(inaudible 10:25:36)** briefs are in the hands of the arbitrators and very limited.

And so, this has become a major concern in the discussions around ISDS and indigenous peoples' residences to that. Excel pipeline in the US is a clear example of that, and when indigenous people succeed in shutting something down, that in itself can end up being subject to an investment dispute because the state has allowed that to happen.

The UN Rapporteurs are predicting that fulfilling Paris obligations are likely to result in $340 billion US liability in ISDS disputes. So, what we're seeing is that even countries that were strong advocates of ISDS are now quitting agreements because of claims in relation to climate change. The European Union and a number of its Member States in particular have done so recently.

The question is where does this leave New Zealand with its existing agreements, its bilateral agreements with Hong Kong and China and the investment chapters and other agreements. Because there are relatively minimal protections. There are none effectively in the China and Hong Kong agreements, and minimal in the investor state disputes mechanisms in the other agreements where the interpretations even of the 2001 Treaty of Waitangi exception would be quite random. And we had a lot of discussions on that in the first 2522 inquiry of Amokura Kawharu, myself, and Penny Ridings, all reaching different conclusions along a spectrum that there were significant potential issues with the Treaty exception in relation to CPTPP. Next slide please.

So, I just want to give you two examples to show that this is not just hypothetical. One of the issues when this was first raised in the water claims some years ago and then in the urgency hearing on Wai 2522 TPPA was that yes there were risks, but what would happen was speculative. Well, we're now seeing enough evidence to show that there are smoking guns.

One that has become very notorious I would even say in Australia and here involves the case of an Australian mining magnet Clive Palmer who is actually suing his own government through the back door of a Singapore company under ISDS for matters that he failed at in the domestic courts that relate to environment and climate related measures. Now, Clive Palmer is a particularly colourful person. His Who's Who lists litigation is one of his past times. He funded the advertising campaign to oppose the Voice referendum in Australia. He uses what we call SLAPP writs to get environmental NGOs to back off because they can't afford to conduct the litigation. And so, he is someone who was predisposed to such actions.

Because suing his own government couldn't be done by his Australian company Mineralogy, he then engaged in what we call "Forum-shopping". Firstly, he reincorporated Mineralogy in New Zealand and announced he was going to sue Australia under ISDS from New Zealand agreements, but his lawyers obviously did not do a very good job of advising him because Australia is one of the few that we have an ongoing agreement with not to allow ISDS to be used.

So, he then took Mineralogy off to Singapore in 2019. He has now brought four disputes that we know of against Australia over mining – over environment and climate measures, which include court decisions, not just laws, and the total of his four claims against Australia are $420 billion. Three of those claims are under ASEAN Australia New Zealand FTA to which Australia and Singapore are parties, and so is New Zealand, and that is the one that was just renewed last year with ISDS.

So, Clive Palmer uses ISDS, he weaponizes ISDS as a mechanism to deter governments or punish governments if they adopt climate related measures that are averse to the interests of his mining companies, which include rare earth critical minerals and so on, not just fossil fuels.

Mineralogy is incorporated in New Zealand. There is a chart in my third affidavit showing the exploration and prospecting applications that they had made, a number of which drew protest from mana whenua. I learnt recently through

Radio New Zealand that he had withdrawn all but one of those because he said he was refocussing investment elsewhere, but the one he still has is 19,000 in the Waikato/Wharekaho area for exploration permits that include rare minerals such as lithium.

What we should expect is that if there are moves on that or any future applications that he makes via government to shut down or not renew those permits, I think his current one is a 5-year one for Waikato/Wharekaho, then he will threaten and potentially bring an investment dispute. Next slide please which is my last substantive slide.

JUDGE MILROY:
Professor Kelsey, we are now at another break. It's actually the morning tea break. So, we will take that before you complete, I think because there will be questions afterwards as well.

HEARING ADJOURNS: 10.33 AM

HEARING RESUMES: 10.59 AM

JUDGE MILROY:
Kia ora anō, Professor Kelsey, we are up to your last slide, I think.

PROFESSOR JANE KELSEY: (CONTINUES SPEAKING TO #A038(c), SLIDE 11)
Second to last, yes. Yes, could I have the next slide please.

Now, I mentioned before that the threat of losing a case isn't the only concern about investor state dispute settlement. A much more common concern now is what we refer to as the "chilling effect" of not just an actual threat of investor state dispute settlement which, for example, occurred in relation to plain packaging of tobacco where Phillip Morris threatened to bring a dispute, had one against Australia, New Zealand held off until that was resolved. But the internalisation of legal and fiscal risk into the advice that officials give on the

adoption of new policies and laws. And this has been discussed in a number of Tribunals previously, the Water Tribunal, the 2522 TPPA.

In the Water one, it was treated as, the Crown said: "We promise we won't be chilled." When it came to the TPPA, initially the Tribunal said the risk was speculative, but then in the final stage three inquiry dealing with the digital, there was a much deeper discussion and the Tribunal said: "Yes, we actually recognise that this is a significant risk."

Nevertheless, we didn't have the smoking gun, and the question is whether we now have the smoking gun that shows in the climate context how this might play out, reinforcing the concerns that I just raised about Clive Palmer.

When the previous government introduced a ban on offshore oil and gas permits off Taranaki in 2018, it only applied that to new permits. And that surprised some of us. But then I came across an article and then a more recent article in the *Guardian* that quote James Shaw as Minister of Climate Change saying that the reason it didn't apply to existing permits was because of advice that there could be an investor state dispute over interfering with the existing permits.

So, I then set about doing a little bit of detective work and discovered that the advice was actually primarily to Minister Megan Woods, the Energy and Resource Minister but also James Shaw as Climate Change, not to apply the ban to existing permits. And so, the OIA responses that I received under urgency from MBIE – requested a number of agencies but it turned out to be MBIE that was responsible – they very helpfully sent me a number of documents that had already been made public, one of which was a Cabinet memo, but another was a specific paper dealing with existing permit holders. And that document has extensive pages redacted of legal advice in relation to applying the ban to existing permit holders. And I asked MBIE if they would reconsider that in light of the years that had passed, and yesterday afternoon they sent me a message saying that they wouldn't, they wouldn't waive legal privilege on this.

I think it's a reasonably strong presumption that that legal advice applies to ISDS, especially because there is a reference elsewhere in the paper to so-called sovereign risk, and they would have been the two main legal issues I would have thought.

So, I think we've moved beyond the merely speculative to the very likely risk that ISDS has already chilled decision-making related to the climate crisis and that there is a very real and present possibility that Mr Palmer could bring an investment dispute either relating to his existing or future investments here were he to be aggrieved about either mana whenua action or decisions of the Crown, a regional authority or some judicial process. So, if I could have the last slide, thanks.

So, my recommendations as a result of this analysis is that the Tribunal firstly recognises as other witnesses have said that the Crown's approach to climate change as reflected in these FTAs reflects Western values and commercial priorities, and excludes mana motuhake and te ao Māori, as well as the responsibilities, duties, rights, and interests associated with that.

That ISDS remains a major risk, despite the cross-party post-2017 policy position, and that the Tribunal needs to act as a Tiriti circuit-breaker on a reluctant Crown in terms of:

- Process, rangatiratanga, seat at the table of decisions, including stressing the need to address those outstanding issues in the context of climate change both in the international climate sphere but also in the internation trade and investment sphere as they impact on climate;
- Secondly, that there needs to be a Tiriti circuit-breaker in terms of the concepts that the Crown uses, not simply referring to Te Ao Māori, and mātauranga and kaitiakitanga and tikanga as kind of dressing for business as usual, but that it actually takes those seriously and empowers those concepts and Māori to implement them;

- The Crown stops signing up to agreements that exacerbate the climate crisis, and that it withdraws from starting with the bilateral investment treaties with China and Hong Kong which it can withdraw from much more easily than the FTAs, but that it initiates a review of ISDS that provides it with more leverage to go back to other countries saying: "This is our mandate and we have no mandate to continue and to agree to ISDS." And I note that New Zealand First has previously even sponsored legislation around ISDS;
- Finally, that there is a finding that active protection, responsibilities for the active protection principle applies not only to concepts and actions by Māori, but to the actual authority of Māori in terms of mana Māori Motuhake and Te Tiriti o Waitangi.

So, that is my evidence. I hope I didn't lose the Tribunal too much into the weeds of this rather arcane space of trade and investment agreements.

JUDGE MILROY:

Thank you, Professor Kelsey for your evidence. We now have some questions from other claimant counsel and the first is from Bennion Law.

(11:08) MR BENNION TO PROFESSOR JANE KELSEY:

Q. Yes, thank you, your Honour. Thank you, Professor Kelsey, for your evidence. I've got about 15 minutes of questions. The first is, in terms of Treaty settlements, this is a general question, the Treaty settlements the Crown's entering into rely a lot on a background of functioning viable eco systems, and climate's a threat to that, I'm thinking about ocean heating and fisheries settlements and things like that. Have you seen any analysis of the impact of climate change on the future value of Treaty settlements?

A. Sorry, no, I haven't. What I have seen is discussion about the risks that apply to whenua and the risks that apply to kaimoana, and concerns that have been raised about the delayed impact, for example, in the forestry sector on the benefits that were anticipated from settlements, and we saw

this especially down the Coast, and I know that there's been some evidence around that. But in terms of calculations, no, I haven't.

Q. And so, I assume too, you haven't seen any comment or discussion about Crown policies, either a lack of ambition on climate or even reversing climate policies around the oil ban and any risk those might have for the value of settlements, whether there might be some liability risk there?

A. No, I have to say I don't spend that long looking at the settlements.

Q. No.

A. And that's kind of outside my sphere of competence.

Q. Okay, no, thank you for that. I just should have said and prefaced that I'm here representing Emily Tuhiao Bailey and the Climate Justice Taranaki community effort running out of Parihaka.

A. Well, I did of course read her evidence with great interest and the concerns that she raised within there about what the flow-on consequences, well, what were the actual existing impacts and the flow-on consequences would be, including in the wind turbine areas and so on.

Q. Thank you. Looking at your first affidavit and the Treaty of Waitangi exception, Article 29.6 in the TPPA CPTPP, you've explained how it says that, you know, New Zealand should – there's an exception that New Zealand from the most favourable nation treatment, there can be an exception with respect to Māori. Firstly, when it said exception to accord more favourable treatment to Māori in respect of matters covered by this agreement, do you think the intention there is it might be applied to specific iwi in settlements, or would it have to be favourable treatment to Māori nationwide? Has that been discussed?

A. I think it's accepted that it would be in relation – it could be in relation to specific iwi. Because its reference is to the Crown's obligations under te Tiriti o Waitangi and those obligations can be specific to hapū for example as opposed to – or even to regions where you have a settlement that covers a number of hapū or iwi and not just to Māori generally. The bigger problems with the Treaty exception have been firstly that it refers to more favourable treatment which is a kind of a positive discrimination as opposed to we've accepted that there are Treaty of Waitangi implications

of allowing wind turbines in this particular rohe and therefore, or across the motu more generally, and therefore we're not going to allow that in legislation. That's not what in trade-speak we would call more favourable treatment. There's an additional part, without getting too into the legal words, called the chapeau, which is that if there are kind of commercial benefits as well that might come from this, it might fail, or if there are adverse effect on the other parties, trading interests that might fail. We had that recently in a case involving GM corn in Mexico and Canda and protection of native corn was considered to be giving – having adverse trading effects on the exporters from the US. And then the third problem is that there is a wording that says that a state-state dispute process can't re-examine what the Crown's Treaty obligations are and what it says is necessary to comply with those, but it doesn't actually explicitly say that applies to ISDS as well, and there is a strong concern that an investor state dispute would say, well, we're not pre-empted from examining the Treaty of Waitangi and what is necessary to achieve measures under that, and given the problems with ISDS that's opening a very big can of worms, and the Tribunal kind of accepted that that was a problem in 2522.

Q. All right, thank you. I just wondered if you – had you thought of or were you able to think of a possible climate related positi – what is it – climate related positive or favourable treatment proposal that might, that clause might apply to, or is it very hard to think of anything it could apply to in the climate space?

A. Well, of course, narrowing down to a specific climate policy in a specific rohe is a very difficult thing to do as to what effect that would have. Could possibly be an area relating to forestry and clear felling and, you know, what might be done in a particular rohe to mitigate the disastrous consequences of climate catastrophes on a particular area.

Q. Yes, no, that's an interesting example. Can I come now to, in your first affidavit, I'm coming down to paragraph 68 where you're referring to the IPEF Clean Economy Agreement, and just a technical bugbear here about this one that the blue carbon proposals that are there talked about as a future way forward. So, this is things like, say, you know, you talked about coral enhancement and maybe enhancement of sea grasses or

things that could, you know, store carbon. Has there been discussion of how that might work in New Zealand when nobody owns the Foreshore and Seabed and Māori get no more than a resource consent veto right even if they get customary marine title, has that been teased out anywhere?

A. I think you're assuming that there is actually more concrete discussion around these things than actually tends to occur. In the – and I have to be careful about what I say about what was said and done in the negotiations. It is fair to say that in the IPEF negotiations, all the texts were provided by the US, and the negotiations were largely around the edges of that. And so, in I think in my evidence I'd refer to some of the advice that was given which appeared also in the Tiriti assessment of the IPEF about the risks associated with that kind of language, and part of the process problem here is that you would want to take that wording and go and talk to a number of people on the ground about what the consequences of this might be in practical terms. For example, if we're dealing with seabed mining or if we're dealing with seabed foreshore ownership and so on, the confidentiality rules kind of stop us doing that, and that's been a major issue about not having Māori as of right at the table there. There's also, in India Logan-Riley's affidavit where she talks about the blue carbon issues, she raises two important points there. One is that she's got an example from Papua New Guinea of a practical consequence of how that might work including the dispossession or displacement of indigenous peoples from resources that might be subject to blue carbon strategies or solutions. And I think you could extrapolate from that to quite a number of examples in Aotearoa. But the second thing that she raises, and this is why we talk about the kind of financialization and commodification of this, is that the blue carbon is intended to be not just a sink but a tradeable carbon credit that can be even more detached from the reality on the ground, and it's once you start to get into those blue carbon markets, the consequences for those on the ground become even more remote. We think that's the global financial crisis and the securitised derivatives and all of that there. It's a very

similar kind of plan. So that's why there needs to be really deep analysis of these things, none of which happens in these negotiations.

Q. Yes, and I just want to follow up on that aspect. I mean yes, I think there's some, with MACA and carbon credits, and we have seen there's some real ownership issues about who controls the space et cetera. But just following up on your point about sort of secondary carbon markets and where things go, it's fair to say that the current system of carbon credits, and I'm thinking of forests here, makes no link between the sequestration activity and how it came about and what the resulting credits are applied to, and I want to give you an example. So, for example, a Māori carbon forest credit can be used to offset a flight, an overnight flight to Sydney to go shopping and attend Formula 1 racing.

A. Yes.

Q. Yes. But I wanted to come to something in your evidence, your second one #A029(a), where you've got that agreement on Climate Change, Trade & Sustainability, Act, and I don't mean the party, I see it's an agreed trade agreement, and I was particularly interested in Article 4.6 on page 31, there's specific exemptions around fossil fuel subsidies.

A. Yes.

Q. So I just wanted to put a proposition to you here about how these things get linked and de-linked under different settings. So, if I look at Article 4.6, and I won't go into the detail, but it says, you know, having in mind the *Paris Agreement*, you may subsidise fossil fuels in the future if you're needing to do it for low-income, remote or vulnerable communities. Do you see that? I'm thinking of 4.6(2)(c) for example.

A. Mhm.

Q. You recall that aspect of the agreement?

A. Mhm.

Q. So I want to put this issue about linking to you, an example. So, under the current settings that we have, it would be possible that we need – we have an exemption for fossil fuel subsidies to enable, say, a remote Māori community to use fossil fuels to manage their forests, and they may be credits in those forests, but then those credits may be used for entirely non-essential fossil fuel burning activities. So, is that an example of the

sort of somewhat non-sensical way in which we delink and then link, we link fossil fuels for certain things, but we delink credits from their communities and the way in which those credits are used?

A. Yes, absolutely, the background to that provision is that Norway was actually initially a party to this negotiation and Norway has fossil fuel subsidies including to some local communities, and so the wording that was negotiated here was designed to keep Norway in the loop and allow it to continue what it was doing without – of course we know that Norway is a major fossil fuel producer and exporter, so it wanted to minimise the consequences. And a lot of that very loose language in there is designed to achieve that. Then Norway didn't sign on anyway. So, we've got double guessing, triple guessing of what the consequences of those and applications of those words might mean, but yes. I mean, they are totally delinked, and that's why that lack of any holistic underpinning of the approach or the mandate to the negotiations becomes critically important.

Q. Thank you very much, Professor Kelsey, for all your evidence, and that's my 15 minutes.

JUDGE MILROY:

Thank you. We now have Mr Sharp.

MR SHARP:

Thank you, your Honour. My questions have been answered by the supplementary evidence given today, so no further questions, thank you.

QUESTIONS FROM MR SHARP – NIL

JUDGE MILROY:

Thank you, Mr Sharp. Mr Lyall, you are next.

(11:26) MR LYALL TO PROFESSOR JANE KELSEY:

Q. Thank you, your Honour. Tēnā koe, Professor Kelsey. **Thank you, Professor Kelsey.** My name is Lyall and I am appearing here today for four claimant groups: Ngāti Porou ki Hauraki, Te Upokorehe Iwi,

Te Waimate Taiamaiki Kaihohe Claims who **(inaudible 11:26:55)** you will be familiar with through the Trans-Pacific Partnership Inquiry, and of course Ngāti Ruapani ki Waikaremoana. I have some general questions and then I was going to traverse some of the matters that you've just been through with my learned friend Mr Bennion, and I think I have one or two specific questions that he hasn't covered, so I will return to those. But to begin with, in opening submissions and in evidence Te Upokorehe earlier this week made it clear that their principle of rangatiratanga was first and foremost for them in advancing this inquiry and really in the way that they go about all of their affairs. In your opinion, is it realistically possible for the Crown to recognise and provide for tino rangatiratanga in making international treaties including climate change treaties?

A. Absolutely. When those who engage in the international negotiations as states it doesn't prescribe the nature of that state. The state is determined domestically internally. There's no reason why the state could not participate in international treaty processes in a manner anticipated by te Tiriti o Waitangi. It doesn't because it asserts a Crown prerogative to have an exclusive seat at the table. That is a domestic decision, it's not a decision that is imposed by whatever the negotiating forum is.

So, if you think, say, about South Africa, in the post-apartheid era it had a completely different constitutional composition, it still participated as South Africa for example in the World Trade Organisation, it just had a different configuration set of values, approaches, et cetera.

Q. Now, you've traversed in your evidence some of the issues with existing international trade agreements because of the policy settings that were in place at the time those were entered into, and this I guess is a broad question, but if we're thinking about the principle of rangatiratanga, what can be done to incorporate that within those existing trade agreements if we're looking at addressing things through a climate change lens?

A. There is no guarantee in a renegotiation or a review of an agreement of that kind of change because the other party has to agree to it. However, there are two other – there are two related options. One is that the Crown could change its mandate to pursue in reviews or seeking reviews or amendments to agreements, to have mandate that reflect rangatiratanga

in the climate context for the relevant parts of those agreements, and it would go – there are mechanisms under those agreements, there are both review mechanisms, for example, there's one in CPTPP at present, there are amendment mechanisms. It's much more difficult when you've got large numbers of countries involved. But when you've got just a couple of countries involved you have the potential to seek actively a renegotiation. What we're seeing occurring in many countries at present is that there is a similar kind of conversation to that which is happening here. So we shouldn't assume that agreements that were entered into years ago, that are antithetical, might not change if governments become aware of, alert to and willing to seek amendments. I mention the investment agreements, which are a slightly different kettle of fish. The trade agreements that have investment chapters, that is difficult to change unless all of the parties agree, but New Zealand's approach has been to seek side letters of non-application of ISDS between New Zealand and that country. It would be quite possible for New Zealand to seek side letters to some of the other parts of those agreements as well that reflect te ao Māori perspectives, but also that bring Māori into those negotiations. You've then got an awkward misfit of parts of an agreement based on one and parts on another, and that's one of the dilemmas that we have now. The agreements with China and Hong Kong, the investment agreements, New Zealand could withdraw from them. New Zealand actually had tried to renegotiate the Hong Kong agreement, could have withdrawn from it, chose not to. So it's a political will issue, a mandate issue, and then finding strategies. But they will have much more authority and leverage if Māori are at the table arguing for themselves as well as having much more accountability for what the Crown does if Māori are there putting those arguments.

Q. And if we think about potential new agreements in the future, you've mentioned that it would be open to the Crown to change its mandate. Is it open to the Crown to change its negotiating position in that way for those future agreements? And how do you think it should go about that process if it was to do that?

A. It depends in large part what the priorities of the Crown are, and what we found in the past is that te Tiriti o Waitangi is a relatively low priority when the Crown is entering into negotiations between trade agreements, and those negotiations tend to work on existing templates. An example at present however is the India FTA that negotiations are just beginning on. Māori have no input into that mandate, no seat at the table. If India says no Tiriti provisions, no Māori presence, no rangatiratanga of any kind because we don't – Mr Mauri doesn't like that, then the Crown has a decision. Does it want to proceed with this agreement or does it want to honour Te Tiriti o Waitangi. What we've seen in the past is the trade treaties and investment treaties are seen as more significant than Te Tiriti o Waitangi. One area that could be quite fruitful is to try to renegotiate parts of the PACER Plus Agreement with the Pacific Island countries, because that's an area where there is a synergy and a real interest, and there have been some arguments. I think Ngā Toki Whakarururanga raised the argument about having direct indigenous to indigenous negotiations in relation to a number of issues with Pacific Island countries. So, there needs to be some imagination. At present, we're a kind of one-trick pony.

Q. So, I've got three further brief specific matters to address. The first, my learned friend Mr Bennion took you to the agreement of Climate Change, Trade –

HOUSEKEEPING – TIMING (11:35:46)

HEARING ADJOURNS: 11.35 AM

HEARING RESUMES: 11.41 AM

MR LYALL TO PROFESSOR JANE KELSEY: (CONTINUES)

Q. Kia ora anō, Professor Kelsey. So, I was just referring you to the questions that you received from my learned friend Mr Bennion on the Agreement on Climate Change, Trade and Sustainability, mostly around the fossil fuel subsidies. You criticize that agreement for being reflective

of market-based approaches and say in effect that it will have little impact on the climate crisis. Do you consider that international trade agreements or trade rules, if properly designed, could be used to support phase-out of fossil fuel subsidies, or is a completely different approach needed?

A. They could make an active contribution. There is some interesting work that's being done by a former MFAT official for PECC, I think it is, Pacific Economic Cooperation Council, who talks about the need to deal with indirect subsidies as well as direct subsidies, which are the kind of incentives that are provided for those engaged in fossil-fuel-related activities, and – including those, or genuine disciplines on those, not surrounded by language like "potentially harmful" or various other conditioning language could make a real difference. Another example of the indirect subsidies is the exclusion of agriculture from the ETS, and so he's written a very interesting piece about the kind of approach to subsidies that might have a genuine impact, but you have to get the states who have a commercial interest in those sectors to be prepared to include genuine hard rules on those, and to date, other than the EU, which itself is quite selective about some of the rules that it includes in its agreements, we've not seen much happen on that front.

Q. Now, because you have mentioned the exclusion of agriculture from the Emissions Trading Scheme, I had a question on investor-state disputes and the chilling effect that the threat of those potentially causes, and in your view, whether you consider the chilling effect could apply to the changes to the Emissions Trading Scheme, and I was thinking, for example, if the Crown were to tighten emissions caps or remove possible future free allocations when other areas of the market are brought into the scheme. Do you have an opinion on whether the chilling effect is a relevant consideration there?

A. Yes. I mean, what we see now is law firms being extremely adventurous in advising of the possible ISDS approaches. There's been, on renewable energies, for example, there have been a number of disputes where subsidies have been removed in relation to renewable energies, and so measures that governments take that impact on the investors' future profitability and expectations are potentially open for both

challenge and a chilling effect. The problem is that's always redacted from documents here, so we are unable to find, unless we have leaks, what the thinking has been behind these policies. Occasionally, they might be mentioned in the Regulatory Impact Statement, or in submissions by a company. That happened with the tobacco cases. But it's very hard to prove.

Q. Well, yes, that was my next question on the chilling effect, just because Māori are, as you have described, in these situations, looking at these negotiations from the outside, or in the position of the outside looking in. The fact of the chilling effect or consideration of it can be hard for them to prove or have the Crown acknowledge, just by its very nature, can't it?

A. Yes, but the Wai 2522 digital inquiry really took seriously the substantial risks associated with the chilling effect, and so I think we've now got enough cumulative evidence to show that this is really problematic. And the fact that the government itself, since 2017, has said "No ISDS", and it's kept to that, but not in legislation. What we don't know is whether state-to-state disputes might involve similar matters. I suspected so over some of the COVID pharmaceuticals issues. But yes, the Crown needs to be a bit more open here, because currently, it holds all of the cards, and if it wants to say, "You've got no proof", well, it creates a self-fulfilling prophecy.

Q. And finally, on the ISDS Protocol which is being developed by the Crown and you have been critical of the Protocol as it has emerged into practice, in your evidence. My first question was the protocol, or the use of it, relies on that Treaty of Waitangi exception being invoked by the Crown, rather than it applying whenever an ISDS may be taken. Do you have a comment on whether that weakens the practicality of the Protocol?

A. Well, I think the practicality of the Protocol is a bit like a colander full of holes. And that was part of the concern when it was being negotiated, that not only did it apply only to the Treaty of Waitangi exception, so other provisions that might be relevant that Māori may wish to have been engaged on it wouldn't apply to. For example, in the China and Hong Kong Bilateral Investment Treaties, there is no Treaty of Waitangi exception. And they're the really blunt instruments, those ones. But then,

you know, the protocol itself doesn't include a number of the things that even the Waitangi Tribunal said should be included in there. And there is no power that affected Māori under that protocol. Unfortunately, that's kind of a pattern that we see, with MFAT trying to minimise whatever the Treaty-based responses are that it is asked to adopt even by tribunals, and I mentioned before the 2001 Crown engagement strategy on Māori and international treaties. There's another example of trying to reduce a review to business as usual.

Q. Finally, do you think there is space for a climate-specific ISDS Protocol, or at that point, are things just getting too messy and we're better to concentrate on removing Aotearoa from ISDS-type treaties?

A. Well, because there are existing ones which are going to be hard, in some cases, to get consent to withdraw from, and when you've got an investment chapter in a 22-chapter trade agreement, there's all sorts of other interests that would be involved if you were going to withdraw from it because of ISDS, and so having a protocol if there is a dispute is important. Having a protocol that is meaningful is important. But the existing Treaty of Waitangi exception also has to change for it to be effective, so having a protocol that provides for more Māori input into arguments about an exception that is deeply flawed doesn't solve the problem. And so one of the responses, you are talking about climate specific here. Because the Crown was found to have breached its Tiriti obligations in the digital space in the Wai 2522, the digital, the e-commerce chapter. What we've seen now is MFAT including in those chapters carve-outs from the rules in those chapters for Tiriti compliance. And most recently, in the United Arab Emirates one, it's actually a really good, comprehensive carve-out. The problem is you have to then find which chapters this would apply to, and so on. But there are ways of doing this for climate, and there has also been, in discussions internationally, not just about having those exceptions or carve-outs. But also having what's called a peace clause, an agreement by the parties not to have disputes over climate-related measures. And then you have an argument about what's a climate-related measure, but there are these

discussions happening internationally about how to deal with exactly these kind of problems.

Q. Well, I suspect I am well over my time, but thank you for your time and answers today, and those are my questions, your Honour.

(11:53) BASIL MORRISON TO PROFESSOR JANE KELSEY:

Q. Thank you very much, Professor. That has been extremely interesting, and not only the text of your brief but in the discussions that you have put forward. You mention the proposed, I guess I can call it, a free trade agreement within there, and you mention that I think it's fairly public that someone somewhere is feverishly beavering away on putting together or something. Question to you is can you help me, in a practical sense, of how Treaty issues in regards to climate, how that would actually be put into that negotiation? Would you see, you know, you don't want to, I guess, you wouldn't have 500 people sitting at a table, because we talk about the table access, first of all, to the table. What is the table, and how would that table reflect iwi Māori concerns for climate change? How would you get that representation to who and what at the table, whatever the table would be? Sorry, that's a bit convoluted.

A. No.

Q. Forgive me, I'm just trying to practically figure out how you would have that conversation that would obviously have to end up back in the whare somewhere for appointment, discussion, and time constraints, and all of those things. How would you see it playing out practically? Thank you.

A. That's a fabulous question. At the kaihautū meeting last week of Ngā Toki Whakarururanga, they asked me to do a briefing for them on how trade and investment agreements are made. With a view to working out just how rangatiratanga intersects with the kāwanatanga's current processes, right from the get-go. And yes, I mean, the get-go is actually the problem of paradigms, that the Crown's working on one paradigm and te ao Māori is working on a different paradigm. But setting that aside for the moment, you were asking about practical things. Conversations need to start right at the very beginning before the mandate is adopted by the Cabinet that sets the negotiators' instructions about how they are to

proceed. The parties, as well. In this case, the Crown and India will be working out, what is the scope of the agreement? What's in and what's out? What's the subject matter? So we're there to be, hypothetically speaking, a Tiriti-based, te ao Māori approach to the climate crisis proposed. Let's say the Tribunal is reporting next week and recommends to the Cabinet that that is included in the mandate, that mandate would then be currently passed to the MFAT officials, so the question is, how do Māori come into that process? And there's some creative work that can be done. I mean, for example, there's some discussions about how to deal with organics or Para Kore, et cetera, and seeds and so on. In relation to India, they have an interest in that, Māori have an interest in that. Is there some way of doing that? And so Ngā Toki Whakarururanga has put that, I know, on the table as a possibility. So, an initiative that comes from Māori, especially mandated by the Tribunal, would be one. A more defensive approach would be to have a specific exception in the exceptions chapters that any measures that are to implement Māori rights, duties, responsibilities, interests in relation to te taiao and the climate crisis and the Crown's obligations will have a total carve-out from this agreement. There is a similar one, for example, for national security. Completely out of the agreement, for a number of agreements. There was one for tobacco, in relation to investor-state dispute settlements in CPTPP. The other side has to agree to this and has to think there will be a win-win in it. But one of the problems with negotiations is there are trade-offs, and so if India thinks the Crown really wants this, it's going to say, what will you give us in return? Then the Crown will usually make its own decisions about the trade-off, as opposed to having Māori in the room and at the table making those decisions. So having protocols that actually govern these processes becomes very important. Now, Ngā Toki Whakarururanga **(inaudible 11:59:06)** agreement out of the Wai 2522 inquiry does have some of those kind of protocols with the Crown, but not a seat at the table. They don't have a right to talk to other Māori about what is seen under the confidentiality agreement, and as I said, not even to go to the experts if it involves disclosing something in these very secretive negotiations. So, it's been a bit of a step forward,

but the power all still rests with the Crown. Does that help explain that at all?

Q. Well, I will have to process that a bit, but Professor, thank you for trying to explain that to me. I really have to think on that a bit. I just, you know, from a practical point of view, sort of, first of all, and I think you have answered my question, but I just need to think on it. On, first of all, the table, access to the table, and just who and what would be presented for climate change issues for iwi Māori. That's what I look to see, how that can be implemented within the, I won't say "secretive", but I've used the term "confidentiality" of discussing complicated negotiations in such a broad sense. But look, thank you most sincerely. I am sure we will deliberate on that at lunchtime, and I thank you very much for trying to help me with that. Thank you most sincerely.

A. It's a pleasure. If it might help, I could look at adapting that presentation that I did for Ngā Toki Whakarururanga last week and put in a couple of slides that relate specifically to climate.

JUDGE MILROY:

Mr Morrison is saying, "Yes, yes" in my ear, so yes, please.

(12:01) MS PRUE KAPUA TO PROFESSOR JANE KELSEY:

Q. Kia ora, Professor Kelsey. Thank you for your evidence. Strangely enough, following on from Mr Morrison and his questions. I guess the substance of the whole mandate issue is the fact of how you take it to being a right rather than a discretion or a courtesy in relation to any involvement you have for Māori. So do I take it from your response to Mr Morrison that actually, because if we look at some of the groups that exist now that are having a voice, the extent of the power of that voice is up for some debate. But if we look at, for example, you have the Iwi chairs, you have got different organisations that are adding a Māori voice and overcoming that representation. I suppose, the issue, is it your evidence from your response to Mr Morrison that actually probably it is better or there is a more pragmatic way to deal with it by having the particular, I think you referred to the protocols. That are reflected in the

agreements that refer specifically to te Tiriti issues and exceptions, et cetera, rather than what could be quite a convoluted path of trying to determine who is at the table or who the representation is, or how that mandate is going to be agreed amongst tangata whenua?

A. Thank you, Ms Kapua. One of the difficulties that various groups have is that this is quite a technical area, and not that many understand even the structures and how the play works, which is a dilemma in itself. Because that's when you're always some way down the track, so the starting point actually needs to be, what's the world view that informs this, and at present, the paradigm is not te ao Māori. So, if you're looking at pragmatic immediate responses, it's how do you have protective elements in here that if there are policies, actions, decisions, et cetera that are designed to honour Te Tiriti o Waitangi, that those are not caught up by these rules. So that's what I mean by a carve-out or an exception which is less good. The problem with that is if we go back to the evidence, or some of the evidence I've referred to before about, yes, but what's needed is a te ao Māori approach. That's not going to solve that problem, because you're still going to have that agreement that's got all of those elements in it of blue carbons and CCUs and all of those things. That, to go back to an earlier question from counsel, yes, there are particular measures you might be able to take in a hapū. But climate change is a global thing, and so it comes down to, what's the paradigm, rather than, do you just have an exception in there for specific policies or decisions that might be Tiriti-compliant for Māori? So, if you're being ambitious, then you're saying we actually need to have a mandate that reflects that different paradigm. If we're dealing with the fact that the Crown is currently making all the rules, then as far as you are likely to get for now is to have some sort of carve-out or exception. It may be something specific to climate, or it may be broadening the Treaty of Waitangi exception as was promised in the mediation agreement on 2522, or it could be both. I mentioned the digital one that we had in the UAE, for example, that was stronger than the Treaty of Waitangi exception. You could have something very similar in relation to climate, yes? That doesn't deal with the decision-making problem, yes? Who is going to

decide this? Because putting it up to Cabinet, it's going to be MFAT that puts the decision to the Minister for Trade, who puts the decision to Cabinet that then sets the negotiating responsibility to implement that back to the Crown agencies. Especially MFAT but not only MFAT, and so the question then is, where is the Māori presence in this? where's the rangatiratanga? where's the mana motuhake? And that's why I raised that concern about the review that was done without telling anybody, Māori outside the Crown and has left in place this totally unsatisfactory 2001 engagement strategy, and where MFAT was extremely reluctant to have that reviewed and to have significant steps taken. So I know for the Climate Change Inquiry, that is a tension between how much of that belongs in the Constitutional Kaupapa Inquiry and how much of it belongs here. But that one is going to take forever, while more and more agreements involving climate change and so on are developed. So, I think it's a very important strategic question. I hope I didn't lose you too much on that one.

Q. No, thank you, that was good. Thank you very much. Thank you for your evidence. Kia ora.

(12:08) PROFESSOR DAVID WILLIAMS TO PROFESSOR JANE KELSEY:

Q. Kia ora, Professor Kelsey. Good to see you again. So you've done an awful lot of work, and documented it well over many years, on free trade agreements, and with respect to climate change, you've given reference to what you call "soft provisions" that do now appear on transitions to a low-emissions and resilient economy, and so on. So I want to put to you some questions about growth and degrowth. So the soft provisions are undoubtedly necessary, because basically, almost all of these free trade agreements are justified as contributing to economic growth and successive governments tout them as good for New Zealanders because they promote economic growth. But you have also referred favourably to the evidence of Alison Cole, where she advanced the proposition that to secure transitions based on degrowth, to limit consequences in favour of self-sufficiency, equity, and wellbeing. And you have also favourably mentioned Emily Bailey's evidence, which is staunchly based on

degrowth. So, are you in a position, as a pūkenga for Ngā Toki Whakarururanga, which is your position today, are you in a position to comment on that evidence on degrowth? You have referred favourably to those witnesses, even though the whole free trade agreement is based on growth.

A. Thank you, Professor Williams. Just to clarify, I'm not giving my evidence here solely as a pūkenga for Ngā Toki Whakarururanga. That's one of the hats I wear, but the work I've done on the investments and the trade agreements, including in the climate context, have been wearing multiple hats in multiple for over many years preceding Ngā Toki being established. The growth issue, I mean, it comes back in a little bit to that paradigms question I was raising with Ms Kapua. That the growth model has been essentially unquestioned in the trade arena since at least 1947 when the GATT was established and with the notion also of comparative advantage and countries specialising in what they do best and trading with others so that you get the best possible returns. One of the advantages that there may be for trying to get the degrowth discussions moving. Including in the climate context, is ironically the crisis that is now being fomented in the international trade regime by Trump's tariffs. Because the model is broken, and it's been broken for quite some time. It's just that this has brought it to a head, and there are now discussions, and I had one last week with people in Geneva, I'm having one in Penang in about ten days, about rethinking the model, and how you rethink the model for food security or dealing with pandemics. As well as dealing with the climate crisis, and how you look to sources of inspiration and knowledge such as indigenous peoples and ways of addressing those. And so those degrowth discussions are taking place. The problem that we have here, and I mentioned it on Radio New Zealand a couple of nights ago. Is that the politicians and the advisors are firmly stuck still in the growth paradigm, and there is no place for them to have that discussion, effectively, inside their tent. So that has to come from elsewhere, and that's where I see one of the advantages of this climate inquiry, of actually putting some of those questions on the table with recommendations associated with it.

Q. That's very useful. Thank you very much and thank you for all of your evidence.

(12:14) JUDGE MILROY TO PROFESSOR JANE KELSEY:

Q. Thank you, Professor Kelsey. I did have a question about improving the Treaty of Waitangi exception clause, and realised that the idea I had about improving the Treaty of Waitangi exception clause might not go down well with the Crown given the experience that they have had with the State-Owned Enterprises Act situation, but I am just – if you are able to and it is not confidential, I am just wondering what – where the discussions are at in terms of improving that exception, given that that might be one of the more realistic things that could happen, and I mean, my fear is that it is all coming a bit after the horse has already bolted.

A. Well, horses have to find ways to change courses. I hate to refer back to Mr Trump, but Mr Trump has kind of – all the rules are up for grab again now, and of course the Crown's response is that we have to pull those rules back into order, but if the rules are open for discussion, then that may be an opportunity and not just a risk. The Treaty exception clause has been quite interesting in the international sphere, because this one here dates back to 2001, right? And it came out of a large number of protests, Māori protests that there were over intellectual property rights, international agreement on investment services, negotiations, and so on, and so this was developed then. Since then, the agreements have become much bigger, cover a lot more things, but also, the issues that relate to the agreements have also become much more expansive, and in the case of climate crisis, existential. And so, the Crown's position has been, well, we always insist that we have to have this, and if we start changing it, then we're going to lose that leverage. Part of what was pointed out after the Wai 2522 digital report was that the Tribunal there found that that Treaty exception, plus several other protections on digital, weren't going to be enough to protect the implementation of Māori data sovereignty, Māori digital governance, and so on. And so, the Crown has gone to put more protections in for that. But getting movement on the more general one has been difficult. The US, Mexico and Canada looked

at New Zealand's one in a recent agreement that they signed, and said, okay, yes, we see there is a problem with limiting it to more favourable treatment. So they adopted a version of this exception that doesn't refer to that, that talks about compliance. Basically, paraphrase honouring the obligations to indigenous peoples under constitutional law treaties, et cetera. They moved on that, but they kept what we call the chapeau, which is a, neutralises the exception if there are seen to be disguised trade benefits from this. That's what I was referring to earlier about the GE corn dispute because the only time this has been tested was in a very recent decision last year. Where the US sued Mexico over Mexico's ban on the GE corn for foods such as tortilla. That involved it tightening up a looser rule on GM corn, and so the US said, this is a breach of your obligations in relation to importing GM corn. One of the defences was the indigenous peoples' exception, and the tribunal said, well, no, because even if it was an indigenous peoples' issue, there are still trade benefits that come from that. So that chapeau was still a hiccup, and so one of the arguments with MFAT is that you need to have an exception that doesn't have more favourable treatment and doesn't have that chapeau. That's a long-standing argument that was raised back in the Wai 2522 Tribunal, but it's a work in progress. But that's the general exception. The digital one is broader, because the Crown lost in the Tribunal on the digital, so that's had a stronger position, the strongest being the UAE one. It also put forward a much stronger one in the WTO, in an e-commerce agreement, as well. But it backed down from it, and that's part of the problem about who makes the decisions about trade-offs and who's at the table, and so on.

Q. Thank you. Thank you, Professor. That has been very helpful. My second question does come back to Mr Morrison's question, and that is because we have had evidence this week and in the previous hearing, because we are talking and wanting to talk to the local Māori – what's happening on the ground, what do they need, what do they want, and, you know, that relationship with their local and territorial councils and central government. So I do wonder if you have anything else you can – you would be willing to tell us about. Because it is not just the Iwi chairs

that need to be talked to and be part of that group around the table. I just wondered if you had any other thoughts about that.

A. There are Māori advocacy groups, who have a mixed capacity of analysis and on the ground. I'm thinking here about the Hua Para Kore producers, for example, who are doing the on the ground, but who also have analytical grunt. And my sense is that when we're dealing with the climate crisis, the best kind of mediatory ways. How we bring the trade agreement, investment agreement parts into this is kind of similar. If we look at what I was saying about Clive Palmer and the ISBS and where Mineralogy had investments and where there were issues around that. A number of those, which were alliances, I think, between mana whenua and some of the green groups and so on. They became aware of that, and they can become advocates in that space. At Waitangi this year, Ngā Toki Whakarururanga had a tent that it shared with Wai 262 and developed a whole lot of pamphlet resources connecting for people on the ground to what was happening in the trade and investment agreement space. And so, there are those things happening, there's just nothing systematic. Of course it's not resourced. Ngā Toki Whakarururanga has big issues about resourcing. This work was done with a Borrin Foundation grant. Where they contracted me and several others to do some of that work, then they developed the resources. So there are pockets of things that are happening everywhere, and I've seen that in the evidence, but meanwhile, the Crown is marching on, and investors potentially are threatening disputes, so we need to find a bridging space there.

Q. Thank you very much, Professor Kelsey. Just your comments just there did remind me that there was quite a mobilisation when the TPPA, if I've got all the right number of P's, was first mooted, in terms of Māori objection to that. So it's possible, certainly, but as you say, something to make all those disparate groups able to contribute together would be really helpful. Well, again, I must thank you very much for your evidence. As always, it is extremely well researched and thought out, and it has been a pleasure to hear your thoughts and your wisdom on these matters, and I am looking forward, since you have agreed to come back later if

necessary, we will look forward to that time as well, so thank you very much.

MS SYKES ADDRESSES JUDGE MILROY – QUESTIONS OF RE-EXAMINATION (12:25:32)

(12:25) MS SYKES TO PROFESSOR JANE KELSEY:

Q. You were asked to provide papers, Professor Kelsey. I just want to be clear, what papers are we getting? To assist me in meeting – in the directions that will follow.

A. What I can provide immediately is the Official Information Act documents relating to the oil and gas, offshore oil, and gas ban, so there's two papers there; there is a cabinet paper and there's an existing prospecting paper, so there's two of those that are easy. A second one, which I would probably – I have to go to Moana's mum's tangi tomorrow, so I could do on Sunday. Probably, the update of the PowerPoint that I did, the briefing I did for Ngā Toki Whakarururanga on Treaty process and put into that some climate material. The third is the analysis of this review of the Treaty process, which is going to take me a little bit longer because it's a lot of stuff there and I've done notes of it. But I need to have the time to do the analysis. That's one of the papers for the Borrin Foundation project. So, I could make that available, but I'm travelling from the 20th of April to the 20th of May, so I suspect that won't be until the end of May.

Q. My second question relates to some of your answers. You cited agreements that refer to circular economy. What does that mean?

A. Basically, kind of recycling. Recycling. So not producing new but finding ways to reuse what has been already. And there's a big literature on that, I can –actually, what might be useful is if India Logan-Riley is going to be giving evidence, it might be useful to ask her if she can address the circular economy, yes?

Q. And my last question is that in the free trade agreement area, are you aware or can you explain collaborations that are occurring between and

amongst Māori on areas of participation, collaboration, and decision-making around free trade agreements?

A. MFAT, as I understand, is talking to several different entities. There is a crossover of some entities. For example, the Iwi Chairs and Ngā Toki Whakarururanga, there's Pita Tipene, there's Peter Lucas Jones, so some crossover there. There is not a coherent space for sharing, despite there being attempts to do that. People have different interests and different approaches, and there have been several moves to do that. There's the view, I know, from the kaihautū from their meeting last week that they're very keen for that to be happening, including with Te Taumata. But at present, it allows the Crown to keep that information to itself and then work out what to do with what it hears, and that's the dilemma.

Q. Just for the record, who is Te Taumata?

A. Te Taumata is an entity that was established partway through the Wai 2522 inquiry in response to the concerns that were raised in the urgency hearing in relation to the TPPA. It has, as I understand it, an MOU with MFAT, as opposed to the mediation agreement, which has a legal status with the Crown that Ngā Toki Whakarururanga came out from, and yes, I probably need them to describe that themselves, rather than me taking that further.

Q. Can you advise or help us understand traditional groups, which Ms Kapua raised? And maybe to assist you, shortening the question, like FOMA, New Zealand Māori Council, are they part of these collaborative efforts? Māori Women's Welfare League?

A. FOMA's view has largely been expressed this in the establishment mandating process for Ngā Toki Whakarururanga, that they are quite keen to focus just on the commercial issues and Ngā Toki Whakarururanga's mandate is to deal with te Tiriti aspects of this space. In the Iwi Chairs, Ngahiwi Tomoana was engaged in earlier stages. But they haven't been as actively now, except the Data Iwi Leaders Group, for example, has been. We ran some wānanga for them specifically around that, so there's those kind of relationships. Māori Women's Development Institute was involved when the APEC was

being chaired by New Zealand and there was a process that set something up called the Indigenous Peoples' Economic Trade Cooperation Arrangement. That was probably the last time all these entities were around the table, and out of that came a document and something called IPETCA, which has equal Crown and Māori participation in the Council. But there's very little information that gets circulated around about that. So, there have been various initiatives, but largely ad hoc.

Q. Would you be able to provide that – IPETCA, is it? – arrangement, or is that confidential?

A. No, no. IPETCA is there. It's co-convened by Traci Houpapa from FOMA – well, by Traci Houpapa and Pita Tipene, but as individuals, not wearing their FOMA, Ngā Toki Whakarururanga hats. Which has proved to be quite awkward, and then Tane Waetford from MFAT as Crown's representative. Then there is an international body, who's those who've signed up to IPETCA and what's called the Inclusive Trade Action Group, which I referred to in my evidence. That had, as part of its work plan that there was going to be indigenous peoples and climate change, but nothing happened. So, I mean, there are these embryonic things, and they have variable successes, but we can certainly provide the IPETCA text. That co-governance arrangement came out after discussions that were informed by the UN working party on indigenous peoples and the development of the UN Declaration. I was the technical person who drafted that, so it's kind of why I know where and how it came from. But kind of how it's working now, there's very little public information, which comes back to that, how do you connect to the ground?

Q. Thank you, Professor Kelsey. I have no follow-up questions.

MS SYKES ADDRESSES JUDGE MILROY – SEEK DIRECTIONS TO FILE FURTHER EVIDENCE (12:35:11)

JUDGE MILROY:

Thank you again, Professor Kelsey, and just your extra evidence in reply to Ms Sykes' has shown again how well you cover this whole area, so thank you very much, and you are deserving of your lunch.

HEARING ADJOURNS: 12.36 PM

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HEARING RESUMES ON FRIDAY 11 APRIL 2025 AT 9.00 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

JUDGE MILROY:

E mihi ana ki a koe, Dr Every-Palmer. **I want to greet you, Dr Every-Palmer.** Welcome to the Tribunal this morning. I will hand over to Mr Lyall to help you present your evidence.

MR LYALL OPENS

Tēnā koe, e te Kaiwhakawā. **Thank you, your Honour.** E ngā mema, the claimants that I represent, who I will not run through at this point in time. I now call Dr James Every-Palmer KC as an expert witness in this matter.

MR BRYCE LYALL CALLS

DR JAMES DAVID EVERY-PALMER KC (SWORN)

Q. Mōrena **Morning,** Dr Every-Palmer.

A. Mōrena.

Q. Now, you have filed a brief of evidence and attached opinion in this matter, which is on the record as #A043. Can you confirm that that is correct and it's the dated the 11th of March 2025?

A. Yes, I can confirm that that's filed with the Tribunal and that the content is true and correct.

Q. And you have also filed in advance a PowerPoint presentation which you are to work through with the Tribunal this morning?

A. Yes.

Q. Now, just to get the housekeeping out of the way at the outset, perhaps, last night, we filed a Radio New Zealand article entitled *Pine planting: Ministers 'dreaming' about amount of suitable land, say green groups*, dated the 7th of April 2024, and a report which was released on Wednesday, I understand, from the Parliamentary Commissioner for the Environment, entitled *Alt-F Reset: Examining the drivers of forestry in New Zealand*, and you intend to refer to those in the course of your

evidence as documents that were unavailable at the time you produced your evidence, is that correct?

A. Yes, they are respectively a news item and a report from the Parliamentary Commissioner for the Environment that have come out during this week, so they came after my written report, and I would like to refer to them, with the Tribunal's permission.

MR LYALL:

Your Honour, so we have asked that those two documents be placed on the record of inquiry and be allocated record of inquiry numbers.

JUDGE MILROY:

Yes, certainly. I will just check if we have got the numbers already. Sorry, we do not have those numbers yet, but they will be advised.

MR LYALL:

Ka pai, in due course. So, Dr Every-Palmer, before you turn to your PowerPoint, I wonder if you would like to begin by introducing yourself to the Tribunal and the members and setting out your qualifications as an expert, and also confirming that you have read the schedule relating to evidence by expert witnesses and agree to be bound by that in presentation of your evidence today, and then we can turn to your PowerPoint if that approach suits.

(09:05) DR JAMES EVERY-PALMER KC: (#A043, #A043(a), #A043(b), #A043(c))

Ka pai. And mōrena to members of the Tribunal. Tēnā koutou. Ko James Every-Palmer ahau. Ko tangata Tiriti taku iwi. Nō Ōtepoti ahau. Kei te noho au ki Te Whanganui-a-Tara. Ko Te Waipounamu tōku tūrangawaewae. **Greetings. My name is James Every-Palmer. I am a tangata Tiriti, is my iwi. I am from Dunedin, and I live in Wellington, and I grew up in the South Island.**

My full name is James David Every-Palmer. I'm a barrister and co-founder of Lawyers for Climate Action New Zealand Incorporated, and I've been on the

LCANZI board for the last six years. I have read the Code of conduct for expert witnesses at Schedule 4 of the High Court Rules, and I confirm that I agree to comply with it. I understand and accept that it is my overriding duty to assist the Tribunal in matters that are within my expertise, and I confirm that the opinions I provide are within my expertise and experience.

MR LYALL:

Ka pai. Now, for the Tribunal's benefit, and being conscious of time, Dr Every-Palmer sets out his qualifications as an expert from paragraphs 1 through to paragraphs 9 of his attachment to his brief of evidence, and unless, Dr Every-Palmer, you wish to go through those, we could ask that those are taken as read this morning and perhaps turn to the PowerPoint that you have prepared.

DR JAMES EVERY-PALMER KC: (BEGINS SPEAKING TO PRESENTATION #A43(a))

So the question that I've been asked to address is whether Aotearoa New Zealand's current climate policy matches the level of ambition required by international climate science and policy in order to appropriately respond to the threat of climate change. In terms of this presentation, I will follow the structure and headings, and largely, the content of my written report, and where I am expanding on my written report, I will make that clear.

This chart shows how global temperatures have changed over an 80-year period relative to the late 19th century pre-industrial average. To explain the title, it is based on the land-ocean temperature index, which is a metric that combines land surface air temperature data with sea surface temperature data to track changes in global average temperatures over time. The data comes from NASA's Goddard Institute for Space Studies.

The salient points to take from this are, firstly, that global average temperatures have increased significantly since the start of the Industrial Revolution. In 2023, it was 1.17 degrees warmer than the average of that pre-industrial period. That was at the time the record high temperature for a year, but the record was short-

lived, because in 2024, it was exceeded, and the global average temperature was 1.28 degrees Celsius warmer than the pre-industrial average. So the last two years have been the hottest years since record-keeping began in 1880. In fact, if you were to ask, "When were the ten warmest years on record? Where did they occur over time? How were they spread out?", the answer is that they occurred between 2015 and 2024. That is, the last ten years are the ten hottest years ever recorded.

The cause of global warming is not controversial. It is unequivocal that human influence has warmed the atmosphere, the land, and the oceans through the emission of greenhouse gases, particularly carbon dioxide and methane. This has primarily been as a result of the combustion of fossil fuels and industrial agriculture.

In simple terms, when sunlight warms the air, infrared radiation bounces back out towards space, and greenhouse gases in the upper atmosphere allow further sunlight to the Earth but reflect some of the infrared radiation back down towards the Earth, creating a kind of atmospheric blanket.

Over the last 60 years, the carbon dioxide concentration in the atmosphere has increased from around 320 to over 420 parts per million, and you can see that in the chart on the screen. Consistently with the theory of global warming, there is a very high degree of correlation between this increasing carbon dioxide concentration and the increasing global temperatures.

The increase in carbon dioxide concentration we are witnessing is unprecedented. To see this, we need to look at a longer timescale. Based on ice core sampling, over the last million years, and up until the start of the 20th century, carbon dioxide levels have oscillated between 180 and 300 parts per million. However, since 1911, this pattern has been broken by human-induced emissions, and the concentration has increased by nearly 50% to 425 parts per million as at December 2024. So, you can see that from the chart, that there's been a regular cycling with going down to 180 and up to 300 parts per million, with the exception to that being the last hundred years, where

the concentration is now almost 50% higher than at any other time over the last million years.

In terms of where the carbon dioxide is coming from, the increased concentration of carbon dioxide in the atmosphere is primarily due to the combustion of fossil fuels, that is, oil, gas, and coal, since the start of the Industrial Revolution, and a secondary cause is land-use change, particularly deforestation. The chart on the screen shows annual carbon dioxide emissions due to fossil fuel combustion and land-use change. Other than a dip associated with the COVID lockdowns, the level of annual emissions has continued to increase, despite countries' knowledge of climate change and the responses that have been adopted to date.

Methane is the second-most important greenhouse gas, and accounts for approximately 30% of global warming since pre-industrial times. Methane has a potent short-term effect, around 80 times as much warming per tonne as carbon dioxide over a 20-year period, and if I can just make a correction to my written report, my report says, "around 85 times". That's a slightly out-of-date figure. The current figure is 81.2, but if I could please change that to "around 80 times", for the record.

So it has a potent short-term effect, but also breaks down within a couple of decades, in contrast to carbon dioxide, which remains in the atmosphere for hundreds to thousands of years.

This means that reducing methane emissions now would have an impact in the near term and is critical for helping keep the world on a path to 1.5°. The importance of that target I address shortly. It has been estimated that human-caused methane emissions could be reduced by as much as 45% within the decade, which would avert nearly 0.3° of global warming by 2045.

In terms of having an environment which is capable of sustaining life and society as we know it, it is vital to limit global warming to 1.5°, or as close thereto as possible.

This has been recognised globally and is not subject to serious debate. Article 2 of the Paris Agreement reaffirms the goal of limiting global temperature increase to well below 2 degrees Celsius, while pursuing efforts to limit the increase to 1.5 degrees.

Importantly, a temperature rise of 1.5° in and of itself will still cause considerable harm. However, limiting warming to 1.5° will significantly reduce the risks, adverse impacts, and related losses and damages from climate change.

Comparing the world at global warming of 1.5° warming to that of 2.0° demonstrates the importance of this, where for example:

1. Firstly, impacts on biodiversity and ecosystems on land, including species loss and extinction, are projected to be lower at 1.5° compared to 2. Limiting global warming to 1.5° compared to 2 is projected to lower the impacts on terrestrial, freshwater and coastal ecosystems and to retain more of their services to humans;

2. Secondly, with 1.5° of warming, one sea ice-free Arctic summer is projected per century, whereas this likelihood increases to at least one per decade with 2° of warming;

3. Thirdly, by the year 2100, global mean sea level rise is projected to be around 0.1 metres – that's 10 centimetres – lower with global warming of 1.5 compared to 2°. Just to expand on that, at 1.5°, it's estimated that there would be around 30 to 50 centimetres of warming by 2100, so already a considerable amount, but it would be an extra 10 centimetres projected if the temperature increase is 2°. That difference of 0.1 metres in global sea level rise would mean that up to 10 million fewer people would be exposed to related risks;

4. Fourthly, any increase in global warming is projected to affect human health, with primarily negative consequences. However, lower risks are

projected with global warming of 1.5° compared to 2 for heat-related morbidity and mortality.

Even if 1.5°C cannot be achieved, every tenth of a degree matters. Indeed, every tonne of emissions matters.

And if I could just add to my written report there, the consequences that I have just described are primarily physical. However, as areas of the planet become uninhabitable due to sea-level rise, air-temperature rise or drought, it will lead inevitably to mass migrations and geopolitical instability. One can easily imagine that if we are in such a world, it will be military power that determines access to the least worst affected areas, so in thinking about the consequences to Aotearoa, we may not be directly as badly affected as the low-lying areas of our Pacific neighbours, or Bangladesh, for example, but in a slightly longer-term frame, the geopolitical consequences could well dwarf the physical consequences of climate change that we are experiencing.

There is very little limited time to decarbonise the global economy quickly enough to limit temperature change to 1.5°. This is because the remaining carbon dioxide emissions that are consistent in a physical sense with limiting temperature change to 1.5° are modest relative to our rate of annual carbon dioxide emissions. It is estimated that the remaining carbon dioxide budget for a 50/50 chance of keeping warming to 1.5° was around 250 gigatonnes, as of January 2023. That's equal to around six years of current carbon dioxide emissions unless dramatic cuts are made. Obviously, we have had two and a bit years since that budget was estimated, so there are now only four years remaining if we continue to emit carbon dioxide at present rates, in order to stay within that budget for 1.5°.

In addition, although to date we have seen a linear relationship between carbon dioxide concentration levels and temperature increases, there is a real risk that the climate will reach "tipping points". That is, we may reach critical thresholds within the climate system that lead to significant and irreversible changes in the state of the system. The tipping points at risk include the

collapse of ice sheets in Greenland and the West Antarctic, which hold almost all of the world's freshwater ice, the widespread thawing of permafrost, the death of coral reefs in warm waters, and the collapse of one oceanic current in the North Atlantic. Tipping points in the Earth system pose threats of a magnitude never faced by humanity that could trigger devastating domino effects.

Climate change is therefore an "existential threat" to humanity. That is, it is a material threat to the way of life and sustenance of hundreds of millions of people. It also is a threat to global security as some areas of the planet become uninhabitable and others remain favourable to human life.

As such, it is severely testing humanity's ability to think globally and act locally in light of a threat that is both intergenerational and a collective action problem.

In this regard, how "small" countries like Aotearoa New Zealand act is extremely important. As former Climate Change Minister James Shaw told a United Nations climate change conference in 2017, "New Zealand is a small country and our emissions are less than one percent of global emissions, but size is not an excuse for inaction. If you add up all the countries who contribute less than one percent, we collectively contribute almost a quarter of global climate pollution." Indeed, only six countries in the world account for more than 2% of the global total: China, the United States of America, India, Russia, Japan and Iran.

The reality of climate change as a global problem is that the solution depends on the actions of many committed countries. Smaller countries can lead by example and create pressure on large countries to do more.

As well as a moral obligation on Aotearoa New Zealand to play its part in reducing climate change, our global reputation is likely to benefit from a committed approach to climate change. There may also be increased economic advantages, as sustainability is increasingly embedded into

companies' economic models. Climate change trade barriers may also hinder New Zealand from trading overseas if it fails to do its fair share.

In the following sections I consider what "sufficient action" looks like at a national level for Aotearoa if it was to do its share and demonstrate leadership. I do this bearing in mind the whakataukī, "Manaaki whenua. Manaaki tangata. Haere whakamua." **Take care of the land, people, and move…**

In order to avert the worst consequences of climate change, what do countries need to do? How much do emissions need to reduce and by when?

So, just to pause there and explain why I'm doing this, what I want to do is assess whether Aotearoa is on the right track, and in order to do this in an empirical evidence-based way, what I do in this part of my report is develop some reference points, some metrics of appropriate action.

The standard reference for what is required to limit global warming to 1.5° is the Intergovernmental Panel on Climate Change's 2018 Special Report on Global Warming of 1.5°.

The 2018 Special Report emphasises the need for rapid and far-reaching transitions in energy, land, urban and infrastructure, and industrial systems, and for the world to achieve "net zero" CO_2 by 2050 to remain consistent with 1.5°.

Discussion about the 2018 Special Report has tended to focus on the second of these two points; that is, net zero by 2050. While this is *necessary* for global temperatures to remain at an acceptable level, it is not sufficient. Putting it another way, the quantity of greenhouse gases emitted between now and 2050 is of vital importance as well.

In terms of waypoints, the 2018 Special Report considered a variety of plausible global pathways and the resulting peak temperatures.

A common reference point for reductions required by 2030 to be consistent with limiting warming to 1.5°C is the collection of pathways which imply a 50-66% chance of limiting global warming to 1.5° at 2100 with no or limited overshoot.

I pause there to note that although these are a fairly widely accepted set of reference pathways, they are by no means conservative, in the sense that they imply a one-third to 50% of not staying within 1.5° with limited or no overshoot, and so some people criticised them for not being harsh – or stringent enough targets, but they are widespread, so I adopt them.

This set of pathways imply that by 2030, relative to emissions at 2010:

1. net CO2 emissions need to reduce by 40 to 58%; and
2. methane emissions need to reduce by 11 to 30%.

The 2018 Special Report is not prescriptive as to what each country needs to do. It's a global report. However, actions countries take are informed by the international environmental law principle of "common but differentiated responsibilities and respective capabilities", and this is often referred to as the CBDR, Common but Differentiated Responsibilities Principle.

There are various different lenses of equity through which the CBDR Principle can be viewed when Aotearoa New Zealand determines its level of action on climate change. These include:

1. Equal rate of emissions reductions;

2. Equality, based on equal emissions per capita;

3. Historical responsibility, being equal overall responsibility for global warming, including from historical emissions; and

4. Need, being the equal right to sustainable development.

The CBDR Principle has been interpreted to require developed country leadership in addressing environmental and climate harm. It is intended to accommodate the needs of developing countries, and equity burden sharing, not to allow wealthy developed countries like Aotearoa with high historical and current per capita emissions to do less or to move more slowly than other countries for fear of incurring economic or social transition costs.

In my view, for a developed country like Aotearoa New Zealand which has a high standard of living and has benefitted from past greenhouse gas emissions, being consistent with the global average reductions represents a bare minimum level of ambition in accordance with the CBDR Principle.

Adopting this approach, we can apply the percentage reductions from the Special Report – that is, 40–58% for net CO_2 and 11–30% for methane – we can apply those to our actual emissions from 2010 in order to set a 2030 target. I do so in the table on the screen, where Mt means metric tonne and MTCO2e means metric tons of carbon dioxide equivalent and is a way of standardising the atmospheric impact of different greenhouse gas relative to that of carbon dioxide.

The 2010 emissions figures come from our Greenhouse Gas Inventory, which is an annual report we make to the United Nations under the UNFCCC, the Climate Change Convention, and if we look at each line in the table, for net CO_2, our 2010 emissions were 5.8 metric tonnes. If we apply the 40–58% reductions from the Special Report, that implies a target in 2030 of 2.4 to 3.5 metric tonnes.

For gross CO_2 – and I should pause there to explain that in simple terms, "net CO_2" means taking into account carbon removals from forestry, and "gross CO_2" means not taking them into account, but I will return to that later – gross CO_2 in 2010 was 34.8 million tonnes. With a 40–58% reduction, that becomes a 2030 target of 14.6 to 20.9.

And if you apply the methane reductions, you end up with a 2030 target of 27.7 to 35.2 million tonnes of CO_2 equivalent in methane.

So those are the figures that I'll refer to later, when I judge New Zealand's targets and projections against the standard.

But I note that this approach implies a very stringent level of net CO_2 for 2030. The 2010 level of net CO_2 is a combination of our gross CO_2 emissions, so that's 34.8 million tonnes, and CO_2 absorption from forestry, which in 2010 was 28 million tonnes.

In my view, a fairer approach which is less stringent on Aotearoa New Zealand would be to apply the 2018 Special Report reductions to our gross CO_2 emissions in order to set a target for our 2030 gross CO_2 emissions. I consider this approach (effectively disregarding forestry during the 2010-2030 period) to be reasonable given: (a) the relative insignificance of carbon dioxide removals to the 2018 Special Report pathways over this period; and (b) the primary importance of reducing emissions at source.

Accordingly, I put more weight on the gross CO_2 figures in this chart than on the net CO_2 figures.

In terms of methane, I am aware that a Ministerial advisory panel was appointed in June 2024 to determine what methane target for New Zealand would be sufficient to satisfy the "principle" of no additional warming. As I will explain here, I do not consider this question to be relevant to the question of what our level of ambition should be.

Now, this is a short tangent, but the reason I am addressing this is that the government has announced an intention to review the Climate Change Response Act, and it is possible that one of the proposals will be to reduce ambition on methane, so what I want to do now briefly is explain why this is not justified by the so-called "principle" of no additional warming.

HOUSEKEEPING – TIMING (09:30:58)

HEARING ADJOURNS: 9.31 AM

HEARING RESUMES: 9.36 AM

JUDGE MILROY:

Thank you, Dr Every-Palmer. We have had a chance to stretch our sore joints. Just before you continue, I will just note that we do have the numbers for the two documents that were filed this week, so for the RNZ article, it is #A043(b), and for the other, it's #A043(c).

DR JAMES EVERY-PALMER KC:

Ka pai and thank you.

CONTINUES SPEAKING TO PRESENTATION #A043(a)

So the Tribunal will recall earlier that I referred to methane as having a potent effect in the short term but a relatively short-lived presence in the atmosphere, and that that means that a sizeable decrease in methane emissions can reduce the extent of global warming. So the question here is whether climate science and policy imply that those reductions shouldn't or don't need to go further than preventing additional warming from methane.

As with all greenhouse gases considered in the 2018 Special Report, the global average reductions have been determined on the basis of plausible pathways that will limit warming to 1.5°. Depending on the physical characteristics of individual gases, this means that a particular gas may continue to contribute to global warming or may have a lower impact than compared with some earlier point in time.

I want to emphasise that whether a particular gas happens to contribute to additional warming is irrelevant to the question of what the science says is required to limit warming to 1.5° and applying the so-called "principle" of no

additional warming to cap our level of ambition on methane reductions is not consistent with the science or our international obligations.

As a report by report by Kapiti Climate Insights says:

> Using the principle of 'no additional warming' as a cap on our level of ambition for methane reductions is an arbitrary constraint on the principle embedded in scientific literature that emissions of all greenhouse gases must fall as rapidly as possible. As such, it runs counter to the Paris Agreement's core temperature goals, as well as its requirements for targets which progressively increase ambition over time.

The report goes on to say that:

> Current global pathways for limiting warming to 1.5° require reductions of all greenhouse gas emissions as rapidly as possible. However, a 'no additional warming' target would allow New Zealand to grandfather its share of contributed warming from historical emissions into the future. This approach is self-serving for New Zealand and unfair to others – shifting the burden of reductions in greenhouse gas emissions to other sectors and other countries.

I agree with those comments. In short, it is clear that all greenhouse gases should be reduced as quickly as possible. Whether that means additional warming or not depends on the gas and the feasible reductions. Accordingly, I consider that methane reductions set out above are an appropriate benchmark and should not be capped by the principle of "no additional warming".

The figures that I have just gone through reflect a top-down approach based on what is required at a global level and based on our fair share being, at the very least, to reduce our emissions in line with the required global average reductions.

An alternative “bottom-up” approach is to look at Aotearoa New Zealand’s actual emissions and ask what reductions are feasible by 2030.

Of course, “feasibility” is a relatively elastic concept as trade-offs are involved between climate ambition and other socioeconomic goals (at least in the short term). Emissions could be drastically reduced by, for example, introducing quantity rationing for petrol and imposing requirements to steadily reduce the total sheep and dairy herd numbers.

Given the urgency of the climate crisis, and Aotearoa New Zealand’s international commitments, one could certainly argue that these measures should be under consideration.

However, I take a more conservative, i.e. less ambitious, approach to feasibility here by using one of the Climate Change Commission’s modelled pathways referred to as “HTHS pathway”, where HTHS stands for High Technology and High Systems change, and it represents a greater level of ambition than used for setting our domestic emissions budgets.

The HTHS scenario illustrates areas where the Government could go further and faster than implied by the budgets. Some key examples include further use of biofuels to decarbonise transport; higher modal share of public and active transport; further decarbonisation of steel production through green hydrogen or greater utilisation of scrap steel; adoption of green anodes for aluminium production; further land-use change from dairy to horticulture; and adoption of methane-reducing feed additives.

Although more ambitious than our budgets, I consider that these sorts of measures are all feasible (and well short of the sort of policies which would be pursued if climate change was actually treated as an emergency).

As the Commission explains:

> All draft scenarios are designed to be technically and economically achievable, assuming plausible rates of change in technology, systems, and the price of mitigation options. The draft HTHS assumes a relatively ambitious pace and scale of change and more optimistic assumptions over technology readiness.

But the point is that it's a feasible scenario.

The HTHS scenario implies the following target levels of emissions for 2030 and 2035. So there's a new concept here, LLG, which is long-lived gases, which is predominantly carbon dioxide and nitrous oxide, but basically means all of our greenhouse gas emissions other than methane. By 2030, a high-ambition but feasible target would be 12.3 million net long-lived gases, and with a gross figure of 31.1 million tonnes. By 2035, net long-lived gases would hit zero. The gross figure would be 23.3, and the methane figures are set out in the table.

So then turning to the question, "Does Aotearoa New Zealand's climate policy have the required level of ambition?", what I do here is compare our proposed emissions – projected emissions, rather, for 2030 and 2035, against the projections based on the 2018 Special Report and the Climate Change Commission's HTHS scenario, and compared against those metrics, the short answer is, "No, we do not have the required level of ambition."

In order to explain why I reached this view, I set out below a short summary of our climate change policy settings, our past performance, our projected emissions and how they compare with the metrics that I have developed.

I won't go through the United Nations Framework Convention on Climate Change or the Kyoto Protocol or the Paris Agreement. They will be well known to the Tribunal, and I set out short summaries in my written report. In terms of domestic legislative response, the Climate Change Response Act, as amended in 2019, provides for a "2050 Target", being to:

1. reduce net accounting emissions for all greenhouse gases (except biogenic methane) to zero by 2050 – and although it's expressed as a year 2050 target, the statutory definition includes keeping it, keeping those emissions below zero in each calendar year after 2050.

2. The 2050 Target also includes targets for biogenic methane, a 24 to 44% reduction by 2050, and a 10% below 2017 levels by 2030 target.

MR LYALL:

Kia ora, Dr Every-Palmer. I think you may have just misspoken there. The report says 24 to 47%, rather than 44%. Can you confirm that?

DR JAMES EVERY-PALMER KC:

It does. 24 to 47%.

BEGINS SPEAKING TO BRIEF OF EVIDENCE #A043

And I can also add there that the Climate Change Commission which gave advice at the end of last year to the Government on the 2050 Target included a recommendation to tighten that 2050 Target for methane from 24 to 27% to 35 to 47%, and also to increase the target for gases other than methane, so to be negative 20 million tonnes by 2050 and thereafter, rather than simply being below zero – at or below zero.

The Climate Change Response Act, as amended, also constitutes the Climate Change Commission to provide independent expert advice to the Government. It provides for the setting of five yearly domestic emissions budgets, with three in place at any one time. It also provides for the setting of emissions reductions plans for each budget period. And it also contains the framework for the Emissions Trading Scheme, which puts a price on emissions other than agriculture and certain industries that receive a free allocation of units.

New Zealand's approach to addressing climate change has been controversial. In particular, setting international targets with gross starting points and

net finishing points, moving the baseline year for the gross starting points, utilising Kyoto-era offshore carbon credits of questionable integrity and introducing "averaging" for forestry removals a couple of years ago at a time when we were over our long-term average of removals, have all been criticised as overstating our true level of ambition.

Rather than go through that history and those controversies, I consider the most instructive thing to do is to look at how our emissions have changed between 1990 and 2022. I only go as far as 2022 as that's the most recent year for which our Greenhouse Gas Inventory data is available. There is a considerable lag between emission years and the Inventory data.

The chart on the screen graphs our gross and net emissions – remembering that net is with forestry included – over this period, and as can be seen, our gross and net emissions are both higher in 2022 than they were in 1990, despite our international commitments and domestic policy framework. In particular, our gross emissions increased over this time from 69.0 to 78.4 million tonnes CO_2 equivalents. That's a 13.7% increase in gross emissions. At the same time, our net emissions, including forestry, have increased from 44.6 to 59.2 million tonnes, being a 32.5% increase.

Now, we can compare that to what are referred to as the Annex 1 countries in terms of the UNFCCC and Kyoto, which are, effectively, developed countries.

So the chart on the screen shows the change in gross emissions for all Annex 1 countries between 1990 and 2020, with Aotearoa in red. As can be seen from the chart, most countries have had considerable reductions in their gross emissions over this time. In fact, the only worse performing countries than New Zealand are Australia, with a 24% increase; Iceland, with a 23% increase; Cyprus, with a 53% increase; and Turkey, with 138% increase. The average change for the other Annex 1 countries, excluding those ones, was minus 30%.

So as can be seen, New Zealand's historic performance falls well short of what most other developed countries have achieved over the same period of time.

Turning to the future, the question is whether the path we are on embodies a sufficient level of ambition.

Looking at the projections for overall gross and net emissions through to 2050 in ERP2 – that's Emissions Reduction Plan 2 – one can see downward trajectories which are at least an improvement on the historic position. That does paint a better picture, but the question is whether it represents sufficient ambition. To answer that, we need to do two things: compare the projected emissions against the ambition and feasibility yardsticks that I have already discussed, and also to test the appropriateness of basing budgets and targets on net emissions, that is, after forestry removals, rather than reducing emissions at source.

In my opinion, the path we are on does not embody a sufficient level of ambition, for two reasons.

First, I do not consider that the level of ambition is consistent with what the science says is required nor with what is feasible for Aotearoa New Zealand.

The table on the screen compares the latest government projections of emissions against the benchmarks from Part C. In particular, the table on the screen compares the level of net $C0_2$, gross $C0_2$ and methane projected by the Government for 2030 against the levels that would be obtained if we matched the global average reductions required for 1.5°.

So the – based on the Special Report 2018, those are the figures that come from Part C in my report, and I've explained how I have derived those. The government projections are from ERP2, and the percentage above midpoint says how much is a percentage of where we should be according to the science, how much above that are our projections.

As I said before, I think gross $C0_2$ is a better measure than net $C0_2$, so I will use that one, and it says that we should be between 14.6 and 20.9 million tonnes;

we're projected to be at 28.1, and that's a 58% excess above where we should be, according to the science, if we were to simply do the global average required.

For methane, the figures show that we'd be 9% above where we should be.

MR LYALL:

And just because that's an important point in the context of your evidence, to note that that's found at paragraph 89 of your report. But please continue.

DR JAMES EVERY-PALMER KC: (CONTINUES SPEAKING TO #A043)

Thank you. So that's in terms of the science of the reductions required and whether we satisfy the global averages, which we don't, but we can also compare the level of ambition for 2030 and 2035 as contained in the ERP2 against the Climate Change Commission's HTHS scenario as a measure of what is reasonably feasible.

For 2030, our projected emissions are significantly higher than what the HTHS scenario implies is feasible. So based on CCC is the Commission's HTHS scenario. The net long-lived gases in 2030, these are the figures that I've introduced before would be 12.3, and gross would be 31.1, and methane would be 30.5. The next line contains the government projections for 2030, and the percentage above the net long-lived gases is 70% higher than what the Commission considers feasible, the gross are 15% higher, and methane is 12% higher.

We can do exactly the same exercise for 2035. Here, net long-lived gases government projections are 15 million tonnes higher than based on the HTHS scenario. I can't give a percentage, because you can't divide by zero, but obviously, it's well above where – what would be feasible, and our gross long-lived gases are 44% above what would be feasible; methane 12%.

Accordingly, I consider that the Government's present level of ambition is not consistent with either the science of what is required or with the Climate Change Commission's assessment of what is feasible.

In addition to insufficient overall ambition, in my view, the Government's present plans also rely too heavily on the removal of carbon dioxide through forestry, as opposed to reducing emissions at the source.

In order to understand this criticism, it is necessary to understand the difference between gross and net emissions.

In climate accounting, "gross" emissions refer to anthropogenic, that is, human-caused, emissions of greenhouse gases from transport, agriculture et cetera. "Net" emissions also take into account land use, land use change and forestry, which is abbreviated to LULUCF. For example, if a country loses forestry to agriculture, its net emissions will be higher than its gross emissions.

In New Zealand, the most significant LULUCF factor has been the conversion of marginal sheep and beef farmland to exotic plantation forests. As those forests grow, they sequester carbon and produce negative emissions in the LULUCF sector. Accordingly, our net emissions are lower than our gross emissions (typically by around 20-25% each year over the last three decades).

We have chosen to set our budgets and targets by reference to net rather than gross emissions.

On one level this makes sense. Afforestation is a good thing in response to climate change, and one might think that our contribution to atmospheric carbon dioxide levels is best measured by the balance between greenhouse gases that are released (gross emissions) and what is removed from the atmosphere (sequestration from forestry).

However – and this is an important point – this simple explanation does not tell the whole story.

In particular, planting forests to remove carbon dioxide from the atmosphere is an inferior approach to reducing carbon dioxide emissions at source for three main reasons.

First, there is the question of relative permanence. Sequestration of carbon dioxide in a forest (or any other biological reservoir) is vulnerable to reversal, whether by fire, disease, natural disasters, or land use change. Indeed, many of these risks are increased by global warming itself, and this will exacerbate risks from forest fires, droughts, and storm damage.

This impermanence of forestry and other biological reserves can be contrasted with the release of carbon dioxide through fossil fuel combustion. Each tonne of carbon dioxide emitted into the atmosphere will remain there for hundreds to thousands of years.

The second issue is the loss of optionality for potential changes of land use. That is, land being used as a forest and counted as carbon sequestration must stay in that state indefinitely. This implies there would be less land available for other potential uses in the future.

Thirdly, while a “removals by forests” approach might allow us to meet emissions budgets and the 2050 target, net zero cannot be sustained with this approach, since it would require ongoing land conversion, which cannot occur indefinitely. We would run out of land.

In my view, carbon dioxide removals through forestry are best seen as a necessary complement to reducing emissions at source and cannot be seen as a substitute for deep emissions reductions. In particular, emissions that can be reduced should be reduced, and offsetting should be reserved for residual hard-to-abate emissions such as from agriculture and some industrial processes.

Now, here I want to refer to the two recent reports which have been produced into evidence. The Parliamentary Commissioner for the Environment report

looks at our past and continuing reliance on planting trees, particularly pines, rather than reducing emissions at source or planting other types of forests, and I commend the whole report, but I just wanted to quote a little bit from page 4 of the report.

> "In the space of 15 years," since – in the space of the last 15 years, "the NZ ETS has become the principal driver of land use change. Record high carbon prices in 2022 coincided with total afforestation rates exceeding 70,000 hectares. By the end of 2024, over 650,000 hectares of forest was registered in the ETS. The Climate Change Commission's most recent scenarios for their emissions budget projections have future plantings totalling between 0.93 and 2.2 million hectares by 2050. This is a huge area to commit to trees for reasons that are neither strictly commercial nor truly environmental."

And just to put the figure of 0.93 and 2.2 million hectares into context, current plantation forests in total are approximately 2.1 million hectares.

> "The commercial driver relies on the artificial policy construct of an NZ ETS, which can be changed at any time. The environmental driver – sequestering carbon to offset emissions – is based on a deeply flawed assumption of equivalence between carbon dioxide emissions from fossil fuel combustion and their capture in stocks of biological carbon. To put it simply, because of the long-lived nature of carbon dioxide emissions in the atmosphere, any forests planted to offset those emissions need to effectively remain there forever. If we continue to emit carbon dioxide and not reduce gross emissions, we will need to continually plant more and more forests.
>
> The PCE has repeatedly drawn attention to the multiple environmental and economic risks that are being run. The scale of land-use change caused by the NZ ETS, driven by its singular focus on carbon and with almost no limit to the number of carbon credits that can be created, is

> setting up increasingly negative economic, social and environmental consequences.
>
> If current settings remain largely unchanged, those negative consequences will compound.
>
> The PCE has previously made the case to phase forest offsets out of the NZ ETS, at least as an offset for fossil fuel emissions. Successive governments have resisted the logic of doing so on the basis that planting trees is a cheap and easy way of kicking the gross emissions reductions can down the road."

I agree with those comments.

The second item added to the record was the Radio New Zealand news article. This refers to a plan which was announced, I think, at the end of last year, that 330,000 hectares of Crown land would be planted in forests, the vast majority in pines, and what this article does is refer to commentators who say that ministers are wrong to think that there is that much low-value land to plant. Gary Taylor of the Environmental Defence Society is quoted as saying, "I think they're dreaming if they think that that's the case. Would you plant the whole of the Molesworth Station in pine trees? Molesworth, which is New Zealand's largest farm," – and a beautiful part of the country, if anyone's had the opportunity to drive through it, and a massive farm – "is only 160,000 hectares", so the numbers that the Government are suggesting that can go from the conservation estate into pine forest is massive.

HOUSEKEEPING – TIMING(10:04:02)

HEARING ADJOURNS: 10.04 AM

HEARING RESUMES: 10.13 AM

MR LYALL:

I think we are up to your paragraph 113 or the slide that's on the screen.

DR JAMES EVERY-PALMER: (CONTINUES SPEAKING TO #A043, PARA 113)

Thank you.

So what I do in this part of my report is compare the Government's ERP2 with the HTHS scenario from the Climate Change Commission through to 2050, and this highlights my two themes of low ambition and over-reliance on forestry.

So to start, the chart on the screen shows projected gross emissions at the time ERP2 was being set, i.e. projections that were made as at the end of 2024. It's from New Zealand's first Biennial Transparency Report, which is a report that we are required to make under the Paris Agreement, and it shows that climate policies as at the end of 2024 would cause only a very modest fall in gross emissions between now and 2050, dropping from 76.5 million tonnes to 62.9, a fall of only 18%, and in fact, a large portion of this fall (approximately 10 million tonnes of it, so over half of it) is not due to our climate policies at all, but a modelled fall in gross emissions even if we did nothing at all (that's called "without measures"), and that projected fall in emissions is due to low emissions technologies becoming cheaper and more prevalent, even if the Government did nothing, so the gap between the light blue line and the dark blue line represents the Government's policies as at the end of last year, effectively having the Emissions Trading Scheme and nothing else.

Faced with this picture, what did the Government put in place with ERP2?

One option that was available to the Government was to – sorry – was to adopt the HTHS scenario and the recommended policies from the Climate Change Commission, and the following chart (which was prepared by Dr Christina Hood) shows in orange the reductions in gross emissions within this scenario, so those are reductions at source in transportation, agriculture, industry that the Commission considered were feasible. The green parts of the chart show additional mitigation through forestry, and you can see that's a mix

of existing pine forests, new pine forests and also a significant proportion of removals from new native forests. However, that was not the plan adopted by the Government in the ERP2.

The following chart (also prepared by Dr Hood) shows the "new measures" adopted by the Government in the ERP2. So the top black line is the baseline gross emissions; that's the emissions that are projected to occur under current policies, which was the slide I started with, and what's immediately apparent is that there is much lower ambition to reduce emissions at source. The orange area of reductions is a tiny sliver compared to the reductions that the Climate Change Commission modelled were possible, and we also see that forestry is now a much higher proportion of the path to net emissions. We are getting to a net emissions figure which is higher – much higher than the Commission said was possible, but the way we're getting there is predominantly by forestry, not reducing emissions at source. And also, we are seeing a plan which is relying on pine forests rather than planting new natives.

In my view, this is a dramatic illustration of the difference between the chosen plan with little ambition to reduce emissions at source and the bolder but feasible HTHS scenario.

Finally, the chart I have here breaks down the projected reductions in emissions at source using the four UNFCCC sectors that comprise total gross emissions – agriculture, energy (which includes transportation), industrial processes, and waste – and what we see there is between 1990 and 2050, very modest reductions. None of these categories will reduce by even half between 1990 and 2050. For agriculture, the figures which are set out in my written report are a reduction of 11.5%; energy is 28.8; industrial processes, 26.4; and waste, 34.7.

In my view this is an extraordinary lack of ambition, which is masked by the way we specify our international targets and the focus on planting trees. I consider it demonstrated a form of climate action avoidance, which compounds the burdens which will be face by future generations.

In my view, there are three principal problems with Aotearoa New Zealand's climate policy which would need to be fixed to have confidence of acting consistently with 1.5°.

First, our level of ambition needs to be increased to be consistent with the science of 1.5°.

Secondly, we need to set separate budgets for gross emissions and removals from the atmosphere through forestry. Currently our lack of progress and ambition in reducing emissions at source are masked by planting new forests.

Taking these two points together, a compliant approach would aim to broadly halve gross emissions from current levels over the next decade.

Thirdly, the ETS requires significant changes. It fails to "cap" on our emissions in two senses.

First, because of the equivalent treatment of gross emissions and forestry removals, the main impact of the ETS has been to provide a financial reward to encourage forestry rather than to reduce emissions at source. This is because prices around $50-$60 induce significant forestry, which increases the supply of units, which stops the price going up to a level where it would start to encourage meaningful decarbonisation. Here I refer again to the Parliamentary Commissioner for the Environment report, and I agree that our approach has been based on a deeply flawed assumption of equivalence, and I agree that forestry offsets should be phased out of the ETS.

Secondly, even in relation to net emissions, these are not capped because of the large stockpile of existing units, the free allocation to certain industry groups and the lack of a tight constraint on the volume of future units to be released by auction. To expand on that, the emissions covered on an annual basis at the moment are approximately 25 million tonnes, but there are over 160 million privately held units in existence, of which it's estimated that 68 million are

completely surplus to any reason for holding them. So there is no tool which constrains the level of net emissions in 2025 or 2026 or 2027 to a particular level, because there's such a great stockpile that could be called upon. The amount that the Government auctions each year doesn't control or cap where our emissions would be, because of that stockpile.

As a result, it is wrong to say that the ETS neutralises other emissions policies. That may be true in a simplified cap-and-trade model, but it does not reflect the way that our actual ETS currently operates.

Finally, then, in my view, we are living in a twilight period where the threat of climate change is not only well understood but manifest, and yet the level of action in countries like Aotearoa falls well short of an adequate response.

For a number of reasons there is a lot of systemic inertia against a response which is commensurate to the risks and costs of climate change.

In particular, it is a "wicked" problem to solve because:

1. First, in economic terms, greenhouse gas emissions are an externality (that is, caused by emitters as a group and yet visited on the world's population as a group), so markets do not properly take into account the harms caused by emissions.

2. Secondly, climate change is an intergenerational problem in the sense that an appropriate response involves short-term costs for long-term gains. This makes it difficult for political parties (who are obviously focused on today's voters) to take appropriate steps.

3. Thirdly, it's also a collective action problem (what one country does by itself will not meaningfully limit warming). This means that each country will have a tendency to shirk away from appropriate action.

4. Fourthly, as individual consumers, even if we understand climate change, we still have needs and wants which are carbon intensive (the desire to own a Land Rover or to visit Europe). There is also a strong psychological desire to want to believe that things are okay and that if they were not, the Government would take appropriate action.

5. Fifthly, corporate interests are profit focused, which means it is very difficult for an individual company to act independently in a climate-responsible manner, as this increases costs, and those costs won't be incurred if consumers do not properly understand and value such steps.

6. Sixthly, climate change is also a polycentric regulatory problem of the kind that courts would normally be disinclined to get involved in.

In my view, it's important to stress these points in evidence to the Tribunal. That is, the Tribunal should be cognisant of the challenges to take adequate climate action, and the Tribunal is in a strong position to assess the evidence and measure it against the Crown's duty of active protection of the environment.

In conclusion, and in answer to the question I have been asked, I consider that Aotearoa's climate policy does not come close to the level of ambition required by international climate science and policy in order to appropriately respond to the threat of climate change.

MR LYALL:

Now, Dr Every-Palmer, in the times between filing your evidence and today, the Court of Appeal has released its decision on Lawyers for Climate Action New Zealand Incorporated and the Climate Change Commission, which is on the record of inquiry as document #3.3.015(a). This may not be a question that you feel that you can address in person today, and we may seek leave to reply in writing if not, but first of all, have you reviewed that decision, and second of all, if you have, does it change any of the opinions that you have offered the Tribunal in your evidence?

DR JAMES EVERY PALMER KC:

Yes, I have reviewed it. I was counsel in that case and it's also possible to leave to appeal will be sought, so I think I should be constrained in my comments on it, but it doesn't – the findings of the court don't affect the evidence that I have provided to the Tribunal, in short.

There were three issues that the court was considering whether or not the Climate Change Commission made an error, a logical error in its applications of the percentage reductions from the 2018 Special Report.

Secondly, whether or not the purpose, the statutory purpose of contributing to limiting warming to 1.5° represented a bottom line for the level of ambition in our emissions budget.

Thirdly whether the Act required a particular type of accounting called inventory accounting. None of the court's findings on those issues affect the evidence I've provided to the Tribunal.

HOUSEKEEPING – TIMING (10:27:43)

HEARING ADJOURNS: 10.28 AM

HEARING RESUMES: 11.00 AM

JUDGE MILROY:

Dr Every-Palmer, just before we begin with questions from Mr Bennion, you did quote from the #A043(c) document at one point, and I'm just wondering if you can give us the reference, the page number for that quote?

DR JAMES EVERY PALMER KC:

Page 4.

(11:00) MR BENNION TO DR JAMES EVERY-PALMER KC:

Q. Thank you, your Honour. Mōrena, Dr Every-Palmer. **Good morning, Dr Every-Palmer.** I've got about, I think I'm down to about 30 minutes questioning, but we might be able to get through in less than that. The first thing I want to ask you about after saying thank you for your evidence which is very thorough and careful, and I'm asking questions on behalf of a number of claimants but in particular Emily Tuhiao Bailey and Climate Justice Taranaki who have raised forestry issues, and we had a witness this week Adrian Pucher who owns Māori freehold land up on the Whanganui River, they've got an old pine forest there which was put on some years ago under the Muldoon government and some issues there. So, your introduction of the Parliamentary Commissioner's Report was also very interesting, and I will have some questions there. But I just wonder first if we can, on the ambition front, have a look at a couple of moments in the Court of Appeal judgement which I think your counsel Mr Lyall took you to, and I want to be careful here, I'm not asking you for opinions on what the Court of Appeal said, I'm just asking you for clarification of some of the documents that they refer to. And so, I think your counsel probably has access to the document. I want to bring up the Court of Appeal judgement. There's a paragraph 88 and refers to a Cabinet Paper. Paragraph 88 is quite long, it refers to a Cabinet Paper, and there's, yes, appendix 2 there you see up on the screen, and if we go through to, it says, "Choice of accounting methodology", and I want to come through to this point (v) here. Now, you see that (v) that begins: "Gross net target accounting and accounting recognised that countries with significant rebels and the reference year will be significantly disadvantaged…" Do you see that paragraph?

A. Yes, I do.

Q. And I just wanted to ask you about the last sentence which Ms Tuhiao Bailey referred to, it says: "Targets that represent comparable effort between countries would therefore appear weaker in terms of headline rates reduction for countries with high rates of removals at the base year, which is challenging to communicate internationally." And it

was just those last four words that I wanted to focus on: "Challenging to communicate internationally". What would be challenging?

A. The short answer is that it would be challenging because it would look as if we had very low ambition compared to other countries. But to explain that to the Tribunal I need to go back a little bit. New Zealand has historically and continues to express its international targets using what's called a gross net methodology. What that means is that our target in some future year is measured in net emissions after forestry, but the starting point in the base year is our gross emissions at that year. That's still a bit complicated, so maybe if I give an example and a simple one is our initial indicative NDC which was to reduce emissions by 2030 by 30% relative to 2005. So, what that meant, and it wasn't actually spelt out in their international targets until about 2021. But what the New Zealand policy makers understood that to mean is that by 2030 our net emissions will be 30% below the level that our gross emissions were in 2005. Now, roughly in 2005 our net emissions were already 30% below our gross emissions. So if you express that in net terms, the target would have been to not increase our net emissions, to leave our net emissions at the same level in 2030 as they would be in 2005. So the point that I think has been made slightly obliquely in that last sentence is telling the world that our target, our previous indicative NDC had the ambition of not letting net emissions increase by 2030 relative to 2005, would have been challenging to communicate because it would have lacked any ambition and wouldn't have matched what other countries were offering. The paragraph as a whole says we would be disadvantaged by expressing our target on a net-net basis, and that thinking comes from the Kyoto Protocol where countries that had net emissions that were lower than gross emissions in 1990, were required to use gross emissions as the start year. I think whether or not that was valid at the time it certainly no longer applies when New Zealand for example has moved its base year to 2005, so we've used forestry to meet past targets including over that period, so it's not clear to me what it means to say we're disadvantaged for including that in our base starting point. It would be like saying if there was another similar country which had instead of planting trees, it had

reduced emissions, its source, it would be like saying they were disadvantaged from using their lower gross emissions number than some previous higher number because that would mean that the fact that they've reduced emissions would be counted against them. I don't find that reasonably compelling, but to answer your question, 'what does that last bit mean?', we would – our targets would look much weaker, the headline targets would look much weaker if they were portrayed in a apples for apples net v year basis than the current gross v net. In simple terms, our current NDC, rather than being I think it's a 51 to 55% range, it might be about half that, a 25%-ish reduction.

Q. All right, thank you, and I just want to come up to one other part in this decision. At paragraph 85, it's actually that diagram that you see on the screen there. You are familiar with this from, I think it's in the Cabinet Paper.

A. Yes, I think it's originally from an MFE report to the minister that then became incorporated in the Minister's Cabinet Paper.

Q. Yes. I just want to just clarify some things on it. Sorry, finish that thought.

A. So, the context is that Cabinet was making a decision on the NDC, our nationally determined contribution under the Paris Agreement, and so the Minister was looking at different ways to assess what our fair contribution might be, and this graph was showing different measures of fairness or sharing burden between nations.

Q. All right, and I just want to understand, that bottom row is showing – is that our, that 650 million tonnes, that's a budget over the 25-year period, is that – or our remaining carbon budget?

A. No. So, that's a budget over the NDC1 period which was 2026-2030.

Q. All right. So, that's roughly a 25-year budget? Oh, 2026-30 is a four year budget.

A. Five year budget, 2030 as well.

Q. Five year budget. And so, I'm just interested in what's happening on the right-hand side here with the two measures of equal share of global mitigation –

A. Sorry, sorry. Can I just correct that, sorry. It was, the budget period for NDC1 is 10 years, it's 2021-2030, so that 10-year period. So, a budget

of 600 million tonnes over that 10-year period is saying 60 million per annum of net emissions as our NDC target.

Q. I see, and I'm just wanting to understand the right-hand side there, on the lower right-hand side, there's an equal share of global mitigation cost at a current share of GDP and an equal responsibility for **(inaudible 11:10:44)** for emissions since 1850, first of all, the bars that are used, are they just indicate a kind of a range of options?

A. Yes. Well, an uncertainty range in the measures, so they're kind of like the diamond is representing a central measure, but the bar itself is representing that if we applied that metric there would be uncertainty as to exactly what the number would be, so the bar is trying to represent that.

Q. And so, on that lower right-hand side, using those measures there's an indication that you would be looking to reduce 80% and possibly beyond 100% of that available budget. You look to go even negative in the period out to 2030.

A. Yes.

Q. Potentially.

A. Yes. So, the percentage is what 2030 net emissions would be relative to gross 2005 emissions. And so, if you used either of those two measures that go beyond the 100%, it would be saying that our NDC if you set a fair contribution based on those measures, would be to have negative net emissions by 2030.

Q. So, if we took – and that would be for that budget or would that essentially be meeting our 2050 net zero target –

A. No.

Q. Or it's just for that period?

A. Just for that period.

Q. All right. I want to then go to the forest issue specifically and the Parliamentary Commissioner's report talking about over-reliance on forests. I just wanted to clear out some background sort of points. First of all, I think it's fair to say the report is making it clear, isn't it, that there's quite a big difference between biological carbon sequestration in the sort of above the ground and geological carbon sequestration under the ground. Those are two quite different propositions, yes?

A. Yes.

Q. Yes, and just to put this in context, and I put this to a witness the other day, but it literally is the case currently that if I was to fly to Sydney overnight, do some shopping, attend a Formula 1 racing event and fly back, there might be forestry credits used to offset that, and if they were, the expectation would be that my flight would be offset by something that has to remain in the ground for hundreds, perhaps a thousand years. That's kind of how they work, right?

A. So, your flights to Sydney and the activities that are going on in Sydney would all involve the combustion of fossil fuels which is part of the slow carbon cycle, so that's using biomass that's become petroleum or gas or coal and combusting it and releasing CO2 into the atmosphere. That has a long half-life. It doesn't dissipate or break down quickly. So, that carbon dioxide is going to be in the upper atmosphere for hundreds or thousands of years. So, if that was to be offset by carbon dioxide removal, then for it to be equivalent you would have to have the same confidence that that sequestration would be permanent over a similar time period, bearing in mind that a thousand years going forward is quite a long time. If we look back at a thousand years, that's about the time that William the Conqueror was heading across to England. So, lots of things have changed in that period, and it would have been very hard to make predictions with certainty as to what would happen, for example, to a tree when William the Conqueror was coming to England. And so, I think it's also hard to make predictions with confidence about what happens to a tree that's planted today if it's been used to offset emissions from the slow carbon cycle.

Q. Thank you. And just in terms of the use of emissions credits from forests in New Zealand, I just want to clarify a couple of points. The legal liability under the ETS is on the landowner to maintain the forest?

A. I'm not an expert as to the detail of the operational mechanics of the ETS, but yes that is my understanding that the owner would have that obligation or rather if the forest wasn't maintained then that would give rise to a liability under the Emissions Trading Scheme because it would be treated as a source of emissions. So, it's perhaps not right to say that there's an

obligation to maintain it, but rather a liability to surrender units would arise if it was not maintained.

Q. Thank you. And in terms of the ability to sell forest units at the moment, there's no restriction on selling units overseas? In other words, the New Zealand Government doesn't necessarily get to meet its obligations, it cannot assume that the forests that are planted in New Zealand have offsets that it can obtain, they may already be sold to overseas users? Sold or leased?

A. That's my understanding, yes.

Q. And I'm just reflecting a little bit off this PCE report. And as we understand, there's no legal requirements in New Zealand at the moment for any sort of buffer planting or anything like that as a precautionary measure against forest fires and climate extremes, you know, wiping out forests?

A. That's correct. If one took the risks associated with carbon emissions being – sorry, carbon sequestration through forestry not being permanent, then one of the ways that you could deal with that is by having an exchange rate. So you could treat, for example, five tonnes of forestry sequestration as being enough to offset one tonne of emissions, or you could require a buffer to be maintained either by the forester, or the government could do it as a form of insurance to say, well, if we lost half our forestry we've got this buffer here. But to answer your question, no, I don't understand there to be any buffering mechanism in our Emissions Trading Scheme as it relates to forestry.

Q. I want to come to page 132 of the PCE report, and there's a chart there. This type of chart I'm sure you're familiar with in terms of discussing discounting and base years and how forests are treated, but I want to just ask a couple of questions about it. So, you see that graph on page 132 talks about – it has a teal, is that a teal coloured line which shows the tonnes of CO2 being sequestered by the forest, it slopes up as the forest grows, and then at the moment of harvest, in this case at about 28 years there's an abrupt drop, and you will see there an average age line which is the blue line, and then a safe carbon line at the bottom. This question relates to average accounting and then the issue of what the atmosphere

sees at any one moment. So, one way of doing emissions trading is that, for example, a forester using the teal line might have a lot of credits at 28 years, but they'd have to be cautious, wouldn't they, because when it's harvested, they would have to account for the credits for the short period that the – or for the years that the foresters is harvested and regrown. So they should probably, if they were wise, not sell all the credits in year 28. Is that the way to put it? If you accounted for credits on a year by year basis.

A. Yes, so under a year by year approach, as the forest matures the forester would earn credits on an annual basis matching the teal line. When it drops on harvesting, i.e., when the forest gets cut down and so those trees are no longer standing and storing carbon. Then that gives rise to a surrender liability if you account for it on a year by year basis. So either the forester would have to be storing up units to surrender at that time, or would have to look to buy them on the secondary market to meet their surrender obligation.

Q. All right. So the idea of average accounting would use the blue line and you would say, look, the forest is being planted, it's year zero. Let's say at year 10, we can safely say that you have a steady 400 tons there and you can get credits for that, and you can trade those, you know, as long as you need to. That you are going to keep getting that 400 ton. We are going to assume that 400 ton is always there. Is that the way the averaging works?

A. Yes, so you earn them year by year up until the forest reaches that, roughly 15 year mark on that diagram. Then you no longer are receiving anymore, but there is also no surrender obligation.

Q. So, to be clear, if we look at the teal line, if I go to about 28 years, we have harvested and we come down to – the harvest means that we drop precipitously down. There's a period between about 30 years and say 45 years where the actual carbon that the atmosphere sees is below 400 tons. That's what that's telling us, yes? So on the average accounting approach, there might be, say a 10 or 15 year period where the credits that I'm trading, that carbon doesn't actually exist. And actually may be dropping away for a period.

A. Yes.

Q. Okay. Now, we have also got, in the report, reference to the temporary adverse event suspension. Which allows for a requirement you don't need to surrender credits if your forest goes out of existence for a period due to wildfire and we can postpone the requirement to surrender credits. Are you familiar with that or the detail of that and how the two things of average accounting and the TAES might work together?

A. No, I'm not familiar with the detail of the TAES.

Q. All right.

A. Mr Bennion, could I make one further observation about the averaging approach to forestry?

Q. Yes.

A. So, in some ways, averaging is quite, firstly, if forest were planted and established with random timings stochastically. Then those kinds of peaks and troughs of individual forests would all even out and it wouldn't really matter at a national level that we were doing it year by year. And we did do it year by year up until about 2020 when we switched how we measure, how we account for plantation forests. But forests aren't planted at random times. They're established in response to economic signals, so you tend to get periods where lots are planted and periods where not many are planted. So, at a national level, when you look at our net emissions, it's a little bit up and down, it's not hugely up and down, like it tends to stay between 20 and 25 percent. Forestry is about 20 to 25 percent of our gross emissions. But that kind of sore tooth figure that an individual forest might have, is also replicated to an extent at a national level. And what was about to happen in the mid to late 1920s, was a lot of historic forestry which had gone in about 28, 30 years ago. It was about to be due for harvesting. So, at a national level, our net emissions would have jumped up because there would have been a period of harvesting across a lot of the forests. While averaging might be sensible as a policy, one of the criticisms that has been of the government, is the timing of the introduction of averaging. Which at a national level, the criticism is that we were well above our national average of carbon storage through forestry. When we switched to averaging and we avoided the

consequences of harvesting in our accounts. But we didn't take into account, we didn't allow for the fact that we were actually gaining on that because of the timing of doing it and part of the carbon sequestration cycle. So I just wanted to add that context that when I said earlier in my evidence that a number of New Zealand's policies and the way that we set targets and measure them have been controversial. This is an example of one of them, the switch to averaging accounting from year by year accounting or plantation of forests. That's why I think it's quite helpful to focus on gross emissions and historic trends, because they are much harder to, or they are much more transparent as to what is actually happening and whether we are moving towards decarbonisation.

Q. Right. I think in that answer you said 1920s, I presume you meant 2020s.

A. I did, sorry.

Q. I know it's forests, it's a long period. So, do I, just from that answer, if we look at this graph, we have used the example of one forest and a period of time of about 15 years when, what the atmosphere sees would not reflect what the credits that we claimed would be. You're saying, but that could be broadened out on a national level if a lot of forests were in harvest at one time?

A. Yes.

Q. That's a vulnerability that we haven't, that's not really explicitly recognised anywhere or provided for?

A. Yes.

Q. Okay. I just want to come to page 168 of the PCE report. Just a couple more matters here. I think there, I'm looking at the second paragraph, the simplest way of the situation would be to break the link between the ETS and forest offsetting by phasing out use of forest or units as a legitimate offset for ongoing fossil fuel emissions. I mean it might be too broad a question, but does that make sense to you from the concerns here, or it is that more of forestry off setter question? Or does it reflect your concern about overreliance on forests?

A. It makes sense to me. I think there are two things going on in that paragraph. One is that we need to delink forestry from gross emissions. Rather than having an ETS which is focussed on both and budgets which

are focused on net emissions. We should have a target for gross emissions. So, the 2030 target for gross emissions, might be, for example, 62 million tons, and emitters would need to – there would be a limited number of units available. For example, through auction, and emitters would compete for those units and the price would rise to a level that meant that you would get decarbonisation in the economy. And you would have, because of the limited number of units, it would work as a cap on the level of gross emissions. And you would have a price that reflects that there was an appropriate price for a market mechanism to incentivise efficient decarbonisation. So that's the system I think we should move to, which means forests have to come out. On the other hand, you have two more problems to solve. One is that we still want to encourage new forestry, because it's a good thing, no one is saying that forests are bad in response to climate change. I'm just saying that you should never think of it as equivalent to reductions at source. Reductions at source are qualitatively a much more important thing to do. So you would need some kind of mechanism for the government to do that. But also, you have forestry owners who are being told for the last, you know, decades, and that includes a lot of Māori forestry owners. Including people who have had received forests or have forest related assets as part of Treaty settlements saying, well actually, we have a legitimate expectation that we would get, 50, 60, $100 per ton of sequestration from our forestry assets. So you can't take that away from us. I think that's a legitimate concern. I don't think that the right response is to say, therefore, we won't change the ETS. But rather, it might give rise to valid claims for compensation or alternative mechanisms to meet those expectations.

Q. All right, and while we are on that page, I just see, at the bottom there, that whenua Māori reference, which I think is also repeated in a special warning or comment about Māori land in your report. It says: "Whenua Māori would have a high-priority claim to any such targeted funding, given the limited option value for many areas" et cetera, and: "Long-term forestry aspirations, such as native afforestation, are particularly well-suited". So, another option I think that this report suggests is that you

might target revenue from offsets to native afforestation. That's a possibility as well?

A. Yes, so, if we phased out forestry from the ETS and dealt with the stockpile of units, and the government was auctioning, you know, for example, 60 million units a year, obviously decreasing it as gross emissions and targeted to decrease. Then that's a considerable amount of revenue that the government would be taking in. It wouldn't necessarily have to be recycled into forestry, but that would be a sensible thing to do with it as a climate win on both sides of the equation. I think if you ask, well, what type of forestry should that money go into having targeted native forests established in a way which is as predator free as possible. In a way that creates that joined up areas of native forestry throughout the motu, would have huge co-benefits in terms of the other environmental issues that the nation or the world is facing. Conversely, the idea that 330,000 hectares of conservation land would be converted into forest of 280 million hectares of that being pine forest. It's something that I think that, if that happened, people would look back in 20 or 50 years and say, why did we do that when there could have been the co-benefits from native afforestation.

HOUSEKEEPING – TIMING (11:33:57)

HEARING ADJOURNS: 11.34 AM

HEARING RESUMES: 11.42 AM

MR BENNION TO DR JAMES EVERY-PALMER KC: (CONTINUES)

Q. Just one last question, as promised. Dr Every-Palmer, the Crown has alluded us to the fact that the Climate Change Commission gained advice back in November 2024 about moving the 2050 target to make it negative 20 million tons Co2 equivalent. Including shipping and aviation for 2050. And I think the governments due to report back on that in November this year. Are you familiar with that target and if you are, does

it address in any way or assist in your view about how ambitious New Zealand should be in its approach to climate change?

A. Yes, I'm familiar with the commission's advice to the government in relation to whether the 2050 target should be revised. Yes, the commission recommends that instead of being longer gases, i.e., looking apart from methane being net zero at 2050. That they should minus 20 million tons at 2050, and thereafter. The commissions reasoning for that is that other countries are becoming more ambitious as they see the risks of breaching the 1.5 degree threshold. Secondly, there is, through the work of the IPCC, a greater appreciation of how bad things get after 1.5 degrees. Thirdly, the commission says there is an intergenerational equity issue that means we need to do more, quicker, and we can't just leave the cow down the road. I agree with that reasoning, and I would certainly agree that it's better to have that revised target than stick with the other target. I guess I would say though that consistently with my written report, I don't think it's enough to focus on our net position. But we also need to really drive down our gross emissions. I think that the appropriate response to climate change isn't that difficult. It's reduce all emissions as quickly as you can, and plant trees. And if the commissions revised target was adopted by the government, then it would still be the case that it could be met, at least, for a while, by planting trees rather than having serious reductions at source. So, I think it's a real move in the right direction. I don't have a firm view on whether minus 20 is the perfect number or not, and the commission has more expertise than that. But I would worry, as I think the commission would worry as well. But doing it thorough planting trees isn't the right answer, and the commission has said that in a number of bits of advice, including its advice to the government on ERP 2. As well as going from zero to minus 20, the targets also more ambitious because of the inclusion of shipping international aviation's. So there is more in there that has to become the negative number, and also, as I mentioned before, they proposed tightening the target range for methane so that that's a stricter target as well. All those things, if they were adopted by the government, would be positive moves.

Q. Thank you, Dr Every-Palmer. Ngā mihi mō to kōrero ki a tātou katoa. **Thank you for your testimony.**

(11:46) MR SHARP TO DR JAMES EVERY-PALMER KC:

Q. Tēnā koe, Dr Every-Palmer. **Thank you, Dr Every-Palmer.**

A. Tēnā koe, Mr Sharp.

Q. Ngā mihi for your evidence. You have transitioned well from the bar to the witness box.

A. It's actually quite nice being in the witness box. You know that you can fall back on, I have no idea, that's outside my expertise. Which counsel don't have the luxury of.

Q. You learn so many tricks. I indicated that my questions were around the projections. The initial projections to 2050, which were at paragraph 84 of your evidence. So, just a few clarifying questions first. Just an obvious observation that in these forecasts there is a high degree of certainty in the chart that you have at paragraph 84, shows a fair bit of downside risk that the emissions might be higher.

A. Yes.

Q. Now, the second point is that, on this trajectory, we will not meet the 2035 budget. I think we will be short. It says by about 9.3 megatons. That's correct?

A. Which budget, the EB3?

Q. Yes.

A. Yes, that's my recollection. So, this is from ERP2 which is mainly focussed on the second emissions budget. But obviously one should be conscious about meeting future budgets as well as the 2050 target. From memory, the medium or the middle projection would fail to meet EB3 and 9 million sounds like the right number.

Q. Yes, and then from about then, we have quite a relatively steep trajectory downwards to what is said to be net zero by 2044. It appears that's based on the forecast of large amounts of additional forestry coming online. Is that your view?

A. Correct.

Q. Now, also with the 2030 NDC on that trajectory, in 2030 will be shorter than DC, they said by about 84 megaton. That's your understanding also?

A. Yes, so, our current NDC is the period 2021 to 2030, and our domestic emissions would exceed its estimated by about 84 million tons.

Q. Now, because in the discussion document for the ERP 2, it was discussed that there will be a need to buy international credits to offset that. But in the final ERP2, that's not mentioned, the buying international credits. Have you any idea what that signals the intention with regards to buying international credits to reach to the NDC?

A. I think the government has sent quite mixed signals on what its intention is on the NDC. It seems, from the outside, that they are trying to walk a line which protects our international reputation by making the right sounds, that we would meet our NDC by purchasing offshore mitigation. But at least in terms of what's publicly available, there is very little to suggest progress and purchasing offshore mitigation to meet that 84 million ton obligation. And neither is there any sign of action to increase our domestic ambition to reduce the amount that needs to be purchased from overseas. Nor has the government been willing to recognise the potential financial consequences of having that purchase obligation on the Crown accounts. So, if you like, one set of messages seem to be saying, we are committed to our international agreements, which include here, the Paris agreement and also our fair trade agreement with the European union. But on the other hand, the signals seem to be that we are not actually taking steps to meet our international obligations. So, the removal of information in relation to that short coming, I don't know why it was removed. But it might be part of that second set of signals of not wanting to make it sound as, we actually have to do it, or we actually are doing it.

Q. So, we don't know, essentially, whether these projections include offshore mitigation or not?

A. So, these projections are just domestic emissions projections.

Q. Right, thank you.

A. They will not include it.

Q. Now, also just an observation that these projections, they took into account, scrapping of the Labour government plans such as clean (inaudible 11:52:24) discount. Bringing offshore emissions in from 2025, et cetera. So the projections, in effect, there has been higher emissions projected because of the scrapping of those plans. Is that correct?

A. Yes.

Q. Now, with the forestry assumptions, you have given some information, or some idea of the large amount of forestry that it projected to get planted under the projections. **(inaudible 11:53:03)** in his evidence, in this Tribunal, he gave an estimate that the projected forestry additional planting will involve about a 40 percent increase in forestry area from now until about 2050, that said in 100,000 hectares. Does that sound about right?

A. Yes, I think the last figures from the commission were a range between 900,000 and over 2 million hectares. So, it's possibly the 40 percent to 700,000, is possibly a conservative number. But obviously, even with that number, that's a huge change to our natural landscape. And a huge loss of opportunity, or loss of flexibility for future generations if that land has to stay in forestry forever, for 1000 years. Rather than be put to alternative uses which might otherwise be more valuable for future generations. I think that that speaks to the potential intergenerational inequities if we are locking up land and pine forests today. Rather than stopping driving, issue these.

Q. Now, to get that large increase in forestry, of course, private foresters have to be incentivised to expand the planting and be able to do that. I think in your evidence, at paragraph 129, you mentioned that keeping carbon or interduce prices at $50 to $60 a unit would be necessary to incentivise, or keep forestry incentivised. I just refer again to **(inaudible 11:55:08)** in his evidence. His evidence was that's that range of NZU prices which is in the documents for the ERP. That that's unrealistic, that given the future trends in the, I think it's the international carbon market, it's unrealistic to try to keep carbon prices that low for an extended period of times. For example, during the 2030s. What's your comment on that?

A. I haven't read his evidence, so I'm not sure of his chain of reasoning around it. The international carbon prices are, I think, likely to be higher than that over the next decade, and likely to be considerably higher. Because our market isn't directly linked to those, there's no direct impact from overseas prices, carbon prices, to our carbon prices. But you can certainly standout as a star comparison if other countries prices are up to the 100, $200 and ours stays low. It does seem to me, to be a fundamental flaw in the Emissions Trading Scheme because of the incorporation of forestry. That the price can never go high enough to incentivise meaningful decarbonisation. Because as soon as the price gets up to that kind of level of 50 to $60, we get marginal beef and sheep, and dairy land converting to forestry, and so the price just doesn't go up. So, I'm not sure that I agree that the price wouldn't stay at those levels with the current Emissions Trading Scheme. I would agree that they would put international pressure on New Zealand, and if he's also making the point as with the Parliamentary Commissioner for the Environment. That that price is too low to drive decarbonisation, then I would certainly agree with that.

Q. Thank you. Now, Mr Bertram, also raises the issue that expanding forestry to that extent has a question mark on it given that the government has signalled intention to restrict the amount of farmland that be converted to forestry in the near future. Any comment on that?

A. Yes, the government has a number of propositions that are harder to reconcile. So the main mechanism for dealing with climate change is the ETS, and the main thing that that does is convert marginal sheep, beef, and dairy land into forestry. That's our main climate response mechanism. Also, in response to concerns from the rural communities in farming lobbies. The government has said that it's going to restrict the conversion of farmland into forestry. The proposals aren't detailed or concrete, but they might come through in the Climate Change Response Act review. Which is being undertaken at the moment. Those policies are directed at maintaining farmland as farmland. So, it's not clear how you square away those two policy positions, that we are going to respond to climate change by planting

forests out of farmland. But we are going to protect the farmland and not let it all become forests. I mean, it might be where the 330,000 hectares of Crown conservation land coming, mainly pine forests came out of this **(inaudible 11:59:13)** and those things.

Q. Yes, that was my next question, that seem to be answered. At least, I think it was about, a forecast of 280,000, some hectares, which they have been budgeted for the Crown land.

A. I think there's 280 in pine out of 300 and 20 of forestry in total.

Q. Yes, and we have seen from that article, and you have mentioned that there's been a number of years that there's just simply not enough Crown land to do that. That's been the view expressed, isn't it?

A. Yes, and my understanding is that the 320,000 hectares, that was a number required to create enough carbon sequestration to have us meeting the 2050 target. Rather than it being built up from what's realistic and feasible. So it's a number which makes the projections look as if we are on track by some measures. Rather than a number that has yet been tested for practicality, feasibility, or the cost benefit of you know, planting two **(inaudible 12:00:53)** stations in the forests.

Q. Thank you, and –

HOUSEKEEPING – TIMING (12:00:59)

MR SHARP TO DR JAMES EVERY-PALMER KC: (CONTINUES)

Q. Dr Every-Palmer, also, just wanted to, just in the ERP plan, it talks about the government enabling carbon capture utilisation storage as a solution. We have heard evidence from Alison Cole, in this inquiry, that there's very uncertain, whether that is going to be feasible. Did you have any views on that?

A. There is, in principle, other forms of carbon sequestration, in addition to forestry, a good idea, particularly if they are more permanent than forestry. But there are no near term likely initiatives to produce, at scale, economical carbon sequestration, so I think there is a real danger if you have plans which rely on those mechanisms.

Q. Thank you. Lastly, just referring to you producing the Commissioner of Environments very timely report that they released this week, about delinking forestry from the ETS. You have suggested ways of doing that. Also, just want to pick up on what you mention is, or perhaps another approach of having a forestry exchange rate, say, five to one, if you do keep forestry from within the ETS. So as to dilute its influence on reductions of emissions at source. Is that what you were thinking of as an alternative?

A. Yes, so, I would personally favour a complete delinking. So just taking it out of the ETS and just have the ETS as focussed on gross emissions. But one of the other alternative ways of thinking about it is to associate a risk factor of forestry, which would give rise to an exchange rate. That was one of several options that the Ministry for the Environment started consulting on in, I think it was the middle of 2024. And it was, so middle of 2023, but the consultation wasn't finished, and it was brought to an end by the incoming government.

Q. Ngā mihi, Dr Every-Palmer. Thank you for your evidence.

HEARING ADJOURNS: 12.04 PM

HEARING RESUMES: 12.10 PM

(12:10) KEVIN PRIME TO DR JAMES EVERY-PALMER KC:

Q. Tēnā koe. I've asked this question of other witnesses. Do you think we are very close to the tipping point?

A. Which tipping point, sir?

Q. The tipping point of becoming irreversible.

A. We are certainly close to the 1.5 degrees threshold, which I think means a much higher risk of tipping points which bring us into much more serious territory. I think there's still the opportunity to stay within the bounds of relative safety. Partly because, even if we exceed 1.5 degrees for a period of time, through reducing methane, we can reduce heat temperatures. Or through carbon sequestration, we can reduce temperatures over time. So, no one can know for certain, but because

the tipping points are inherently uncertain as to when they would kick in, which creates real risk. But I don't have reason to believe that we are past any particular tipping points at the moment. But my understanding off the risks is that it's a call to do as much as we possibly can, as quickly as we possibly can.

Q. Yes. Thank you for that. Basically, that's a no really, isn't it?

A. Yes.

Q. Thank you. My next question was, I suppose it's about the practicalities. What do individuals, what could I do to assist in reducing the emissions?

A. It's very hard to have a low carbon lifestyle at the moment. But if you participate in society and you travel, if you eat dairy and meat, then you are going to create quite a few emissions. I think we can all take a degree of personal responsibility, and in terms of our choices about how we move around the city or what we do in our holidays. But the biggest changes are going to happen, or not happen, at a systemic national level. So, it's important that we have policies in place that create the incentives for businesses to decarbonise. That we have the incentives for thermal, i.e., fossil fuel generation to come out of or electricity system, and that we have incentives for decarbonisation of transport. The two broad ways we can do that, we can either have a cap and trade system, or we can have a series of sector specific government regulations which drive those changes. But until we have that, I think that individuals should do what they can and there are many co-benefits from the low carbon lifestyle choice. But unless you make dramatic lifestyle choices, you are constrained by living within a high carbon economy. Which is why we need the government to create the frameworks to drive down emissions of source.

Q. Yes, thank you very much. That's very clear. Appreciate that.

(12:15) BASIL MORRISON TO DR JAMES EVERY-PALMER KC:

Q. Thank you, Dr Every-Palmer. My question, or couple of questions in regards to para 66 of your brief of evidence. I say to you just at the end of that paragraph, you talk about: "further land-use change from dairy to horticulture." And is that, as a consequence of the reduction of the

national dairy herd over the last three or four years? Is that the reason for the change from dairy to horticulture?

A. This list is from the Climate Change Commission. What there saying is, compared to kind of the middle reference case that we are using for our budgets. There are a number of more ambitious, but still feasible steps that could be taken to reduce our emissions even further. That's the context of this list, including land use change from dairy to horticulture. I don't think it will be referring to – I think it will be forward looking in terms of reductions and dairy going forward. Not historic changes in the dairy herd.

Q. Okay: "Methane-reducing feed additives." Can you help me a little bit with that. Are we talking here about different grass cultivars, are we talking about green feed maze being fed, palm kernelled, all of those sorts of things. Is that what it's referring to?

A. As I say, this is the commissions list, not mine. I have no particular expertise in methane-reducing feed additives, so I'm not sure. Their report certainly has more detail in the summary here. But I can't answer you as to which if those, if any, they were specifically thinking about.

Q. Okay, no, well I was hoping to sort of be able to get something that tells us that in that particular sector, there is continuing movement towards addressing the methane effects from dairy cattle in particular. And in their report, in your view, I was hoping that you would have had some further knowledge in that, in which you could've helped us.

A. I'm sorry, sir. The point I'm really making there is not about specific technologies. It's just expert independent body of the Climate Change Commission. As this more ambitious track that is feasible, and these are some of the things that they said could be done.

Q. Okay, thank you.

(12:18) PROFFESOR DAVID WILLIAMS TO DR JAMES EVERY-PALMER KC:

Q. Tēnā koe, good afternoon, Dr Every-Palmer. I just have a couple of questions. I'll just preface my questions by mentioning that when Mr Bennion was questioning you, he, himself, I think, is rather averse to

air travel. But he put the proposition that he would fly to Australia, I think his destination was Melbourne, rather than Sydney. You said Sydney. He wanted to go and turn the Formula 1 Grand Prix, where 20 high performance cars go round and round in circles for three days, and then ship off to Singapore or China. I think that would probably be adding to the Co2 emissions, I'm sure you would agree. But his questioning also led you to elaborate a little bit on what's paragraph 75 in your original brief. In which is the, setting international targets with gross starting points and net finishing points. You made some comments on that, and at the end of that paragraph 75, you point out that this approach has been criticised as overstating our true level of ambition. You have talked about level of ambition several times today. So, do you, yourself, agree with the critiques who say that that gross net approach provides an untrue level of ambition? From the witness, Emily Bailey, she calls it fraud. So, what sort of comments do you have, is it untrue in some sense?

A. Yes, so, I think the different approaches New Zealand has taken since the Kyoto protocol, have had a common theme of overstating our level of ambition. Now that could be characterised as an accounting trick. I think as a lawyer, I'm very careful about words like, forward, and, I have no insight as to the particular states of mind of the decision-makers who have made those decisions or recommended them to the minister to be able to go that far. And the issues are complicated, and for some of them, there are valid reasons why things were one, but they have been implemented in a way in which makes a headline ambition look much higher than our true ambition. I certainly stand by that statement. But in many ways, I think it's helpful to cut through that by looking back, actually, what has our track record been since 1990. The fact that our gross and net emissions are higher today than they were in 1990 speaks for itself in my opinion.

Q. Right, so that’s comparing that with net?

A. Apples with apples.

Q. Apples with apples.

A. So, yes.

Q. Yes, and so, in terms of dealing with all this, I take you to paragraph 133 of your brief. You talk about the wicked problem that we have where

greenhouse emissions are an externality and markets do not properly take into account the harms caused by greenhouse gas emissions. Then the second part of the wicked problem is that for politicians and political parties. Short term costs are probably more important than long term gains. It's the reference to markets in that statement of yours, on 133.1 that I want to ask you about. It is an acronym, TINA, which is no reference to Tina Turner, and nor is it a reference to the rather beautiful film, Tina, which is in cinemas now. But it's the acronym evoked by many political leaders that there is no alternative to market regulated economies, rather than state regulated economies. So, what are your thoughts on that?

A. That's quite a big question, sir. So, I don't see a dichotomy between stated market. It's a question of balance between market mechanisms and state regulation, and it's something that tend to spring a bit overtime. Within my lifetime a heavy regulated state under the Muldoon era. To a heavily de-regulated state under **(inaudible 12:22:58)** Douglas. To something which is now in between the two. In terms of climate change issues, I'm personally quite a fan of market mechanisms. For climate change, the market left alone wouldn't solve it because of the externality problem. So, in the same way that if we didn't have environmental regulation, there would be excessive pollution. Some would say even with environmental regulation there's excessive pollution. But without any, then the externality problem would mean that you would have far more pollution that's socially optimal. So, a common thing that economists say is that we should internalise the externality by making business who pollute bear those costs. A simple response to climate change is a carbon tact that puts a value on the social costs of a ton of emissions. For example, the EPA in the United States under the Biden administration was using a social cost of carbon of $190 US dollars for their policy protections. You could just impose that as a polluters tax in order to ensure that people only emitted carbon when the benefit to them was greater than the social cost of those emissions. So, I do think there are market mechanisms which could address climate change. But in many ways, my list, which goes on with the other problems partly highlights why governments are slow to take that kind of action. Because

it's inter-generational, because it's a collective action problem. That leads me to the conclusion that the Tribunal actually has a special place in the eco-system for being able to speak truth in terms of what is appropriate ambition and where does the government stand in relation to that standard.

Q. Thank you. Could you just clarify for me, are you saying that you think the imposition of a carbon tax, polluted pays type of carbon tax is a market mechanism? It sounds like a more Muldoonist intervention.

A. It's market in the sense that you do one limited intervention that effects relative prices and then you let the market respond to it, as opposed to a series of regulations which, you know, clean car discounts, subsidies for solar panels. Its more market based I the sense of, it's one intervention but then that's the market to the rest of it. In the same way, an Emissions Trading Scheme is often called a market based mechanism. And I have no strong views against a functional ETS creating a cap for carbon emissions, or greenhouse gas emissions. Letting the market determine what the price of units is, and then the market determine who emits and who doesn't emit. My problem is that, at the moment, we don't have a functional Emissions Trading Scheme in terms of reducing emissions at source. So, I take your point that creating an Emissions Trading Scheme, creating a tax. They are state intervention, but they're just one intervention that then changes prices and lets the market determine the rest of the outcomes.

Q. Right, okay, good. Thank you. That clarifies it a little bit for me. I'm sure your evidence will be taken to the full account when we have to consider it further as we move towards writing a report at some stage, so thank you very much.

(12:27) JUDGE MILROY TO DR JAMES EVERY-PALMER KC:

Q. Dr Every-Palmer, I just have a few questions, mainly of clarification. At your paragraphs 55 to 57, you refer to the principle of "no additional warming". I am just trying to understand what that principle actually is, could you tell me about that please?

A. Sure. So, the idea behind it is that what our goal should be in responding to climate change, is to look each greenhouse gas separately, and to reach a state where emissions of that gas are causing no addition warming. That's stating the principle. In terms of carbon dioxide, that means moving to net zero. If you have any positive carbon dioxide emissions, then they are going to contribute to warming over, you know, the next century. Methane is different if you apply that principle of no additional warming because methane is disintegrating in the atmosphere at a much faster rate. For methane, in simple terms, you could achieve no additional warming by only a modest reduction in the rate of methane emissions. But you could keep emitting methane. So, for New Zealand, it might mean, where most of our methane is from the agricultural sector. That we could reduce annual emissions by a couple of percent, but because past methane emissions are dropping off the back end, there is no additional warming despite there being new methane emissions. That is the idea. But for the reasons I set out in the following paragraphs very briefly, but also referring to a report by the Kāpiti Claimant Insights Group, I do not accept that that's a valid proposition in science or climate policy. Because what the science in the climate policy says is, reduce each gas as much and as quickly as you can. And if that means that methane is contributing to cooling rather than warming, that's a great outcome. It's not something which is a reason for a hand break. It would somewhat perverse if the ability for methane to reduce global maximum temperatures becomes a reason not to do all we can on methane.

Q. And presumably, on emissions of carbon dioxide as well. So, reduce all of them, is what you are saying, rather than let one reduce more and still continue emitting?

A. Yes, so I guess, reduce all of them as quickly as we can, and depending on the gas, it might still contribute to warming, or it might contribute to cooling. But that's not the operative principle that should guide what we do. The operative principle is do as much as we can as quickly as we can.

Q. Thank you, and I will just have our registrar bring up the page 4 of the Alt F report. We have just highlighted I think, the three paragraphs that

you quoted. I am looking at the middle paragraph regarding the commercial driver of an ETS. It does refer to the fact that if that is to work, what it means for land use is that land would be in forests permanently. We have had a lot of evidence from Māori, from our witnesses that they're interested in transitioning from, or at least, partially transitioning from pine to native. And of course, a native forest is much more long lived and has a lot of other benefits in terms of biodiversity and its association with traditional Māori culture and so forth. I suppose my question is really that we have also been told that there is something in the ETS which is a disincentive to natives being planted. Are you aware of what that might be?

A. The issue is that pine forestry soaks up carbon much more quickly than native forestry, because it grows more quickly. If you like, it's not that forestry is penalised, but that if any has an area of land that they want to plant into forestry in order to earn units under the Emissions Trading Scheme. The financial balance because of those different rates of growth, greatly favours pine forests. So, there is a strong economic incentive to go pine, rather than native under the Emissions Trading Scheme. That is one of the things that the PCE report talks about, and it also talks about transition forests, and about how we might think about creating incentives that recognise those co-benefits that you have mentioned and that I agree with. I think the forestry is an important part of the climate solution, and that there are lots of reasons for Aotearoa to favour native forestry rather than exotic pine plantations. But if you like, the even more important part of that paragraph is the reference above where you took me to. To the deeply flawed assumption of equivalence between carbon dioxide emissions, from fossil fuel combustion, and there capture in stocks and biological carbon. Because that assumption, which is deeply flawed, is what's driving our climate change response. It's built into the DNA of our budgets, our targets, and the Emissions Trading Scheme, and unless that Sumption is called out and changed, then are not going to have inadequate response to the climate emergency. We won't have a response which is (inaudible 12:35:26) with what the science says is required or what is feasible in

terms of changes to our economy. But both bits of the paragraph are important because forestry is important. But the key is that forestry is a compliment and additional factor to reductions at source. It is not and can never be a substitute for reductions at source, which is the way that it's currently treated throughout our entire carbon change response.

Q. Just looking at the third paragraph there, and it refers to increasingly negative economic, social, and environmental consequences if we continue with the ETS in its current form. Apart from the issue of continuing warming, because it is not an adequate incentive to de-carbonise. I am wondering if you can expand on what the other economic, social, and environmental consequences might be?

A. Under the current Emissions Trading Scheme settings, we would see hundreds of thousands of hectares of private and Crown land becoming exotic pine forests over the coming decades. That will have economic consequences in terms of the loss of agricultural land and the transformation of rural communities. That will also mean social consequences for those communities, and also, environmental consequences in terms of the potential dangers of pine forests as homes to predators for the native eco-system. But also, as we have seen in Cyclone Gabrielle in Tairāwhiti, the potential consequences of erosion, land instability, and off cuts from harvesting entering streams, and rivers, and causing damage. So, I think it's a broad reference to both the problem of, it's driving us away from facing up to the real challenge, which is de-carbonising. It's driving us to a solution which is, inferior, that’s the non-equivalence, the deeply flawed presumption point. And it's also one that there are a number of negative consequences of a landscape dominated by pine forests that we could sleepwalk into. To the extent that forestry’s are part of the answer, they could be native forest with the co-benefits that we have already talked about.

Q. Thank you, Dr Every-Palmer. We have heard from a number of rural Māori communities, and they are certainly concerned about what it means for them. That if we continue to have global warming – can I just ask you one more question. I agree with you, in that the fact that on the global scale, our emissions are relatively small. But nevertheless, there is a

moral duty in every country, whether small or large emitters have to do their part. But it's certainly something that I hear a lot from all sorts of people. That, well, you know, we are only small and our emissions, they are only small, and what we do is not going to make a difference. Do you have any ideas about how we change that view? Because unless that view is changed, the political will, will not change either.

A. Thank you, that's a great a question to have an opportunity to answer. The way it's often put to me is, India and China are the big countries, they aren't doing anything about climate change. What we do will make no difference, we are 0.1 percent of emissions, so why hurt ourselves, or sacrifice ourselves for a lost cause? I think that that is fundamentally mistaken reasoning for a number of reasons. The first is that it's based on a false assumption that India and China aren't doing anything in that example. China is a huge investor in renewable energy. India has set targets to reduce the carbon intensity of activities. Obviously, there are countries that are still going through the path of development, so it's much more difficult for them to actually reduce headline emissions than it is for a country like New Zealand. But it's a false assumption to start off with to say that they are not doing anything. Secondly, there's often an assumption there that it's going to be this huge burden and costly for New Zealand to do it. Whereas actually, the projections from the Climate Change Commission, for example, are that it isn't a huge burden to move down this path of de-carbonisation. Thirdly, I think it's important to point out that every reduction matters. Every 10th of a degree, every ton, so what we do does matter, and there are only six countries that have emissions which are 2 percent or more of the total global amount. So most countries and most emissions are from small countries by that measure, so small countries as a group are more important than the big countries. I think it's also important because in order to encourage over time, other countries to do more, we can be a leader by doing more. I think the moral dimension is very important, particularly when we look at our place in the world and we look at our relationship to the Pacific Island nations who will be heavily hit by sea level rise. It's incumbent on us because of that, as well as our general position as a

global citizen to do our share in of itself. In much the same way that, you know, one should still go and vote, even if one isn't going to have the pivotal vote in the general election. That is something to throw back at people ask you that. Ask them whether they are voters or not. Finally, I think there are pragmatic reasons why it's important to be doing as much as we can. If we don't, we face international reputation issues, potential trade barriers through carbon border adjustment mechanisms. Through our obligations under the EU trade deal, and because I think the world will reach the stage where it really values economies that have de-carbonised. I said that was my final point, but my real final point is that we are 0.1 percent of global emissions, but we are 0.06 percent of the global population. So, person for person, our emissions are threefold what the global average is, so I think that that says that, you know, in itself, is a big reason to be reducing to a fair share of the available carbon budgets. But thank you for that question.

Q. Thank you, Dr Every-Palmer.

(12:43) MR LYALL TO DR JAMES EVERY-PALMER KC:

Q. One matter arising, Dr Every-Palmer. In your brief of evidence at 55, and her Honour, Judge Milroy has just taken you there to discuss the Ministry advisory panel appointed to determine the methane target. My understanding was that the Climate Change Commission was established to provide independent expert advice on mitigating climate change. Are you aware of why the Climate Change Commission didn't give that advice, or didn't give that advice? Are you aware of the background there?

A. Yes, so, the principle of no additional warming has been advocated for amongst others, but by the Federation Farmers and the Beef and Lamb New Zealand Industry Body. Having a report into revising our targets consistently with no additional warming was written into one of the coalition agreements as part of the new government. I'm 99 percent certain it was the New Zealand First one, but I would have to go back to check to be 100 percent sure which one it was in. In light of that, the commission did have a couple of pages in one of its reports,

commenting on no additional warming. And in saying that it didn't agree that it was appropriate to revise our targets on that basis, and that even if we did revise the methane target, we would have to do more elsewhere. And so, it's fair to say that the independent expert body that was set up to advise the government, was likely not a fan of the principle of no additional warming. That was the broad context around which the Ministerial advisory panel was formed. It's referred to as an independent panel, but the terms of reference have quite an extraordinary definition of independent. They didn't have to be independent with any lobby groups, what they had to be independent of was the Climate Change Commission. So, the government wanted someone who was independent of the independent advisor to the government to give them advice as to what methane targets would be consistent with the principle of no additional warming. They were specifically asked not to comment on whether it was an appropriate principle to apply in terms of policy science. They were asked not to comment on whether it would mean more ambition was required from other people in the terms of reference. What they were asked to do was to come up with what a revised methane target might look like according to that principle. So that as I understand it is the context to their formation.

QUESTIONS ARISING FROM THE WAITANGI TRIBUNAL PANEL – NIL

JUDGE MILROY:

Dr Every-Palmer, can I just thank you very much for attending and giving your evidence today, which was extremely interesting and also enlightening for the panel. We value the evidence that you have given, and your expertise in this matter. So thank you again, and you can now relax and go away and attend to your ordinary life.

DR JAMES EVERY-PALMER:

Thank you very much and if I could just thank the Tribunal, it's honestly a privilege to be able to give evidence in this very important inquiry and I wish you the best of luck with your mahi. Thank you again, I appreciate the

thoughtful questions and the opportunity to greatly exceed my allotted speaking time.

HOUSEKEEPING – TIMETABLING (12:48:30)

MR LYALL CALLS

Tēnā koe, Ms Wikotu. I see you have popped up on our screens, so welcome to the hearing and thank you for your patience in waiting to give your evidence today. Just for the record, Ms Wikotu has filed her brief of evidence at #A052 and some speaking notes to that brief of evidence at #A052(a).

AROHA WIKOTU (SWORN)

Q. First of all, could I have you confirm that your full name is Aroha Wikotu.

A. Kia ora, yes, my name is Aroha Wikotu.

Q. And to the best of your knowledge, is the evidence that you have given through your brief of evidence true, and correct as of today's date?

A. Yes, it is.

Q. Ka pai, what I will do is, you may have heard her Honour say that your evidence can be taken as read, so you do not need to read through it point by point. But if there is anything important like introducing yourself and perhaps a mihi and then covering off the really important parts. I will leave that to you to work through if you are okay with that approach. Then there may be some questions from the lawyers on the call, or from the Tribunal once you are finished.

A. Yes, okay, thank you.

(12:50) AROHA WIKOTU: (#A052, #A052(a))

Kia ora tātou. Ko Aroha Wikotu tōku ingoa. Nō Waiotahe ahau. **Greetings. My name is Aroha Wikotu. I'm from Waiotahe.** I live here at the top of Waiotahe valley, sitting below our sacred maunga, Pukenuioraho, and above our awa, Waiotahe. The evidence that I'm giving provides a viewpoint from Te Upokorehe members that affiliate Rongopopoia hapū and marae.

We reside here in the upper Waiotahe and our whare tipuna, Rongopopoia was built in 1942. As Upokorehe was seen as one hapū, we never received any marae grants to maintain the wharenui, so our wharenui became derelict. It also was because that we were leaving rural areas for work in towns and cities. It is a deeply held dream by Rongopopoia hapū that our marae be rebuilt.

We are the kaitiaki of the upper Waiotahe valley, also known to us and those around us as Te Kahikatea. Our Waiotahe river flows down the valley and is a significant taonga for our whānau. The catchment starts at the headwaters of Paititutu stream and continues down to the estuary at Waiotahe beach. This can be seen on the map in page 4.

The upper reaches of the river are being kitted in native forests. You can see that change in the map there and it contributes to the rivers pristine condition. However, the transition to agricultural pastures marks a critical juncture where the impact of development becomes evident.

Climate change is altering rainfall patterns, leading to increased droughts and occasional flooding. We see this as, we have always had flooding in the valley, but it would usually take one week of rain or more to start giving us surface flooding and coming across the roads, eroding the riverbanks. But now we can see that same type of flooding coming in one to two days of rain.

We are seeing erosion along the catchment. For example, there is a large Totara stand not far from where I'm staying, it's about a K down the road. It also has an old pā site there and this called the Tukainoke Reserve, and the river has been gradually eating away and eroding, and the large Totara stand is slowly going into the river. It is very close to the old pā site, the ancient pā site that is there as well. This ancient ā site still has defence trenches there that are visible. Also, down on our lands, where we still reside, we are, each year, losing more and more land to the flooding.

BEGINS READING BRIEF OF EVIDENCE #A052(a), PARA 6

Further on the journey, descending down to the moana, there are abundant traditional mahinga kai gathering grounds. It is expected that with climate change the dangers to animal and human health will only increase.

Erosion, largely attributed to the loss of native forest, contributes to sedimentation in the river, while dairy farming is the primary source of nutrient loads. Elevated levels of E. coli, particularly in the estuary, pose significant challenges to water quality and ecosystem health.

Changes in water flow and temperature affect freshwater species such as tuna, inanga, giant kokopu and many more which are/were traditionally harvested. Increased sedimentation and pollution, worsened by extreme weather events, threaten the mauri of the river as a whole.

The whānau of Te Kahikatea and Rongopopoia Marae hold a deep connection to the whenua and awa, embodying cultural practices, mātauranga Māori, and kaitiakitanga. Climate change presents increasing challenges to these relationships, particularly in the areas of freshwater management, food sovereignty, and environmental resilience.

MR LYALL:

I wonder if we might take the list of expected issues as read and perhaps move to paragraph 13 and discuss the Waiotahe Kiwi Project that Rongopopoia hapū are fronting? I can bring up some of the pictures that you have filed as you speak to that.

AROHA WIKOTU: (CONTINUES SPEAKING TO #A052(a))

Yes definitely. I did just want to touch on things that we used to collect for kai, we can no longer do at those places now.

So when I was younger, I would collet pūpū with my grandparents and we haven't done that since, it was like in the 1980s. We no longer can collect pipi from Te Ahiaua because if pollution and over harvesting as well. I'm a rongoā Māori practitioner and there are some rongoā that are being affected by the

erosion. Some of them, they like to grow along the riverbanks, and so, that erosion takes some of the places where they grow.

There are also pest's wits such as deer and possums that like to chew on some of the rongoā. Tātarāmoa is one that I can no longer harvest here in the valley, and it's actually a much needed rongoā in these times. Karamu, I have also noticed is also being eaten by it looks like possums that are just eating away at it. Although there are still enough of that for me to harvest.

We had some traditional kai that we used to be able to harvest, we were quite abundant in the Kiekie plant up here and it grows a fruit and a flower, or the Tāwhara. When I was younger my uncles and father used to take us out and we would be able to harvest this white fleshy flower, which was traditional to our family, and we used to ferment it in a bottle and then drink it as a drink. Nowadays, we can't get to the flower because it's gone, so the rats are getting to it before we are actually able to harvest it.

This is sad because my eldest daughter, who is now 21, she got to see this process when she was younger. My youngest daughter who is now nine, we actually can't find the Tāwhara to actually show her what it looks like and the process of fermenting that as a traditional kai.

Also, some of our pūrakau. We have some wāhi tapu and pūrakau connecting us to some kōhatu that used to be in the river, and they are still there, but we can no longer see them. When we were younger, we were shown these kōhatu and told the pūrakau which connected us into our whakapapa and who we are. Those kōhatu are no longer visible, so it's sad that now, we go to tell those stories, we can't actually show our children and grandchildren, show them the actual taonga that used to be there sitting in the river. Due to flooding and gravel movement, they have been buried within the awa **river**.

Moving forward to the Waiotahe Kiwi Project.

This one is of particular importance that I want to highlight. As kaitiaki, we were working to reduced pests in the area. We did an expansive trapping throughout one of the reserves, moving stoats, ferrets, possums, hedgehogs, and rats. We would like to see kiwi flourishing here again. We are concerned that this project will be undermined by climate change, in particular erosion, fires, and changing tree cover.

MR LYALL:

Ms Wikotu, I have just put up two of the pictures on the screen from your brief of evidence. Figure 5 is your late father, Akurangatira Richard Wikotu, and the Tribunal may recognise Mr Ransfield, who gave evidence on Monday, in the bottom picture there. I did want to bring them up and make sure that they are acknowledge in the process. If you would like to speak to those pictures or continue, but just so that you know, I have brought them up for the Tribunal to see.

AROHA WIKOTU: (CONTINUES SPEAKING TO #A052(a))

Kia ora, Bryce, thank you for that.

Yes, when I first moved back home, my father and some of the other kaumātua, Trevor Ransfield, they were working on setting up a kiwi project for us here up in the valley. On moving home, I then jumped on board with them to help grow this project. It's really tough when you have, you know, it seemed like we were fighting an uphill battle. It's really cool seeing dad holding that tiny kiwi there. He’s really big and got huge hands, you can hardly see the kiwi.

But yes, just like to acknowledge the mahi that him and those of his generation did form Upokorehe, to set up projects to fight this, so that it can help educate the younger generations and get us more involved. And hopefully, make a difference for our future generations.

MR LYALL:

Just on getting involved if I zoom into this one. There is a picture of the Upokorehe Kiwi Project pest control day and the kaitiaki there. So, wanting to

make sure that they are acknowledged in the presentation of evidence today too.

AROHA WIKOTU: (CONTINUES SPEAKING TO #A052(a))

Yes, thank you. We would just call in volunteers on the day and then everyone would get their trap lines that they'd do and head off for the day, and then we'd have a big barbeque afterwards, once everyone come back and it was really awesome whanaungatanga. We would have, you know, quite a few people come in, of our whānau, and yes, see the maunga behind them there, that's Pukeoraho, so this is taken outside my place here.

It was all day voluntary. We could get bits of funding to help with purchasing traps and tools and stuff, but the project itself was all run voluntary.

MR LYALL:

I think, unless there is anything else that you would like to comment on in that section, we are on to the final section which is the building resilience, or the recommendations that you would be asking for. Whether you would like to cover those off for the Tribunal before we ask if anyone has questions for you.

AROHA WIKOTU: (CONTINUES SPEAKING TO #A052(a))

Thank you, yes, I will just finish that off.

Climate change is a global issue, but for us as kaitiaki there are specific actions that we can be taking now that will benefit our people and our rohe in the future. We want to:

a. Collaborate with regional councils to enhance freshwater quality and implement iwi-led water monitoring.

b. Restore wetlands and riparian areas to protect the Waiotahe River from erosion and pollution.

c. Promote regenerative farming, agroforestry, and native reforestation to maintain healthy soils and biodiversity.

d. Support hapū-led conservation initiatives focused on restoring native ecosystems.

e. Revitalise korero tuku iho.

f. Support intergenerational knowledge transfer on traditional food gathering and kaitiakitanga.

g. Engage with local and national climate policies to ensure Māori-led solutions are prioritized.

h. Build partnerships with environmental organisations, research institutions, and other iwi/hapū facing similar challenges.

i. Undertake regenerative farming and sustainable land management practices may help build resilience in response to these changes.

The factors that will allow all of the above to happen are a Crown that is willing to listen, and the funding to make it happen.

MR LYALL:

Kia ora, did you have anything else to add before we ask if anyone has questions of you?

AROHA WIKOTU:

No, that's it, thank you.

HOUSEKEEPING – TIMETABLING (13:06:26)

QUESTIONS FROM CROWN COUNSEL – NIL

(13:06) PROFESSOR DAVID WILLIAMS TO AROHA WIKOTU:

Q. Tēnā koe, Ms Wikotu. Thank you for your ground level, bottom up, view of the world from your valley. On my lapel here, I have a tieki. I'm not sure whether you would be able to see it. But anyway, I love the birds of this land. On page 11 of your brief at paragraph 28, there are some photographs there. Including a beautiful – it's the whio that I want to look at. The whio in the middle there, so there's a pair of whio there, blue ducks. Now, I just happen to love those particular ducks, and I have seen them in different parts of the country. What I know is, they need to have very clean, and fast flowing water. My question is, if you have whio in that river, I assume it must be. Can you confirm, must be in the upper reaches where the water is still clean, and perhaps goes over a few stones and bubbles up and provides a food source for those ducks. Because a lot of your evidence is about the degradation of that river. So, am I right that it's clean and pure as it's coming out of the mountains and then it gets worse as it gets further down, is that what the story is?

A. Yes, yes, you are exactly right. So, we have whio in the upper reaches which are surrounded by native, and the water is pure and pristine. There has been lots of sightings of them in the upper part, which is above where we live. But must have been just over a year ago, I saw three whio down at our swimming hole. Which is probably about two kms down form my house, so that’s the furthest that I think I've seen them. I have told other people about them too and I think it's the furthest down that they’ve seen them. This is still within pristine native bush coming down either side of the awa, it changes after that once it gets down to farmlands.

Q. Right, good, thank you for that. I just wanted to be clear that you know, your evidence is about the degradation, but it's also nice to know that there's still something left of the pristine. So thank you for that, and thank you for your evidence, and the local level support you have from volunteers and so on is nice to know, so kia ora to you. Thank you.

(13:09) JUDGE MILROY TO AROHA WIKOTU:

Q. Kia anō, Ms Wikotu. **Thank you again, Ms Wikotu.** I just have one question and you have mentioned time period over which you were able

to see the kōhatu in the river. But your children are unable to see it because of the silting and so forth. Is that around where you are living or further down the river?

A. It's further down the river. It's probably about another 10 kms down from where we are, yes.

Q. Right, and you look very young to me, so I'm just wondering about the time period between you being able to see them and your children not being able to see them, how many years?

A. Myself personally, I wasn't living here for a period of time, so I remember seeing them when I was younger. Probably in about the 90s. I have got cousins who have seen them coming up to the late 90s, early 2000s. My eldest daughter was born in 2002 and my youngest daughter born in 2015. Yes, so family can no longer see them anymore. But they are very significant to who we are.

Q. So, you are able to isolate the time period really to the 2000s when I think everyone started noticing the changes in our climate and that there was more rainfall, and in shorter periods of time, which damages the land.

A. Yes, it's quite significant, it's well talked about within our whānau that the kōhatu were always there. They have been integral to our pūrakau, our whakapapa, and who we are. Always talked about, always told and then once they disappeared, again, that's something that's always been talked about. We can no longer see them. We can no longer view them. There is korero from my great, great grandmother who is passed now, that one day they will return. So we hold on to that fact that one day they will return.

Q. Thank you, Ms Wikotu, for your evidence. That was all my questions.

QUESTIONS ARISING FROM MR LYALL – NIL

MR LYALL:

I would note that some of the members of this panel have had the benefit of a site visit into the Rongopopoia area and they may recall kōrero on those kōhatu at that time.

JUDGE MILROY:

Well, they are very lucky people to have had that opportunity.

That just leaves it for me to thank you very much Ms Wikotu for appearing before us today and giving us your evidence and providing us with some beautiful photographs of the work of your whānau and of the area in which you live. So, thank you very much for that.

AROHA WIKOTU:

You are very welcome. Thank you for the opportunity to represent my whānau, my marae, hapū and iwi, and hopefully make a change for our future generations. Ngā mihi nui.

JUDGE MILROY:

That is the last witness for this particular sitting or hearing of the Climate Change Inquiry. Can I just thank all counsel for their contributions to our hearing week. It has been an interesting week with a lot of good evidence presented, and I hope that the next hearing week will be equally as interesting. I am sure it will be. So, thank you again to all counsel and to all witnesses who appeared this week.

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING CONCLUDES: 1.15 PM

MINISTRY OF JUSTICE
Tāhū o te Ture

Notes of Evidence Legend

National Transcription Service

Indicator	Explanation
Long dash –	Indicates interruption: Q. I think you were – (*Interrupted by A.*) A. I was – (*Interrupted by Q.*) Q. – just saying that – (*First dash indicates continuation of counsel's question.*) A. – about to say (*First dash indicates continuation of witness' answer.*) This format could also indicate talking over by one or both parties.
Long dash (within text)	Long dash within text indicates a change of direction, either in Q or A: Q. Did you use the same tools – well first, did you see him in the car? A. I saw him through – I went over to the window and noticed him.
Long dash (part spoken word)	Long dash can indicate a part spoken word by witness: A. Yes I definitely saw a blu – red car go past.
Ellipses … (in evidence)	Indicates speaker has trailed off: A. I suppose I was just… *(Generally witness has trailed off during the sentence and does not finish.)* Q. Okay well let's go back to the 11th.
Ellipses … (in reading of briefs)	Indicates the witness has been asked to pause in the reading of the brief: A. "…went back home." The resumption of reading is noted by the next three words, with the ellipses repeated to signify reading continues until the end of the brief when the last three words are noted. A. "At the time…called me over."
Bold text (in evidence)	If an interpreter is present and answering for a witness, text in bold refers on all occasions to the interpreter speaking: Q. How many were in the car? A. **There were six.** Q. So six altogether? A. **Yes six** – no only five – **sorry, only five.** *(**Interpreter speaking** – witness speaking – **interpreter speaking**.)*
Bold text in square brackets (in evidence)	If an interpreter is present and answering for a witness, to distinguish between the interpreter's translation and the interpreter's "aside" comments, bold text is contained within square brackets: Q. So you say you were having an argument? A. Not argue, I think it is negotiation, ah, re – sorry. **Negotiation, bartering. [I think that's what he meant]** Yeah not argue.