WAI 3325 – CLIMATE CHANGE PRIORITY INQUIRY

HEARING WEEK 6

HELD AT WAITANGI TRIBUNAL OFFICES, WELLINGTON

MONDAY 16 MARCH 2026 - FRIDAY 20 MARCH 2026

Tribunal:	Judge Stephanie Milroy Kevin Prime Prue Kapua Professor David Williams Basil Morrison
Crown Counsel:	Jeremy Prebble Nixon Fong Grace Seeley Larissa Tucker
Claimant Counsel:	Arabela Boatwright Umar Kuddus Michael Sharp Chelsea Terei-Tipene Dr Season-Mary Downs Annette Sykes Sam Vincent Scott Fletcher Bryce Lyall Hannah Swedlund Matanuku Mahuika Tara Hauraki Tamahou Thoms Eve Rongo Amylee Temese David Miller Darshini Dorn Tom Bennion Kudrat Tania Te Whenua Lauren Chand Jasper Sontier Dr Grant Hewison Isabella Lenihan-Ikin Luke Evison
Interpreter:	No Interpreter

Witnesses:

Day 1 - [MONDAY 16 MARCH 2026]

Rebecca Prebble
Katherine Wilson

Day 2 - [Tuesday 17 March 2026]
Katherine Wilson
Gina Rangi and Anne Haira
Bryan Smith and Simon Mandal-Johnson

Day 3 - [Wednesday 18 March 2026]
Professor Jane Kelsey
Vangelis Vitalis
Victoria Hallum

Day 4 - [Thursday 19 March 2026]
Bryan Smith and Simon Mandal-Johnson
Paul Barker
Dan Bolger
Dr Richard Ford
Kay Harrison

Day 5 - [Friday 20 March 2026]
Kay Harrison
Dr Samuel Dean
Dr Andrew Old
Richard Ward

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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 16 MARCH 2026 AT 9.00 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

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

Tēnā tātou katoa, nau mai haere mai ki tēnei nohoanga o te Rōpū Whakamana i te Tiriti. Welcome to the sixth sitting of the Tribunal in relation to this Climate Change inquiry. Ki a koe e Kevin, e te kaiwhakarite i a tātou i roto i te āhuatanga whakawairua, tēnā koe. Just before I do some introductory marks, I'll just ask our staff to speak about the housekeeping rules.

HOUSEKEEPING (RYAN GREEN) – HEALTH AND SAFETY (09:06:10)

JUDGE MILROY:

So I've just got a few remarks to make. First of all, this sitting week is very full and there have been various filings requesting cross-examination. Please understand that because of the tight timeframe we are going to be sticking to it because it's longer than our usual sitting anyway. So I may – please forgive me if I have to cut you off. I have given leave with those who may not finish their cross-examination in the time given to put their questions in writing to the witnesses.

Now, we will still be having mini breaks however despite the tight timetable, but they will be shortened so it'll just be a stand up a bit of a stretch and so two minutes max for the mini breaks just so that we can keep on time. Without further ado I'm going to go through the appearances now and although we have people attending in person I'll do it the same as we did for the online hearings. As it's the Crown week we'll begin with the Crown. Kia ora.

(09:08) MR JEREMY PREBBLE: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, otirā tēnā koutou ki ngā mema o te Rōpū Whakamana i te Tiriti o Waitangi. Ko Prebble ahau. Kei konei mātou ko Mr Fong, ko Ms Seeley, ko Ms Tucker mō te Karauna.

(09:09) MS ARABELA BOATWRIGHT: (MIHI, APPEARANCE)

Otirā, tēnā koutou e te Rōpū Whakamana i te Tiriti o Waitangi. Ko Ms Boatwright tōku ingoa, ā, kei te tū tahi ahau me taku rōia matua a Kuddus mō te tari o Phoenix Law, heoi anō kei te wātea kore a Kuddus i tēnei rā, engari kia tae mai ia ki te aroaro āpōpō. E whakakanohi ana mātou mō ngā kaikerēme e rua tekau mā rua. E te Kaiwhakawā, would you like me to state the claims that we are representing today?

JUDGE MILROY:

There's an awful lot of claims that you'll representing today. I think we'll skip that for now. It's been given up to us before, but I'm just going to ask you to confirm that the list of claims is the same as it has been in previous weeks?

MS BOATWRIGHT:

That's correct.

(09:10) MR MICHAEL SHARP: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, anō hoki te Rōpū Whakamana i te Tiriti o Waitangi. Michael Sharp appearing for Wai 3340 Tōtaranui Nama Ono Trust.

(09:10) MRS CHELSEA TEREI-TIPENE: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, otirā tēnā koutou katoa. Ko Mrs Terei-Tipene tōku ingoa. E whakakanohi ana māua ko Tākuta Downs mō ngā kerēme o Ngāti Hine, Te Kapotai, me Ngāti Hine Forestry Trust, otirā tēnā koutou katoa.

(09:11) MS ANNETTE SYKES: (MIHI, APPEARANCE)

Kia ora anō tātou e huihui mai nei i raro i te maru o tēnei o ngā tūāhuatanga i tēnei wiki. Mātou mai Annette Sykes & Co, ko Sam Vincent me Mr Fletcher tētahi o ngā rōia. E tono ana mātou hei āwhina i te kaupapa, i tae mai ā-kanohi i tēnei wiki, engari ka huri ake tērā o ngā reo kia whakamārama mai te raru pā ana ki tēnei o ngā tūāhuatanga mai Legal Services requirements, Ma'am.

It's been very difficult for counsel to ignore – well, to arrange appearances today. Legal Services has been quite difficult. So some of us will be there in

person, some of us will be on screen and some have not been given leave to appear at all which I think is quite unusual. So if there's anyone here from Legal Services please be really clear that we will be appealing that position. It's nonsensical for lawyers who've been involved for three months in a claim then to be told that they can't be in appearance to listen to other cross-examination of other council.

So Mr Fletcher, Mr Vincent will be in person this morning. Ma'am, I've been given permission to travel down this afternoon. I will be present Tuesday and Wednesday with Mr Vincent or Mr Fletcher. I've been asked – I will seek leave from the Tribunal to leave on Thursday and Friday and to watch via AVL. But it would be really helpful Ma'am If we can have some direction from this Tribunal, but even though it's an online hearing, it's the same as an ordinary hearing as if we were giving evidence viva voce and all of us were able to be in the same place that the same time. I think it's quite unfair. I think it's questionable in terms of the BORA rights of those claimants, the Bill of Rights of those – rights of those claimants we represent. Mōrena.

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

Mōrena. Tēnā koe e te Kaiwhakawā anō hoki ki a koutou ngā mema o te Rōpū Whakamana i Te Tiriti o Waitangi, tēnā koutou. Ko Lyall ahau, ko Ms Swedlund tēnei, ka tū nei māua mō Te Waimate Taiamai ki Kaikohe Claims Alliance, me Ngāti Porou ki Hauraki, me Te Upokorehe, me Ngāti Ruapani ki Waikaremoana. Good morning, your Honour, members. Lyall for the claims that I've just listed.

(09:13) MR MATANUKU MAHUIKA: (MIHI, APPEARANCE)

Tēnā koe. E te Kaiwhakawā, tēnā koutou te Rōpū Whakamana i te Tiriti. Kei te tautoko mātou i ngā mihi kua mihingia ki a koe e te rangatira, e Kevin, nāhau tā tātou hui i whakarite i tēnei ata. Me ngā mihi anō ki a rātou kua whetūrangitia ngā rā whakatā kua taha ake nei, ana ko Hone Wharepapa tērā kei roto o Te Whānau a Apanui, me Dame Tilly Reedy kei roto o te kāinga i Hiruharama, otirā **(technical issue 09:14:31)** e tika ana me mihi atu ki a rātou i te mea, ko te ao Māori te kaupapa, nā reira me mihi atu ki a rātou ka tika. Ana, ka hoki

mai ki a tātou te hunga ora, kei te rere tonu ngā mihi atu ki a tātou e whakawhāiti mai nei i tēnei rā mō tēnei kaupapa whakahirahira, kaupapa nui mō tātou, nā reira, tēnā tātou.

Nā reira, Ma'am, Mahuika taku ingoa. Kei konei mātou ko Ms Hauraki me Mr Thoms hei rōia mō Wai 3287. Ko te kaitono ko Te Taumata, he rōpū whai kaupapa e pā ana ki ngā mahi ngahere. Tēnā tātou.

(09:15) MS EVE RONGO: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, ko Eve Rongo ahau. May it please the Tribunal, counsel's name is Eve Rongo. I appear alongside Ms Temese as well as Mr Miller who is online. This week we represent Ngāti Koata Wai 3277. Kia ora.

(09:16) MS DARSHINI DORN: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā me te Rōpū Whakamana i te Tiriti o Waitangi. Tēnā koutou. Ko Ms Dorn tōku ingoa. I appear on behalf of the following claims: Wai 2607 for Mr Tane Cook and the Mataatua District Council; Wai 3412 for Ms Jennifer Takuta-Moses and the Wairoa Māori Committee, Wai 3413 for Ms Grace Hoet and the New Zealand Māori Council, and Wai 3414 for Mr Anthony Olsen and the Matiti Māori Committee, tēnā koe.

(09:16) MR TOM BENNION: (MIHI, APPEARANCE)

E te kaikarakia, tēnā koe. Ngā mema o te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. Ko Mr Bennion and Ms Kudrat ngā rōia mō ngā kerēme e toru: Owen Lloyd and Ngā Ariki Kaipūtahi (507), Muaūpoko Tribal Authority (2139), and Tuhi-Ao Bailey and Māori members of Climate Justice Taranaki (3262). Tēnā koutou.

JUDGE MILROY:

Those are all the people who have responded to our RSVP list but is there anyone who I've missed out?

(09:17) MS TANIA TE WHENUA: (MIHI APPEARANCE)

Āe, tēnā koe, Ma'am. Ko Te Whenua tēnei. Ka tautoko ngā mihi kua mihia. Ka mihi anō hoki ki a koutou te pae rangatira, huri noa tātou katoa kua honohono mai i runga i te kaupapa nui o tō tātou wiki nei. Kei konei ahau hei rōia mō Te Urunga o Kea, ko te komiti e whakahaerehia tēnei kaupapa mō Te Arawa, Wai 3285, me Ngāti Uepōhatu, Wai 3286. Tēnā tātou.

(09:18) MR JASPER SONTIER : (MIHI, APPEARANCE)

Āe, kia ora. Tēnā koe e te Kaiwhakawā. Ko Jasper Sontier tōku ingoa. My apologies, I think we RSVP'd quite a while ago but it may have been left off the list. We're appearing today on behalf of Wai 2821 Mereana Peka, Wai 3361 Thomas Henry, and Wai 3490 Rita Beckmannflay, and we'll also have Dr Grant Hewison joining later today I think.

(09:18) MS ISABELLA LENIHAN-IKIN: (MIHI, APPEARANCE)

Tēnā koe e te kaiwhakawā. Ko Ms Lenihan-Ikin tēnei. We represent Wai 2003, Te Wahapū. Wai 2003 are participating on a watching brief basis in this inquiry and therefore I seek leave to attend via the YouTube livestream link and reappear via a Zoom during the week as per necessary. Kia ora.

JUDGE MILROY:

Kia ora. Thank you Ms Lenihan-Ikin. That seems to be everybody. So again welcome. We are four minutes ahead of time, so we will carry on and hopefully be able to use those four minutes wisely. We are now up to Crown openings.

MR LYALL ADDRESSES JUDGE MILROY – MEMORANDUM OF COORDINATING COUNSEL, BATTING ORDER (09:19:38)

MS TE WHENUA ADDRESSES JUDGE MILROY – TONO TŌMURI, LEAVE TO CROSS-EXAMINE/QUESTIONS IN WRITING (09:20:41)

MS SYKES ADDRESSES JUDGE MILROY – QUESTIONS IN WRITING (09:21:45)

JUDGE MILROY:

I think we're now done with the preliminary matters so we will now hand over to the Crown. And just Mr Lyall, sorry, Mr Lyall, we have just received the batting order as it were.

MR PREBBLE ADDRESSES JUDGE MILROY – LEAVE TO SIT (09:23:00)

(09:23) MR PREBBLE: (#3.3.031)

Ki ngā kaikerēme me ngā rōia mō ā koutou kōrero i tēnei kaupapa, tēnā koutou. Ki ngā kaikōrero o te Karauna me ngā kaimahi o te Karauna, tēnā koutou. Kei te mihi au ki a rātou katoa. E mihi ana mō te whai wā ki te tuku kōrero i mua i a koutou i tēnei rā, tēnā koutou katoa.

Obviously in terms of the time frame I will endeavour to stick to the 20 minutes that I've been allocated, so feel free to hurry me along your Honour if I am slipping behind.

You have our submissions and I'll just read selected parts from those rather than obviously go through the full 30-odd pages.

The Crown recognises the scale and significance of the problem posed by climate change. This is evidenced by New Zealand's role in the international climate change response, and domestic policy settings.

The Crown recognises the impacts of Climate Change and the need for New Zealand to respond. It has enacted a comprehensive framework providing a roadmap to the 2050 target and the Climate Change Response Act.

The Crown's climate change response should be viewed in the context of that roadmap and being part-way to the 2050 target. The response required to achieve that target is challenging and complex, and it requires a balancing of numerous interests.

The Crown's position is that, in this complex and evolving policy landscape, its overall response to climate change has been and continues to be Treaty compliant.

In terms of these submissions, we understand that the focus of this inquiry is one that is, broadly speaking, “forward-looking”.

The inquiry, as everyone here knows, has four parent issues, being impacts to Māori from climate change, the Crown's actions in responding to climate change, relevant treaty principles, and recommendations. We don't, for the purposes of this opening, go through the 40 sub-issues beneath those. And in terms of the focus of these submissions, we really are focusing on what we say are “core climate change issues”.

And in that sense, the structure of our submission is to first talk about contextual considerations when applying Treaty principles, applicable Treaty principles, and then the Crown's case on those “core climate change issues”. And by that I mean we're focused on climate mitigation, adaptation and forestry/ Emissions Trading Scheme.

In terms of the context that we're dealing with, obviously climate change raises specific challenges for legal and policy analysis, but two are particularly relevant we say for this inquiry.

First is the nature of climate change itself. It is a global problem. It is something that the Government has neither full nor effective control over. This reflects New Zealand's contribution is relatively insignificant. But having said that of course it's not a reason for not taking action and far from it. The Crown has committed itself to targets under the CCRA and is committed to doing its share in a global sense.

The Crown submits that the level of ambition – which involves balancing many competing factors – is a complex question for Parliament. We do accept the Treaty principles can inform the way which we say includes the rate and pace

at which New Zealand achieves the level of mitigation ambition it has set. Also application of relevant Treaty principles are likely to have greater influence in how New Zealand develops and implements climate adaptation policies, where there is more tangible control in how we address future impacts.

The second challenge from climate change is that it does involve different perspectives and trade-offs. While the need for making trade-offs is not unique to climate policies, it is a significant feature in this case. It is not simply a case of balancing the interest of Māori with other interests. In fact, as the evidence has shown and will continue to show, we say, balancing the interest of one part of the Māori community with another part is often an issue as well. For example, under the ETS and forestry. The Crown has to consider interest between sectors, within the same sector, in the present case, and across generations – sometimes all at the same time. Equitable transition reflects that complexity. Any assessment of how the Crown should comply with Treaty obligations, I would say, must take account of this complex reality.

I won't traverse in any detail the applicable Treaty principles, we are really just covering the broad obvious three, being partnership, active protection, and redress.

We acknowledge there are others that the Tribunal will consider relevant and they will fall, we say, within the scope of those broader three.

We set that out, in terms of our analysis of those principles, in our submissions, but what I will go on to is The Crown's case which starts at paragraph 29.

So in this section, the Crown sets out its key points for how it addresses climate change policies and how they comply with Treaty principles, those being partnership, active protection, and redress. We are focused on the governing climate change mitigation regime, climate adaptation and forestry emissions, the ETS scheme. It is not to say other topics such as resources, minerals, emergency response, international treaty-making are unimportant, and we've obviously heard a lot of evidence about those matters during the course of the

first five weeks. It's rather that we say mitigation, adaptation and forestry policies constitute the Crown's core climate change response and provide a convenient compass for the Crown's overall case.

So starting with mitigation. Obviously our response is centred on the CCRA which is our domestic framework by which the Crown gives effect to its international commitments. It does contain a descriptive Treaty clause and it provides mechanisms by which the Crown complies with its Treaty of Waitangi obligations.

That legislation was enacted in 2002 in response to United Nations Framework Convention on Climate Change, the UNFCCC, and then the Kyoto protocol. With the Paris Agreement, significant further amendment was made to that regime, particularly in 2019 with the Zero Carbon Amendment Act 2019, and that really brought in the key aspects of that which I will talk about in terms of the commission, the target, the emissions budget and emission reduction plans, as well as adaptation.

So as we set out at 33, in terms of mitigation, the key parts or components of New Zealand's response include:

1. our NDC, our nationally determined contribution.
2. our 2050 target, which is provided in legislation.
3. the Emissions budgets, which are the stepping stones to that target; and
4. then the Emissions Reduction Plans.

In terms of our nationally determined contribution, that obligation applies to all countries, not just developed countries, and there was a significant shift or move away from the Kyoto protocol which only imposed targets on developed countries. The success of the Paris Agreement rests on continued participation of all countries, and we will hear later evidence particularly from Ms Plume on that. The Kyoto protocol had prioritised the setting of stringent and binding targets, so the Paris Agreement takes a different approach.

The other significant shift was that countries would determine themselves through their NDC, what their emission emissions reduction contribution would be. It doesn't – the Paris Agreement does not impose any particular binding target on any individual party. NDC's are to be “ambitious” and parties are to “aim to reach global peaking of greenhouse emissions as soon as possible” and “to undertake rapid reductions thereafter”. They are to be communicated every five years, and each successive NDC is to be a progression and reflect its “highest possible ambition…in light of different national circumstances”.

As we set out in the submissions, New Zealand has communicated its first one in 2016. That was updated in 2021. And then our second one was announced in January 2025. That second one provides that New Zealand will reduce emissions by 51-55% compared to 2005 levels, by 2035.

The other key obvious aspect to Mitigation is our Climate Change Response Act, and that was enacted to put in a framework to allow New Zealand to meet its international obligations. As I've mentioned, under Kyoto, the UNFCCC, and now Paris. I've also mentioned how it was amended significantly in 2019 with the Zero Carbon Amendment Act.

The 2050 target was introduced in 2019 by the Zero Carbon Amendment Act and provides a binding target of reducing net emissions (excluding biogenic methane) to zero by 2050. There's a different target for biogenic methane obviously. This means that growth emissions must be balanced out by emission removals from forestry and other activities, in order to result in net zero emissions by that date.

As originally enacted, we know the target had biogenic methane emissions to be reduced by 24 to 47% below 2017 levels by 2050, and 10% below 2017 by 2030. That was set under 5Q of the CRRA. That target was recently – and we updated the Tribunal on this late last year – amended by s 4 of the Climate Change Response (2050 Target and Other Matters) Amendment Act to require reductions 14-24% below 2017 levels by 2050. The 2030 target remains unchanged.

Sitting underneath that is New Zealand's emissions budget. So to meet that target, the Minister of Climate Change is required to set a series of emissions budgets, essentially to act as ‘stepping stones’ to that 2050 target. The budgets are also set with a view to contribute to the global effort under Paris to limit global temperature increase to 1.5 degrees above pre-industrial levels.

We set out there, and I won't read all of that, the emission budgets. There's the first three budgets set out at 47 in the table.

The fourth emissions budget was originally due to be set by 31 December 2025. That deadline was postponed through the legislation that came in at the end of last year because of the change to the target. The Minister is now required to set the fourth emissions budget by 31 December 2027.

For each emission's budget period, the Minister must prepare and publish a plan, which is our Emissions Reduction Plan, setting out the policies and strategies for meeting the relevant emissions budget. The Minister is required to make that public, present it to the House and publish it in the New Zealand Gazette, ahead of commencement of any emissions budget period.

We note the CCRA there does also provide that, in respective preparing a plan, the minister must ensure the consultation has been adequate, including with sector representatives, affected communities, and iwi and Māori, and undertake further consultation as the minister considers necessary.

The content of an Emissions Reduction Plan is prescribed under the Act. Among other things, the Minister must include a strategy to recognise and mitigate the impacts on iwi and Māori of reducing emissions in an Emissions Reduction Plan. The Minister must ensure adequate consultation on those plans including with sector representatives, and iwi and Māori.

The first one was published in May 2022. It set out the Government's plan for meeting that period from January 2022 to 31 December 2025. The second one at paragraph 54 was published in December 2024. The approach taken in Emissions Reduction Plan 2 was to rely primarily on the ETS to reduce New Zealand's net emissions.

The Minister wanted to create regulatory and policy stability so that business could respond to credible and long-term NZU price signals, and ensure that emitters outside the ETS had a viable way to reduce their emissions.

In terms of the Crown's case on Treaty compliance, we submit that:

1. In terms of Partnership, the framework of the CCRA reflects the partnership principle, and we refer there to the provisions that ensure the Commission has expertise relevant to the Treaty of Waitangi. We refer to provisions which ensure iwi and Māori are adequately consulted on Emission Reduction Plans, and there's also various provisions relating to making of secondary legislation which require consultation with representatives of iwi and Māori likely to have an interest in the legislation. In terms of the Crown's evidence, Mr Smiler's evidence speaks to engagement with Māori when developing the Emissions Reduction Plans 1 and 2. The Crown has sought to meet this obligation also through the establishment and operation of the Māori Climate Platform. This was specifically set up to embed Māori partnership and representation; support Māori-led strategy and alignment; and activate kaupapa Māori, tangata Māori solutions. Those matters will be covered in the evidence of Anne Haira and Gina Rangi.
2. In terms of Active Protection, the Crown, under this principle, considers it has an obligation to provide an equitable transition to a low emissions future. The Crown says it has complied with this obligation both in terms of the legislative design of the CCRA, as well as in practice. So by way of example, under the CCRA, the Minister must have a strategy in each Emissions Reduction Plan to recognise

and mitigate the impacts of reducing emissions on iwi and Māori, and that was given effect to in the Emission Reduction Plan 1 and 2. Again, that's discussed in the evidence provided by Mr Smiler.

3. In terms of Redress, that principle means the Crown's approach to climate change issues should not compound the injustices of past Treaty breaches. So, insofar as mitigation is concerned, the Crown submits it has complied with this principle through its focus and policies on an equitable transition – particularly for Māori.

Turning to Adaptation.

Climate change adaptation involves efforts to reduce the negative effects of climate change on people, the environment, and the economy, and maximise any advantages.

New Zealand's climate change adaptation mechanisms are largely provided for under the CCRA. They're not solely under that legislation, and Ms Wilson will speak to that as to other actions and legislative mechanisms that are in place outside of the CCRA.

In terms of adaptation under the CCRA, there is effectively an adaptation cycle and it starts with the National Climate Change Risk Assessment. That cycle begins with that assessment to assess the risks to New Zealand arising from the effects of climate change and identifies the most significant of those risks. The Minister requires – sorry, the Act requires the Minister to prepare the first National Climate Change Risk Assessment which has now been done, and the Commission to prepare all subsequent ones at least once every six years.

Our first one was published in August 2020. And it combined Māori and stakeholder engagement with scientific, technical and expert information to inform the assessment. It identified climate change risks that are both of particular significance, and those which have disproportionate impacts on Māori, including “risk of a breach of the Treaty of Waitangi obligations from a

failure to engage adequately with and protect current and future generations of Māori from the impacts of climate change".

In response to that, the CCRA then requires the Minister to prepare a National Adaptation Plan. And that must set out the government's adaptation objectives, it's strategies, policies and proposals for meeting those objectives, and the timeframes for implementing them. In preparing our NAP, as it's sometimes called, the CCRA requires the Minister to consider the economic, social health, environmental, ecological, and cultural effects of climate change, "including effects on iwi and Māori". And again, the Minister must undertake public consultation when preparing that document.

The NAP that is now in place, it was published in August 2022, recognises that Māori have a unique role in adaptation – as Treaty partners, tangata whenua and Kaitiaki.

It sets out 127 actions to address climate change risks, and the specific actions are set out in the table that was prepared in 2025 in response to the Commission's report on the NAP. Among other things, the NAP sets out actions that address risk that are particularly relevant to Māori. Examples of such actions include establishing a platform for Māori climate action and producing guidance on integrating mātauranga Māori adaptive planning and working with mana whenua.

The Act itself also has reporting and monitoring obligations. So the NAP is subject to biannual monitoring by the Commission. The Commission is required to monitor and report on the implementation and effectiveness of each NAP every two years following publication. Monitoring is an important part of the Climate Change Response Framework under the CCRA. Independent assessment by the Climate Change Commission helps progress visible – helps make progress visible and can identify where opportunities and challenges are to act upon.

The first progress report was provided by the Commission in August 2024. The Commission found out that, currently, adaptation is not happening on the scale, or at the pace, that is needed. It identified six areas where action is urgently needed. Of interest, those included "ensuring iwi and Māori retain rangatiratanga and can adapt their communities in a way that is consistent with their tikanga and aligned with their priorities" and "consistently considering and addressing equity of impacts".

The Minister is required to then officially respond to that report. That also provides the government is effectively being made accountable to the public for its response to the recommendations from the Commission.

In January 2025, the Minister responded to that progress report. The Minister agreed that adaptation needs to increase in scale and pace, and acknowledged the Commission's recommendations on policy areas requiring urgent action or focus.

In addition to what is in the legislation, there's also work to put in place a National Adaptation Framework. So in early 2024, the Minister of Climate Change sought approval from Cabinet to progress a "National Adaptation Framework". That is intended to establish an enduring, long-term, joined-up approach to adaptation with clear guiding principles, and clear leadership and responsibilities for bringing this together. That is not designed to replace the CCRA settings that I've just referred to but rather supplement and guide the existing system of response.

We set out there the four "pillars" upon which that is – that proposed framework is based upon.

One example we talk about at 70 is to amend the CCRA to clarify the requirements for local government by requiring adaptation and priority areas. And this is really the Government's ongoing work to move to providing greater clarity around local government who are clearly also going to be dealing with

the impacts of climate change because they are at the forefront of dealing with communities on those issues.

In terms of adaptation*[sic]* in the Crown's case, we say the evidence shows the Crown has engaged with Māori and recognised their interests in key adaptation decisions, as well as future settings. As Ms Wilson explains, the Crown commissioned Ihirangi to set out an indigenous worldview of adaptation, which was later developed into the Rauora framework, and consulted with Māori on the first NAP. That recognised that Māori have a unique role in relation to adaptation as Treaty partners, tangata whenua and Kaitiaki. In relation to the framework that I've just referred to, the Crown has engaged with various PSGE's, Te Tai Kaha, Pou Take Āhuarangi, and other Māori groups. As Ms Prebble will explain, the proposals are intended to support Māori involvement in decisions in relation to land and taonga, and that's in the context of localised adaptation planning. The proposals are building consideration of the needs of Māori into the process for identifying priority locations for adaptation plans through spatial planning process.

In terms of active protection, the first national climate change risk assessment identified risks that are particularly relevant to, and would have a disproportionate impact on, Māori, and the first NAP responded to those by setting out actions addressing those risks. That included establishing a platform for Māori climate action; producing guidance on integrating mātauranga Māori into adaptive planning and working with mana whenua; assessing socio-economic climate vulnerability, developing mātauranga Māori indicators of climate impacts on the natural environment; producing new tools and guidance specific to mātauranga Māori and mātauranga indicators.

In terms of redress, the Crown is aware of the need to ensure that equitable transitions occur for Māori. The NAP expressly recognises, “an equitable transition for all New Zealanders is important”, and to achieve this it will be necessary to “uphold Te Tiriti o Waitangi and work in partnership with Māori to address climate risk, maximise opportunities, and avoid disproportionally affecting Māori or locking in existing inequities”.

The other core aspects to our climate change response is Forestry and Emissions Trading Scheme.

The Crown's interest and priorities with respect to forestry have changed with time. So over the last two decades, the Crown has a renewed role in the forestry sector as compared to the 80s and 90s, and that will be covered particularly in the evidence of Ms Collins and Mr Keenan from MPI in the seventh week. That's been driven by three key factors, being: (1) Crown-led support for afforestation to mitigate erosion risks; (2) the recognition of forestry as a tool by which New Zealand can meet international and domestic climate change commitments; and (3) the use of forestry assets in Treaty settlements.

We set out there the size of the forestry, plantation forestry in New Zealand, and that Māori are obviously a significant asset holder within that.

We say at 75 that while Māori interests in forestry are not homogeneous, those interest cumulative are significant. The Crown recognises this and regularly engages with Māori forestry fora including Te Taumata, the Federation of Māori Authorities and Ngā Pou a Tāne (the National Māori Forestry Association) on the development of forestry policy.

The Crown has taken steps since the 1960s to address erosion-related risk, primarily through afforestation but also through regulation. In that time the Crown has developed its approach to mitigating risk to erosion prone land, and the consequential effects of erosion, including to waterways and the environment following severe weather events.

Examples of the Crown support, which will be covered in the evidence from MPI, include the East Coast Forestry Project, the Erosion Control Funding Programme, the Hill Country Erosion Programme and the One Billion Trees Programme, and more lately the development and amendment of the national standard for forestry management, the National Environmental Standard for

Plantation Forestry, which is now the National Environmental Standard for Commercial Forestry.

The Resource Management Act we mention there is also relevant which provides local authorities with responsibilities for many aspects of the implementation, including in respect of resource consents. So the regulation of those, and that includes taking enforcement for things like slash and other events that occur post-severe weather events.

JUDGE MILROY ADDRESSES MR PREBBLE – TIME (09:48:35)

MR PREBBLE: (CONTINUES)

We set out the Emissions Trading Scheme and we will provide obviously evidence in relation to that. We've heard many of the issues in relation to that including the pre and post 1989-1990 forestry land. We set out that the scheme has been designed with Māori in terms of its initial development.

So we – prior to the introduction of the scheme, Māori were involved very much in the initial consultation, and that will be covered from the evidence of the MFE this week. The Crown took steps to mitigate and compensate for the effects of the ETS scheme on Māori. And I think it's just worth quickly noting that the initial set up of the scheme, which was undertaken we say with careful consultation with Māori has, broadly speaking, remained consistent from that early period in 2008 through to now, but there has been obviously a number of amendments which the evidence from MFE will cover, but the broad parameters of the ETS scheme was one that underwent significant consultation and has remained fairly consistent over time.

We set out there, and I won't go through it, why we say that the forestry and the ETS and the approach the Crown is taking is Treaty compliant.

I just want to acknowledge at 92 that the Crown has heard and the Tribunal has heard a lot of evidence on a range of other topics, and I mentioned that at the start but they include approach to international agreements, treaties and

negotiations, emergency response, local government role and responsibilities, and environmental impacts such as biodiversity loss, land use change and fishery impacts.

And then we set out – and that's not to say that those matters are not relevant. We will also be addressing those in our evidence given the Crown evidence is covering or attempting to cover quite a significant breadth of issues that are being raised by claimants.

In terms of the evidence, we then set out who is providing the evidence, and I won't traverse that and I'll take it as red. Ms Prebble is presenting today, followed by Katherine Wilson. But we, as I say, have quite a number of witnesses for this week and then more in week seven.

One additional point I'd note is with respect to Vangelis Vitalis who's from the Ministry for Foreign Affairs and Trade and as the Tribunal will be aware the Crown indicated that deputy secret Mr Vitalis would provide an update on the critical minerals issue. And in light of ongoing discussions that we've been having with MBIE and MFAT, it has become clear to ask that further evidence is required on that from MBIE as well as MFAT, and that Mr Vitalis is not directly involved in this work. And so, we will be filing a memorandum with the Tribunal as soon as possible capturing that ongoing discussion. He will still provide the Tribunal with an update and we will leave it for him to address the Tribunal more fully.

But by way of brief context, we understand MFAT's role has been to ensure that emerging international engagement on critical minerals is understood within the wider context of New Zealand's foreign policy and trade interests. He's not directly involved in the work. As a result, the Crown anticipates it will need to file, with leave, additional evidence on MFAT's engagement, and that will be provided by Deputy Secretary Morton which will require his appearance in April as well. That said, Mr Vitalis is in a position to provide some context about MFAT's engagement with Māori groups as part of its commitments to consult in this week when he appears on Wednesday.

JUDGE MILROY:

Thank you, Mr Prebble. Yes, that leave is given because there has been interest indicated from claimants about that matter.

MR PREBBLE:

Thank you in advance, your Honour. And unless there are any questions, those are the opening submissions for the Crown. Sorry for running over time.

JUDGE MILROY:

I don't think there are any questions at this stage, we'll save them for closing submissions. We will take a quick two minute microbreak and hopefully people might have time to organise the table for Ms Prebble to give her evidence from.

MR PREBBLE ADDRESSES JUDGE MILROY – 5 MINUTE BREAK (09:53:22)

HEARING ADJOURNS: 9.53 AM

HEARING RESUMES: 10.03 AM

JUDGE MILROY:

Welcome, Ms Prebble. I'll just explain for those online that we've been having some technical issues in terms of sorting out how Ms Prebble will be able to give her evidence but that's now been resolved and I'll hand over to Mr Prebble to introduce the witness.

(10:03) MR PREBBLE CALLS

REBECCA JANE PREBBLE (SWORN)

Q. Thank you, your Honour. No relation actually but just coincidence – to clear that one up. Could you please confirm your full name for the Court?

A. Rebecca Jane Prebble.

Q. And can you please confirm that you have a signed brief of evidence dated 18 February 2026 before you?

A. That's correct.

Q. For the record, that's the supplementary brief of evidence of Rebecca Prebble dated 23 Feb and it's #A150 and the index appendances are #A150(a). I understand you will also speak to the evidence prepared by Mr Smiler in this inquiry, is that right?

A. Yes, that’s correct.

Q. And do you have a copy of that evidence before you?

A. I do.

Q. Again, just for the record, that's Hemi Smiler, 3 October 2025 brief of evidence, #A148m, and the index appendices are #A148(a). And finally, I just understand you've prepared a summary for the reading to the Tribunal today which is 9 March 2026 six, is that correct?

A. That’s correct.

Q. Thank you and for the record that is summary of evidence #A150(b). Thank you very much, Becky Prebble, if you could please proceed with reading your summary for the Tribunal.

(10:04) REBECCA PREBBLE: (#A150-(b))

Tēnā koutou katoa. Ko Matarangi te maunga, ko Te Whanganui-a-Tara te moana. Ko Prebble taku whānau. Nō Te Whanganui-a-Tara ahau. Ko Becky ahau. Thank you very much for having me here.

My name is Becky Prebble and I am here to discuss the government’s overall approach to climate change mitigation.

I am speaking to two briefs of evidence, there’s my own which covers a number of changes to the Climate Change Mitigation and to some extent Adaptation framework that were either made or announced last year. I am also covering Hemi Smiler’s evidence which speaks to the overall Climate Change Mitigation Framework in Aotearoa.

Mr Smiler isn’t actually available to give his evidence but I work very closely with him and I am able to speak to his evidence and very happy to do so.

Before I go into reading my own evidence summary, I want to just speak just a little bit about what my job is and how it works because it might contextualise some of my evidence.

I am the Chief Advisor on Climate Change Mitigation and Resource Efficiency at the Ministry for the Environment. The way that actually works is I report to the Deputy Secretary for Climate Change Mitigation, and the way my job functions it's almost I have a watching brief across the entire portfolio. What I do on any one given day can be – varies quite a lot. I tend to go into things for a small period of time while they need some extra help or just a need extra hands and then I move to something else, and so I skip between things in that regard. So what that means in practice is that I have a generally pretty good overview of everything that is going on in climate change mitigation at any one time and sometimes quite deep involvement at different times.

So some of the things I'm speaking to in my evidence I have very deep personal knowledge of because I typed a lot of the advice or that kind of thing. Other things I wasn't as deeply as involved but I certainly knew what was going on.

There are some parts of my evidence that date to times before I worked in this role or worked for the Ministry for the Environment. Well, in Hemi's evidence actually, not so much mine. I can very much speak to all of those. I'll probably need just slightly more time to refresh my understanding of the exact documents because it's just less completely front of mind for me.

I was really wanting to say that I'm really happy to be in a role where I can help with this. I think this is really important work and I'm expecting that the eventual report from the Tribunal will be extremely useful to the way I do my own work and to the way the Ministry for the Environment does its work. So I'm just very grateful that I'm in a role now that I can help with this.

What I might do now actually, if it's alright, I might move to sitting down to give the rest of my evidence now that I've introduced myself. I just – it'll be a long time to be standing so I'm gonna move here. Excuse me.

Climate change mitigation policy, so it's often spoken of in terms of targets, pathways, and instruments. But at its heart, it's really a process of navigating complexity and differences in perspectives. Decisions about how, and how fast, to reduce emissions, they sit at the intersection of our economic context, environmental goals, social expectations, and intergenerational responsibility. It's inevitable that people will disagree about what the right approach looks like. The Government has a responsibility to take as many perspectives into account to inform its decisions. The act of governing ultimately requires making choices though.

Recognising Māori interests is an integral part of the policy process, and, in my experience, officials really strive to act consistently with the principles of the Treaty of Waitangi. Navigating policy in combination with the complexity of Crown and Māori relations can be challenging, as interests are not always in alignment.

New Zealand's legislative framework for emissions mitigation is designed in a way that aims to develop and implement clear climate change policies that contribute to our international commitments, while also providing flexibility in how we meet our objectives. This is made possible by the international frameworks we are party to, which allow governments to exercise judgement and set priorities according to their individual circumstances.

Atmospheric emissions from all countries contribute to climate change, which makes mitigating emissions a collective commons issue. Emissions must be reduced by the global community to ensure all countries can benefit from a stable climate. New Zealand contributes to the international climate change response through its commitments to international climate change agreements to reduce emissions, such as the United Nations Framework Convention on Climate Change (which I will call the UNFCCC from now on), the Kyoto protocol, and the Paris Agreement.

In particular, the Paris Agreement aims to limit global average temperature increase to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C. Countries communicate a Nationally Determined Contribution (which I will call NDC from now on) to the global response to climate change. Each country's successive NDC must show progression beyond the country's current NDC. It must also be aligned with the country's highest possible ambition, while also leaving flexibility for countries to set their NDC according to their individual responsibilities and capabilities, and which approach to meet their NDC.

The main purpose of an NDC is to outline the contribution countries will take towards delivering on the goals of the Paris Agreement. NDCs are the main mechanism to achieve the long-term temperature goal to limit warming to well below 2°C and pursue efforts to limit global temperature rise to 1.5°C above pre-industrial levels. Helen Plume will give more evidence on NDCs and their nature.

Mr Smiler discussed the development of New Zealand's first NDC and the second NDC in his evidence. I won't repeat that discussion here but, in short, the development the second NDC (we often call it NDC2) was informed by advice from the Climate Change Commission, as well as engagement with key stakeholders, including Treaty partners. We particularly talked to PGSEs and we also engaged with Rangitāne Tū Mai Rā Trust and Te Rarawa, as well as Pou Take Āhuarangi, the Climate Lead for the National iwi Chairs Forum.

So, feedback from engagement with Māori groups and representatives covered a wide array of options they wanted the government to focus on, such as adaptation, research and development of emission reduction technologies, afforestation, blue carbon or voluntary carbon markets. Perspectives on how to best approach emissions reductions to meet our NDCs were diverse.

For example, Te Rarawa proposed that the NDC2 be met through stronger mitigative action, using solar panels, agritech and voluntary carbon markets. On the other hand, Pou Take Āhuarangi proposed a stronger focus on

private-public partnerships, forestry accounting and on overall system-wide support and resourcing for iwi/Māori to reduce emissions. These approaches are not mutually exclusive, but they require different policy approaches to implement. One is more tailored to technological funding and market oversight, the other lends itself more to higher level programs to support sector transitions.

In the end, for the second NDC, the Minister of Climate Change recommended that Cabinet set NDC2 as a "range target" of 51% to 55% reduction of net emissions below our gross 2005 level by 2035. The Minister considered this target range as ambitious but achievable, striking a balance between various interests received in feedback, and the government's objectives and capabilities. Cabinet agreed with the Minister's proposed target, and the government submitted the second NDC on 31 January 2025.

I'll talk a bit about New Zealand's emissions profile as an overall context for my evidence.

Given the warming effects of different gases, there are quite a few emissions reduction pathways that could achieve the temperature goal of the Paris Agreement. That means that New Zealand, like other countries, has flexibility in what measures to pursue to achieve its NDCs in a manner that is appropriate for our national context. How the Government decides to meet these emissions objectives can be divisive across stakeholders, and may vary in terms of priorities when compared to other countries.

New Zealand's gross emissions are currently higher than they were in 1990, whereas in many other developed countries, emissions are now actually below 1990 levels. New Zealand is different from most developed countries, which typically have a much smaller share of emissions from agriculture and a higher share from energy production and industrial processes.

For us, our largest emitting sectors are agriculture and energy (transport is part of energy in that sentence), and a core share of our emissions reductions comes from our forestry sector.

I'll talk about agricultural emissions specifically.

In New Zealand, we have a relatively large agriculture sector, which generates more than half of our gross emissions.

Reducing emissions from agriculture in New Zealand, especially biogenic methane emissions, can be really quite difficult, expensive, and quite contentious. This is mostly due to the fact that agricultural products, like dairy, meat and wool, are really critical to New Zealand's economy, as they significantly contribute to GDP and export revenue.

The complexity and costs of this are mainly correlated to just the large number of farms in the country; so there are approximately 48,000 farms in New Zealand. Reducing agricultural emissions from the sector would require investments from individual farmers to adopt new practices and technologies, which may not actually always be financially or practically feasible, in the short-term anyway. But technologies to reduce agricultural emissions are being developed, and the government is actively supporting new technologies through things like AgriZero which is a joint initiative with the private sector which we will talk about more later.

I will talk about energy emissions now.

So, for the energy sector, our proportion of emissions from the energy sector is smaller compared to other developed countries, but the sector still generates approximately 40% of gross emissions. Our transport sector is the highest contributor to our energy emissions, at 18.5%. That's 18.5% in total, not 18.5% of 40%.

Many developed countries tend to focus their energy emissions reductions by increasing renewable electricity generation, electrifying transport and transitioning to low-emissions industrial processes.

New Zealand's approach to reducing energy emissions is similar, but the caveat is that 83.4% of our electricity generation is already coming from renewable sources, so that really limits the extent to which our electricity generation emissions can be reduced. Regardless of that, developing renewable electricity and electrifying transport remains a core aspect of our mitigation approach.

As for industry, New Zealand has a relatively small number of large industrial emitters compared to other countries. But decarbonising industrial emissions will be challenging, as it is going to likely require the adoption of expensive technologies (like carbon capture and storage kind of things), as well as a large-scale infrastructure upgrades to the grid.

The Government is working to reduce emissions from energy by incentivising further development of renewable electricity generation, enabling carbon capture technologies and rolling out electric vehicle charging infrastructure.

I'll talk about forestry offsets now.

New Zealand is unusual for extensively using forestry as a carbon sink. The LULUCF sector (sorry – that stands for Land Use – Land Use Change and Forestry, but LULUCF sort of trips off the tongue more), so that sector has become a net carbon sink since 1990 and is reported to have absorbed 26% of gross emissions in 2023 (being the last date we have inventory data for).

To summarise that, New Zealand's large share of agricultural emissions, high levels of renewable electricity generation, and large single point industrial emitters are really the main factors that New Zealand has to overcome when we're talking about reducing gross emissions.

So that emissions profile and circumstances have informed the government's approach to respond to climate change. So, one place you see this reflected is in the adoption of a 'split gas' target for domestic emissions, and another place is in the treatment of removals from forestry as fully fungible with gross

emissions reduction in terms of targets, which is discussed in some detail in Mr Smiler's brief of evidence.

New Zealand's climate mitigation policies and strategies are also influenced by the multiple perspectives from sectors and stakeholders. Balancing the interests of all stakeholders with environmental outcomes and economic stability requires decision-makers to make complex choices and value judgments, which may not always be unanimously supported. These also inform the level at which the Government decides to set its emissions targets and budgets under the Climate Change Response Act.

I will probably abbreviate Climate Change Response Act to CCRA from now.

So, the CCRA is the framework that implements New Zealand's domestic mitigation policies. A key development of the CCRA, and New Zealand's mitigation policy generally, was the introduction of the Climate Change Response Amendment Act in 2019, which is often just shortened to the Zero Carbon Act or the Zero Carbon Amendment Act.

The Paris Agreement deliberately gives countries quite a wide discretion over how they meet their climate obligations, focusing on nationally determined targets and gradual progression rather than prescribing particular domestic policies or targets. The CCRA operates within that flexibility by defining its own tools and targets.

Now, I've already – I have also provided supplementary evidence on some recent amendments to the CCRA and also some announced but not yet made amendments, or announced last year, and some of those entered into force towards the end of last year and some of them are expected to be introduced to Parliament shortly. I will cover those later in my summary.

I will talk about the Zero Carbon Act now though.

What his Act introduced was, first, the independent Climate Change Commission. The Commission's function is to provide analysis and advice to the government on climate issues.

It introduced a domestic emissions reduction target for 2050. This is a target of reducing net emissions (excluding biogenic methane) to zero by 2050. Hence really the name, the "Net Zero Amendment Act". At the time that Hemi Smiler gave his evidence, the 2050 target also required biogenic methane emissions to be 24 to 47% below 2017 levels by 2050, and 10% below by 2030. As explained in my supplementary evidence, that target has now been reset. The target now requires reduction in biogenic methane emissions to be 14 to 24% below 2017 levels by 2050, and the 2030 target for methane has not changed. The Net Zero target has also not changed for long-lived gases. The reason for the 'split gas' target – that's not a change, it was split gas since the Zero Carbon Framework was enacted – just considers biogenic methane from agriculture and waste separately from all other greenhouse gases.

I will talk about emissions budgets now.

An emissions budget is a total quantity of emissions that is allowed to be released during an emissions budget period. The purpose of the system of emissions budgets is to help manage a transition to a low-emissions New Zealand and meet the 2050 target. Mr Smiler described in his evidence the process for setting emissions budgets 1 to 3. So, they are all set now. Budgets were set following advice from the Climate Change Commission. Public consultation on the draft advice happened in early 2021. To ensure iwi/Māori views were heard in consultation, the Commission ran additional targeted consultation surveys with Treaty partners and met in person with iwi/Māori where possible. The government agreed in principle to broadly accept the Commission's recommended emissions budgets, with some slight changes. The first emissions budget was 290 megatons, and that's for 2022-2025, the second one is 305 megatons for 2026-2030, and the third one is 240 megatons and that's 2031-2035.

If it sounded like the first emissions budget was actually lower than the second one, that is right. So, first emissions budget covers a four year period whereas the subsequent ones cover a five year period. So it's a little odd – just so if you don't realise they cover a slightly different period of years and it looks a bit strange that it goes lower then higher then lower. Just always catches me out anyway.

I will talk about emissions reduction plans. For each emissions budget period, the Minister of Climate Change must prepare and make publicly available a plan setting out the policies and strategies for meeting the relevant emissions budget. That plan we normally call ERP. It must be published ahead of the commencement of an emissions budget period. We had two ERPs so far. The Minister of Climate Change has to include in an ERP a strategy to mitigate the impacts on iwi and Māori of reducing emissions and increasing removals. The Minister also must ensure adequate consultation on plans, including with sector representatives, affected communities, and iwi and Māori. Must ensure that that consultation has happened.

Our domestic framework under the CCRA aims to provide long-term stability while retaining flexibility to respond to national circumstances. Our legislated 2050 target and emissions budgets provide a clear, durable signal to government, business, and communities. At the same time, our domestic targets are treated separately to our NDCs under the Paris Agreement, which allows our domestic approach to emissions reductions to evolve without undermining our international commitments.

I will briefly talk about the approach to developing those first two Emissions Reduction Plans.

In Mr Smiler's primary evidence, he talks about the development of New Zealand's ERP1 and ERP2. I will touch on some of the detail in my oral evidence. What I see Mr Smiler is seeking to show is that the development of these plans is complex, as government considers how interventions across the

economy impact emissions, and how these interventions impact people and communities.

The government must balance environmental, social, and economic interests when determining the best approach to meet its domestic targets. This balance will evolve with changing global and domestic contexts, influencing the preferred approach for achieving climate goals. Key considerations include New Zealand's unique national circumstances and the values and aspirations of impacted communities.

Throughout the development of ERP1 and ERP2, there was extensive engagement with iwi/Māori on key climate mitigation policies. The Treaty of Waitangi was considered throughout the development of ERP2, including as part of the Māori Rights and Interest workstream. The way we reflected the Crown’s legal obligations under the Treaty and the CCRA was by ensuring that Māori are included the development and execution of policies in ERP2, ensuring these actions are fair, and that Māori perspectives and Treaty rights are acknowledged and respected.

Officials advised on mitigating impacts on iwi and Māori in ERP2, including on the Climate Change Commission’s recommendations relating to Māori rights and interests in the development of ERP2.

We also received advice from many iwi and Māori groups and PSGEs in regional hui, workshops and one-one sessions prior to policy components being formalised. Perspectives on how to best support Māori- and iwi-led initiatives were wide-ranging, from dedicated funding or investment into Māori-led initiatives in renewables, to enabling Māori to contribute to the policy-making process and governance, and providing support and training to Māori for green economy jobs. This feedback impacted and shaped the policies and funding allocation in ERP2, including the Māori Climate Platform and its pilot programmes.

My colleagues, Anne Haira and Gina Rangi, discuss the development and work of the Māori Climate Platform, as well as the relationships with Pou Take Āhuarangi, and Te Tai Kaha in their evidence. Julie Collins also covers sector-led initiatives with Māori in her evidence.

Look, I finally provide just a short summary of my own supplementary evidence, which covers the recent decisions to amend the CCRA.

Since early 2025, the Government has made decisions to amend the CCRA, mostly through two amendment Bills:

> The first one is the Climate Change Response (2050 Target and Other Matters) Amendment Bill, which is now an Act as of December 2025; and
>
> The second one is the Climate Change Response (Adaptation, Efficiency and Effectiveness) Amendment Bill. That has not been introduced to Parliament yet.

I will talk about the first one first, the 2050 Target and Other Matters one. So, this Amendment Act introduced a series of targeted changes to New Zealand's 2050 target and emissions budget reporting. The biogenic methane component of the 2050 target was amended to a range of 14 to 24% below 2017 levels by 2050, replacing the previous range of 24 to 47%.

The Act legislates a requirement for a further review of the 2050 biogenic methane target in 2040, with the review required to consider the latest science on methane and no additional warming, and the international community's progress towards emissions reductions, which includes New Zealand.

The Act defers the deadline for setting the fourth emissions budget and for responding to revised advice from the Climate Change Commission to 31 December 2027. That's to allow time to consider updated advice from the Commission that will align with the revised 2050 target.

The emissions budget framework was also amended to require consideration of the implications for food production when advising on and setting emissions budgets.

Finally, the Act removes the requirement for New Zealand Emissions Trading Scheme unit limits and price control settings to accord with New Zealand's NDC under the Paris Agreement, so that the settings framework is focused on alignment with domestic emissions budgets and the 2050 target.

I will talk now about the Adaptation, Efficiency and Effectiveness Amendment Bill. This is the one that hasn't been introduced to Parliament yet, so I suppose the name could still change actually.

So, this proposes a package of amendments intended to improve the operation, workability and efficiency of the Climate Change Response Act.

There's quite a few changes in here but I will speak briefly to the principal ones.

In relation to adaptation, the Bill introduces a new statutory framework for local adaptation planning, which aims to support coordinated decision-making and investment against climate-related natural hazard risks.

The Bill also proposes a range of changes to the Zero Carbon Framework which are intended to reduce administrative and resourcing burdens while retaining core accountability and monitoring functions.

Amendments were also proposed to address the operation of the ETS, in order to improve the scheme's efficiency, transparency, monitoring, and oversight of the secondary market. These include changes to industrial allocation settings, the potential inclusion of more carbon removal activities in the ETS and a move from annual to biennial auction volume and price control settings to improve market stability and administrative efficiency.

Finally, the Bill makes a number of other technical and administrative amendments, including to forestry and ETS operations, and is really about clarity, consistency and effective functioning.

I hope my and Hemi Smiler's evidence has adequately conveyed that climate change mitigation policy involves navigating complexity, uncertainty, and differing perspectives. Our Ministry officials strive to provide advice that adequately balances environmental objectives with economic and social considerations to ensure the Minister meets the objectives under the CCRA and our international climate obligations.

In Mr Smiler's evidence, he also made a point to acknowledge how engagement with iwi and Māori has strengthened our climate response. We recognise that more can be done to ensure that Māori voices are meaningfully involved in decision-making. Strengthening partnerships with iwi and Māori is essential to achieving equitable and enduring climate outcomes. We are committed to strengthening our engagement practices to ensure Māori are closely involved in the development of upcoming key climate policies and decisions. Thank you.

JUDGE MILROY:

Thank you Ms Prebble. You have very nicely brought us to the morning tea break, in fact ahead of time given the amount of time proposed for your evidence in chief. So we will take our morning tea break and then we'll come back for questions after that at 11 o'clock.

HEARING ADJOURNS: 10.32 AM

HEARING RESUMES: 11.02 AM

JUDGE MILROY:

Kia ora anō, I hope you all had a refreshing break.

JUDGE MILROY ADDRESSES MR PREBBLE – NIL RE-EXAMINATION (11:02:17)

MR SHARP ADDRESSES JUDGE MILROY – TIMETABLE (11:03:01)

(11:02) MR SHARP TO REBECCA PREBBLE:

Q. Tēnā koe, Ms Prebble. Can you hear me?

A. Yes I can, yes, tēnā koe.

Q. Thank you. Tēnā koe. My name's Michael Sharp. I'm representing a number of clients including New Zealand Māori Council and other Māori councils and also some trusts, forest trusts in East Cape. Thank you for your evidence and given, together with Mr Smiler's evidence, it's quite extensive evidence so I won't deal with all the questions I have here as I just indicated to her Honour. I just want to ask you some high level questions and then some further specific questions in writing. The higher level questions I have is just a general discussion on the basis that policy decisions regarding climate change are made in general, the adequacy of the current Climate Change Policy Framework and the emission pathways that Aotearoa is presently on. So, they're the issues that I will be asking you. In doing so, I'll put some reply evidence that's been filed by some of our witnesses, in particular the economist Jeff Bertram. Have you read his evidence and his reply evidence?

A. Yes I have.

Q. All that will help, yes. And also the evidence of Tim Naish, our climate change scientist. Have you read his evidence?

A. That one I'm not familiar with.

Q. Thank you. That's to a lesser degree I think I'm going to put to you so that should be fine. Now just first with the question of policy decisions. So in your summary at paragraph 3, you identify that – you discuss that climate change policy involved a balancing of goals, not everyone can agree. And then at paragraph 19 you discuss involves balancing of interests of different stakeholders, environmental and economic outcomes. Now, just as an add on to that, I notice in the Crown's opening submissions, they further discuss in that same context that policy analysis

is what's – what's feasible given the balancing of the different goals that the government has, and it really has an issue of optimising what it achieve over its goals in the long-term and deciding policy. So that's – does that all sound generally correct to you?

A. Yes, that's what's in my evidence, yes.

Q. Yes. So, within that exercise, so is it correct, isn't it, that a policy maker, so somewhat a policy analyst, means to allocate appropriate weight to relevant goals to decide what importance they are and what you achieve in your decisions **(inaudible 11:07:35)**?

A. Broadly. It's not a sort of a numerical thing but it's a sort of a isolating out of the key considerations that might take you one way or another and working those through to an overall set of recommendations or advice.

Q. And so, in a context – in summary 4 you discuss balancing Māori interests and Treaty of Waitangi considerations. So given that the CCRA specifically acknowledges the Treaty, that seems to be a relatively important consideration, is that correct?

A. Yes, we frequently, in our advice on various things, bring in either the results of engagement with Māori. Or if that actually hasn't happened for one way, reason or another then we bring in results of our own analysis of what we understand the relevant interests to be and any feedback from similar consultations.

Q. Yes, and to achieve those – or to comply with the Treaty and to acknowledge Māori interests? **(inaudible 11:08:50)** that exercise.

A. Yes, that's part of why we're doing it, yes.

Q. And also at 5 and 6 you said the policy designs for flexibility and meeting international agreements. So of course here the most relevant international agreement is the Paris Agreement which has the underlying aim of developed companies, developed countries, achieving the highest possible ambition in reducing emissions. So that's a very considerate – well, important consideration, and indicates that this is an important goal in setting content policy, that's correct?

A. Yes, I agree with that, yes.

Q. Now, just then – Mr Bertram in his evidence, you probably maybe know, he took issue of Mr Smiler's statement that policy needs to balance

acceptability, feasibility and affordability. His view is that the focus should be on feasibility. So if you look at feasibility in a context of optimising outcomes, that's a legitimate comment, isn't it?

A. Sorry, what's the legitimate comment?

Q. Well, Mr Smiler said you need to balance acceptability, feasibility and affordability. Mr Bertram's comment is that the focus should be on feasibility, and that's in the context of optimising outcomes. So did you have an observation?

A. I think Mr Smiler's evidence around balancing – his statement around balancing feasibility, affordability and acceptability is accurate.

Q. So for example, what do you mean by acceptability, who needs to accept it?

A. That statement from Mr Smiler reflects a perspective that dramatic swings in climate policy are like desirably avoided. And if you've landed in a place that is very acceptable to one set of people but completely unacceptable to another set of people, it's unlikely that that sort of policy will be stable over time.

Q. That's a matter of optimising policy, isn't it, rather than meeting what is acceptable to a certain segment of society?

A. Sorry, I'm not totally sure the distinction you're drawing. What do you mean by optimising policy? Just getting policy –

Q. Well, we just talked about the object of climate change policies optimise the government goals. So that's the overriding consideration rather than trying to meet acceptability of a certain segment of society. That's a fair observation, isn't it?

A. When we give advice, the core framing that you'll often see in our advice is balancing ambition, economic impacts and feasibility, or words around to that extent. Underlying some of that, there is a sort of an acknowledgement that ideally you don't have broad swings. Sorry, I feel like I'm not quite getting to your point.

Q. Perhaps we can just move on anyways, sort of got limited time. So in looking through your evidence with the changes in Climate Change policy here, some of the decisions appear to be not the subject of policy analysis to optimise results, but are political decisions by the government. Just

some examples, keeping agricultural over the ETS, result of the National-ACT Coalition Agreement, reducing methane gas target, result of a National-ACT commitment to review the 2050 target, and consistence **(inaudible 11:13:03)** no additional warming. Making food production a priority as a result of a ministerial directive to the departments. Propose efficiency amendments were the result of a Ministerial directive in 2025 to work more efficiently and identify savings. So the point is that not all of the current policy is a result of stringent policy analysis, some of it is as result of political decisions. Would that be a fair observation?

A. So the origins of these different things varied. So as you say, a number of the start of some of these policy changes over the last, well, particularly over 2025 were coalition agreement commitments, so some of them were coalition agreements, that's right. Some other policy changes were not coalition agreement commitments but ministerial decisions. That's quite normal though. It's also, I guess, just because something was in the Coalition Agreement doesn't mean that policy analysis didn't happen on it. I mean, the Ministry for the Environment didn't advise on the Coalition agreements itself obviously. Obviously we didn't. But that doesn't mean but no one did.

Q. Thank you. Now, if I just wanna look at the adequacy of the climate change policy. So you've made observations that, at paragraph 13, 18 of your summary, about New Zealand's emissions profile is built different. We got high renewable energy, high agricultural emissions. So just – but even given those differences, is it – do I understand from your evidence that you are saying that given those differences and given that even though our emissions aren't reducing much, that we have an optimal balance of climate change policy at the moment?

A. Those sections in my evidence are intended to contextualise a bit, the parts about overall climate change response that are slightly unusual. So we are unusual in having a split gas targets. That's unusual. And we are unusual in our use of forestry offsets to the degree. I think it would be a big call for me to say that any particular combination of policies, whether this one or anyone at all, are completely optimal. That's a – that would

be a strong statement for me to say as a policy person. You can always find a problem.

Q. Well, highest possible ambition as in Paris, do you think we're getting – is it within the vicinity of that do you think, or what's your view?

A. So the highest possible ambition as set out in the Paris Agreement is very much a point that is one for governance to decide, and our current – and about two nationally determined contributions that are currently out there that we have set are our highest possible ambition because the judgment is for countries themselves.

Q. Yes, but I'm just talking the context of – throughout your evidence you justify the different policy changes and policy settings within a, I guess, within a policy setting analysis that it's efficient or optimal, but overall have you a view on our total policy settings?

A. That choice isn't one for me to make, that's a choice that elected people make.

Q. Thank you. Now, I just want some views that, in the evidence that we've filed on the overall adequacy of the policy.

WITNESS REFERRED TO EVIDENCE OF GEOFF BERTRAM #A005

Q. So, Geoff Bertram in his evidence at #A005, paragraph 24, says the policy is inadequate because of exemptions for agricultural and industrial matters, uncertainties as to forest, forestry incentives, political decision-making, lacking binding obligations of officials. I'll just go through these different critiques and you can comment then. He also refers to the climate action tracker monitoring site 2023, New Zealand policy is highly insufficient on track for three degrees. The most recent 2026 Germanwatch Climate Action Performance Index. New Zealand ranked very low for policy, dropped from 41 to 44 out of 60-something countries overall. Refers to good policy framework under the CCRA ETS but lack of meaningful policy to implement, and recent policy backsliding. Mr Bertram in his evidence at paragraph 9 also refers to criticism by the parliamentary environment – Commission for Environment, policy ineffective because of uncapped ETS low carbon price, reliance on forestry, little attention to domestic emissions. So given that you are a

policy analyst or that's your expertise, have you got any comments on those critiques?

A. So there's quite a lot in there. Are there particular – He's gone through quite a list of things. Are there particular ones that you're particularly interested in? I could talk to – It's about hard to talk about them as a complete whole because a lot of these various changes and elements have different goals and different objectives. I can speak to the intention of specific ones, it's a little bit hard to do it as in that huge list.

Q. Well they all say the same thing. Basically we have legislated framework but we've got a lack of meaningful policy to drive reductions and emissions.

A. Yes, I see. Our current predictions show that we are in fact meeting our emissions budgets and on track to do so. That's probably the kind of core place I would start.

Q. But we're not on track to meeting our NDC, our international commitment for 2030?

A. There is a gap to meeting the NDC currently based on our projections.

Q. So if I could put it this way, so our main policy tool is a ETS and – but that's a pretty fairly hamstrung in that half emissions agriculture, **(inaudible 11:20:15)** 25% and get free allocations. So it has its major limitations. And given the current back, well, withdraw some policies, there don't seem to be any other government policies that would meaningfully bring down emissions at the moment, would that be a fair observation?

A. Are you talking about agriculture specifically, being the one –

Q. No, no, overall. Overall policy settings.

A. With the Emissions Trading Scheme, well, as you say it doesn't cover agriculture, which is just slightly over half of emissions, it does cover everything else and that's – so it certainly does affect all those other sectors. Agriculture, the current government's approach is primarily to focus on a market-led and technology-led approach, investing in significant – significant amounts of money in emissions reduction technology.

Q. Okay. I've only got a couple of minutes. So I just want to – you talk about pathways. So, your summary at 13, you say multiple emissions pathways, 1.5 degrees, Paris targets. Mr Naish, Professor Naish in his evidence said that New Zealand's current pathway where there's little or any reduction in emissions in the – at the moment or the immediate future, will overshoot 1.5 degrees for 2050. Have to rely on very steep cuts close to 2050, rely on forestry, carbon storage and offshore credits, and then continue to go negative emissions after that. Now, that seems to be our profile, does it? We're going to have to – I'm feeling in the latest claim latest plan, we have to rely on huge increases in forestry and evolving carbon capture and perhaps some overseas credits. So that's basically the pathway that we've got towards the Paris targets, 1.5 degrees, is that a fair comment?

A. Just the starting point of that comment, sorry, look, I can't actually see the evidence. I wonder if that – Is there a way I could see the evidence? Maybe it doesn't really matter for now, but maybe it just might be later. Just the starting point around that you quoted that we're not making meaningful reductions or something like that.

Q. Yes.

A. So our current projections do show that we are making net reductions and are in fact on track to meet Emissions Budget 1 and Emissions Budget 2. So I mean, that's just the state of our current projections and those are our binding domestic targets. So that doesn't seem – that just seems factually wrong to me in terms of we're not making progress, because we are projecting progress.

Q. Sorry, can I just – I'm talking about international commitments rather than our own domestic budgets.

A. All right. The first NDC is certainly more – is more challenging than our domestic budgets. The government's been quite clear that it wants to prioritise domestic measures. But – and is open to international purchasing to – sorry, I was briefly distracted by the screen sharing.

Q. That's fine.

A. But open to international purchasing to meet that.

Q. And the last question. Do you know anything about what's happening with international purchasing for the NDC. It was in the first emissions reduction plan but wasn't in the second one.

A. Well, you probably wouldn't expect to see it in the emissions reduction plan because they're about meeting our domestic commitments as opposed to meeting NDCs. So at the moment the government hasn't made any firm decisions around offshore purchasing but we are exploring various opportunities with various different countries so that that option is open.

Q. Thank you, Ms Prebble, thank you for the answers to my questions.

JUDGE MILROY:

Thank you, Mr Sharp. You have just made it in time. The next questions are from Mr Bennion.

MR BENNION:

Thank you, Judge.

MR BENNION ADDRESSES JUDGE MILROY – TIME (11:24:34)

(11:24) MR BENNION TO REBECCA PREBBLE:

Q. Thanks for your evidence, Ms Prebble. I represent several groups as you heard earlier, so I'll crack straight in. You are chief advisor on climate change and resource efficiency, and you're here talking about mitigation. Right?

A. That's right.

Q. Right, okay. I just wanna give a context for this. I'm looking at Ms Rangi and Haira's evidence, we don't need to go there but they just simply say the national climate change risk assessment says some risks have a disproportionate impact on Māori, and one of the risks they highlight is risk to buildings due to extreme weather events, drought, increased fire, weather, and ongoing sea level rise. So risk to buildings due to extreme weather events, fire, drought, sea level rise. That's a disproportionate impact on Māori. We've also got to think about fatalities, don't we? That

means there's a higher risk of fatality for – potentially a high risk of fatality for Māori who may be in an exposed situation in those terms?

A. I guess logically, yes, well we talk – I suppose in the context of sort of flooding risks which is probably where that's – where fatality is most relevant in that context. What that evidence is really speaking to is that many Māori live in coastal or otherwise flood prone areas. So to the extent that we're talking about flooding risks and, yes, I suppose fatality would be part of that.

Q. So the context of your advice is – we're not talking about social welfare changes or education, we're talking about potential fatalities from this growing risk. And a special disproportionate possibility that that's gonna occur to Māori. That's part of our context, isn't it?

A. Look, I don't think our evidence goes so far to actually conclude – to speak to particular fatality risk or does any sort of analysis on, you know, really whether that is higher for Māori and non-Māori, but I see the logical point you're making, yes.

Q. All right. So it's a pretty – so that's our context. As a public servant you're required to act objectively, not bringing personal ideas in but to say I'm objectively looking at the information in front of me and giving you my best advice on that. That's your role, yes?

A. Mhm.

Q. And politically neutrally. You act politically neutrally, yes?

A. Yes, that’s right.

Q. Yes. As a general approach to risk, we have, and I'm actually just looking – thinking about a interview that I saw today about the things we're doing around the oil issue and how much oil we've got because of what's happening in the Middle East. A prudent approach to risk is to hope for the best and plan for the worst. That's a general approach?

A. This is getting a bit beyond my sort of core area.

Q. Okay, yes.

A. But it sort of – sounds all right. There’s a **(inaudible 11:27:53)** matter of degree underneath that.

Q. All right, let's put that one to one side then. In this context, we have the word ambition, and I've got a dictionary definition here: a strong desire to do or achieve something. That's the definition of ambition, yes?

A. Yes.

Q. A strong desire to do or achieve something?

A. If that's the dictionary definition then I would not disagree with that.

Q. Well I'm assumed that you're familiar with the word ambition in this context?

A. I am.

Q. So you understand that your role is to provide advice to the government about are they exercise – are they achieving a strong desire in their policies to do or achieve something. That's the advice you're giving?

A. That's, well, that's with a meaning of ambition. We go back to the Paris Agreement a lot. Highest possible ambition.

Q. So in other words, you would be saying to them, if policies are clearly inadequate or even just not achieving very little, you would be saying, I'm sorry, but that's not meeting the word ambition. You might think it is and it's your call politically but that's not a strong desire to achieve this. You're actually some way from that. If that was what was coming through. Is that fair?

A. In the actual advice given, and it's probably most sort of obvious actually in the advice around the second NDC and the methane target change. One of the core criteria that we used to frame our advice is really the concept of ambition, like how consistent – well, the exact words we use depend to some extent on context but contribution to the global effort or contribution to the purpose of achieving 1.5 degrees in the CCRA which gets to that.

Q. As an extra gloss on this, aren't you trying to achieve in relation to NDCs at least, highest possible ambition? So a very strong desire if you like to achieve an outcome?

A. Highest possible ambition is correct, those are the words in the Paris Agreement.

Q. Now in your extensive bundle of papers, and thank you for pulling that together, you make mention in your papers to a emissions monitoring

report from the Climate Change Commission. So, it's one of the monitoring reports on emissions, and it's in July 2025. And you haven't included the reports. I'm just gonna put three pages from that report to you, or actually two pages. But you do say that on the 8th of October 2025, cabinet respond – said here's our response to that monitoring report. Do you remember that?

A. Look, I do. I would quite like to have it up –

Q. Yes. Let's – no, fair enough, fair enough.

A. As you say, there are a few pieces of paper here.

Q. Okay, so let's just, if we can – I think we've sent it through because I just realised that that document wasn't attached, it's referred to in the cabinet minute as saying: "We've attached the Climate Change Commission monitoring report". But it's not actually there.

A. Sorry about that.

Q. So I'm sorry, members, we will just put up – I've restricted to just two pages. So I hope we're gonna be okay here. Now, the very first page is actually just the cover page so we know where we are, but can I just come down to the third page, the last page? Now, do you see that there's a heading there, "Partnership", and there's a heading "Māori climate platform"?

A. Yes I do, thanks for making it a bit bigger.

Q. Yes, thank you. Now this is talking about the Māori climate platform, primarily in relation to mitigation. That's why it's in this report. Do you see that? Our earlier advice, Māori Climate Platform, key mechanism, da da da, progress on – oh, both mitigation and adaptation, actions require increase funding, they're saying under the Māori climate platform, second paragraph, do you see that there?

A. Yes.

Q. I wanna come to the end of the big paragraph on the right-hand side. Do you see that?

A. Yes, I do, thank you.

Q. It says slow delivery of the platform, inadequate current funding, and the lack of any signal funding post- June 2026 has reduced the ability of iwi Māori to contribute to emissions reduction. This introduces risks, the

government – introduces risks. The government's commitment to partner with iwi Māori climate action will not be seen as genuine. So do you remember that was the advice of the Commission to the government in this report?

A. I am being reminded of it now. Look, I don't actually have a very clear memory of this at the time I'm afraid, but I see it now, thank you.

Q. Now, that 8 July – oh, okay, let's just go to the next page in the same report. No, just while we're down there, strategic partnership through the transition. You see it says the government does not have a specific lever to achieve strategic partnership with iwi Māori through the transition, as the equitable transition strategy was removed during the amendment to the first Emissions Reduction Plan? Do you remember anything about the equitable transition strategy being removed? Was that something – I could pick that up with others if I need to.

A. No, probably – it's probably a fair thing to ask me because it is around the Emissions Reduction Plan. Look, I actually don't remember a lot about that. I'm really sorry. I mean I'm sure it is true because the Climate Change Commission would not have said it. I mean, they would've kept that. I'm sure it is true but actually I don't have a great memory of this. I am sorry. But I really accept that this is part of my evidence.

Q. Yes, I mean, it'll be helpful if they'd footnoted it, from my point of view, too. Okay, can I just come to the next – the page above? Now, you may remember this page. Do you see it says a sector, it's got an outcome area – might wanna make it bigger. I just want to look at the bottom of it really and the overall colour scheme that we have in front of us. You see down the bottom it says red is for insufficient to deliver, orange is significant risks, and yellow is moderate risks, and those are risks that policy in emissions reduction – Emissions Budgets 2 and 3, there's either a significant risk - won't be achieved, moderate risk - won't be achieved, or there's insufficient to actually deliver what's being proposed. Do you see that – you remember this table?

A. Yes, I do, yes.

Q. Okay. It's almost entirely moderate risk. And actually, and all significant risk that there won't be achieve – these won't be achieved, will they? Right? That's what that –

A. That's what that means.

Q. So that was the advice of the Commission to you in July 2025, yes?

A. Yes. Sorry, yes.

Q. Okay. And this is before you remove the ETS from the Emissions Trading Scheme because you're gonna bring it in 2030. You then made a decision in October to say, no-no, it's never going in the ETS.

A. That's right.

Q. Okay. And it's also before you officially said to people, "we're actually just getting rid of the Māori Climate Platform".

A. The Māori Climate Platform is still ongoing.

Q. Or reduced significantly, is that right?

A. The exact details of this is really more something for Anne Haira and Gina Rangi, but it's still going.

Q. Okay. I'll pick up with them where that's got to. This doesn't – this page here doesn't at all look like a strong desire to do or achieve something, does it?

A. This is an input into a risk management approach that we have for meeting the second emissions budget.

Q. As an advisor, if you're reading this table and saying to a government, "is this ambition or not," this doesn't look like a strong desire to do or achieve the things in the emissions EB2 and EB3 budgets, does it?

A. I can talk a bit to how we do actually take this and how we build it into advice and decision-making.

Q. Do you think that there being significant risk or moderate risk of simply not achieving Emissions Budget 2 and Emissions Budget 3 outcomes as reported by an independent body, isn't that something you should say to ministers: "hey, an independent…" – you've at least gotta say an independent body is telling you, you are lacking ambition in this area. Isn't that a fair statement to be making to ministers?

A. We certainly did tell ministers that the Climate Change Commission had raised a number of risks in its monitoring reports. There are a number of other – we have quite a process for assessing risks.

Q. All right, and did you dispute any parts of the – I looked at the reply from the government to this in October 2025. It didn't seem to dispute any of the statements in this emissions reduction report. Were there any of them disputed internally? Because I haven't seen those documents either.

A. We didn't dispute any of the specific conclusions the Commission landed on. We have our own risk assessment process that the Commission's advice is an input to, but it's not all of it and that does explain – we did land in a different place in terms of our conclusions but that's not the same as disputing the Commission.

Q. The emissions – the response to this that comes out in October doesn't dispute ,as I can see, anything in the report from the Commission. And, okay, we can go to a page of it but I don't think we got time, but I'd suggest there's nothing in your reply that the government sent back in October that actually picks up on any of these issues and explains how you're going to make things more ambitious. No?

A. The reply is not really about how to make things more ambitious. The reply is really about are we on track for emissions budgets. Is there something else we need to do now? Do the risks seem manageable?

Q. And your reply didn't mention the Māori Climate Platform at all, did it?

A. I can't actually remember, but –

Q. I can't see it in the formal reply.

A. All right, I guess probably wasn't then, yes.

Q. Okay. I then want to come on to the – just the methane issue. So at the same time you'll getting the report on the – the methane review panel report, in this sort of time period. We've talking sort of July, September, October 2025. Okay. That Emissions Review report, just looking at it, says that, and I don't know if you're aware: "If the world follows a high emissions and warming scenario such as shared socio-economic pathway 8-5, the high end. Then methane lifetimes would reduce due to the enhanced production of the hydroxyl radical, lowering the level of methane emissions reductions required to satisfy the no warming

condition." Did you understand that that's the basis on which the no warming – no additional warming condition was set?

A. You're talking about the methane panel's report?

Q. Yes.

A. Yes, I see. The methane panel was asked to advise on what methane target would be consistent with the principle of no additional warming, and in order to give that advice that panel needs to have some – there's a sort of a starting assumption of what is the global temperature pathway the world is on because what achieves no additional warming is dependent on the pathway that the world is on.

Q. Do you understand that explicitly they say throughout that report, if people don't reduce their emissions, greenhouse gas emissions, that means methane will come out of the atmosphere earlier because the planet will be hotter. And that means our no additional warming level for methane can go lower and lower and lower. Do you understand that's what the report was saying?

A. The hotter – I understand the report to be saying, and this maybe is exactly what you're saying too, but the hotter the planet gets, so the more the overall globe is warming, that means that the higher New Zealand's methane emissions can be and still maintaining no additional warming relative to a base, yes, that's my understanding of it which I think is what you're saying too.

Q. Yes. So in other words when the government commits to this no additional warming target, and it says it's between 14 and 24% I think, it's explicitly saying if other countries and New Zealand don't reduce greenhouse gases or if their ambition isn't achieved or they have low ambition in that regard, then our additional warming – we can actually put more methane out there, can't we. We can head up towards the 24%, not just the 14%?

A. That's more or less right. So, the 24% is a reductions rather than a –

Q. Yes, sorry, other way around.

A. Yes, the other way around. But if everyone, basically, if the world is hotter and not achieving 1.5, that means that the amount of methane

New Zealand can emit and still have a sort of stable line of warming is a larger number. It's really fiddly.

Q. Yes. So if you're a farmer in New Zealand, your interest is in there being, in terms of methane emissions and the no additional warming target, your interest is in the rest of the world not doing enough to reduce greenhouse gases because that means that no additional warming target gets easier to meet, doesn't it?

A. Well, I guess that depends on the particular farmer's perspective, but…

Q. Well, doesn't it put the New Zealand government itself in a slight conflict of interest situation? Because if it's not ambitious, then the methane target gets better for one sector of the society. Doesn't it?

A. The scientific or technical conclusion from the methane panel, I think – I probably wouldn't describe it as a conflict of interest but just one of many considerations that the government has to filter through.

Q. But doesn't the methane review report explicitly say that? If the world follows a high emissions and warming scenario, such as 8.5 which is the very worst, then methane lifetimes reduce, lowering the level of methane emission reductions required to satisfy the no additional warming condition. That's exactly what it says, isn't it?

A. I agree that the Methane Panel's advice is that the warmer the globe gets the more methane New Zealand can emit and satisfy the principle of no additional warming.

Q. All right. And in November 2025 – well, let me just, two questions then. One is that, as I read the methane review report, it says that it didn't look at the 8.5 scenario, it didn't look at the 3-7 scenario, it looked at sort of 1-9 and 2-1 or something. It used lower end scenarios for – scenarios where emissions – people have been quite ambitious around the globe and emissions come quite far down. Is that fair?

A. Yes, I don't think they went in detail about that 8 degrees one. I think that's right, yes.

Q. Okay. So in November 2025, the UN advised everybody that 1.5 degrees is essentially gone, right, we're going to overshoot and hope to come back. Do you remember that report?

A. Yes, I do.

Q. So you haven't gone back to government yet to say, listen, the whole basis of how we've approached both the methane review issue and the whole process of how achieving – approaching emissions reductions needs to be changed, because 1.5 is effectively gone?

A. We haven't given updated advice based on that particular point, no.

Q. But you did get a report from the Climate Change Commission saying that you should be more ambitious than this government is being, didn't you?

A. On the Net Zero target in particular?

Q. Yes.

A. Yes, that's right, that was the advice.

Q. So they said you should be going to negative 20 megatons by 2050 and you should reduce biogenic methane 35 to 47%, and you rejected that advice?

A. That wasn't the option that the government pursued.

Q. You rejected that advice?

A. So, the government chose a different target than what the Commission had recommended. I wouldn't characterise that as rejection of the advice. It was a really valuable input.

Q. In your expert assessment as a public servant, acting impartially, this is not a strong desire to do or achieve something, to keep within 1.5 degrees, is it?

A. Well, what I'd bring you back to really is the way – what we actually advised on this, and we framed it, as we do in many situations, around a couple of core considerations. Consistency with 1.5, economic impacts and overall feasibility.

Q. Just lastly on the methane issue, if we overshoot, which is now expected, the 1.5 degree target, and have to try and reduce emissions to get back to within the 1.5 degree target, how does the methane review assist that? Because it's assuming that all emissions will be bad. The methane number will drop – the methane reduction required will drop and drop and drop. So it's not gonna help with overshoot at all, is it?

A. I think one of the things we – points we've made in our advice is that the no additional warming principle is a sort of helpful input but it's not actually

the only basis on which you would make a decision about appropriate target level.

Q. And the methane review report, just lastly, says nothing about tipping points, does it?

A. I don't think so. It was pretty tightly scoped. It was – asked to provide advice on targets that would be consistent with no additional warming, but it wasn't asked to recommend the targets or a broader set of factors. No, that's right.

Q. At no point have you advised the government that their policy settings regarding methane in particular are not ambitious. You haven't said to them, “listen, in terms of ambition, that's just not ambitious”? Especially in light of the Climate Change Commission report. It’s whether you’ve given that advice is what I want to know.

A. So our advice – I think a lot of our advice has been filed. So what you will see is an assessment against those kind of pre-criteria of consistency with the 1.5 degree purpose feasibility and economic impacts, and there are certain options that were, you know, in process of this were various options for the methane target that we advise were less consistent with the 1.5 degree purpose than other ones.

Q. Well least consistent – one assessment, and those are words, “less consistent”, but why wouldn't you advise them on whether or not it was ambitious? Why don't you see that your role is to take the words and the statements that are being made in all these reports and say, “this is not exhibiting a strong desire to do or achieve something”?

A. The choice of ambition is really a one that, that elected representatives are best placed to make. We can give the various things that feed into that choice but it is one that is ultimately for people who have been elected.

Q. Do you think current policies might lead to a disproportionate risk of death for Māori?

A. That's a really tricky question to answer and involves quiet a few different assumptions about causal links, like, I just don't feel quite well placed to make.

Q. Okay. Thank you.

JUDGE MILROY:

Thank you, Mr Bennion. We next have questions from Tūkau Law, 40 minutes.

MRS TEREI-TIPENE:

Thank you, Ma'am. Tēnā koe, Ms Prebble.

JUDGE MILROY ADDRESSES MRS TEREI-TIPENE – MICRO-BREAK (11:49:17)

HEARING ADJOURNS: 11.49 AM

HEARING RESUMES: 11.52 AM

(11:52) MRS TEREI-TIPENE TO REBECCA PREBBLE:

Q. (audio resumes 11:52:28)… for your evidence and your time today. I have a couple of questions in relation to the emissions reduction plans and then I'll come to your evidence around the more recent amendments to the legislation and policy. So we'll start with Mr Smiler's brief, and you won't need to go to it, but at paragraph 100 he's talking about the two Emissions Reductions plans.

A. Yes.

Q. One in – the first one published in May 2022 and the second in December 2024. And I'll just ask the Tribunal staff to pull up the Emissions Reduction Plan, the first one.

A. Thanks, that'd be great.

Q. I tried to do it in the break to save my time.

A. Yes, it is a pretty long document.

Q. I might be able to – while they're working on it, would you like the reference on your own bundle? It's at his – Mr Smiler's paragraph 100 and it's the footnote, footnote 84 and footnote 85. I might be able to get there without you actually having to look at it.

A. Please give it a go.

WITNESS REFERRED TO MR SMILER'S BOE, PARA 100, FOOTNOTE 84-85/ FIRST EMISSIONS REDUCTION PLAN

Q. I'll go in if we're able to get there with the documents so you can see it for yourself. It was really just as a reference point. But what I'm interested in is the difference between the two policy settings in respect of te Tiriti and the Treaty of Waitangi. And so, in the first Emissions Reduction Plan, which is at page 43 under the Empowering Māori chapter, it outlines the three key actions there and the first one reads, “embed partnership in representation”. Is this sounding familiar to you?

A. Yes, look, I'm more familiar – so this is part of my evidence so definitely do ask me about it. I'm less familiar with the first Emissions Reduction plan than I am with the second one just because I didn't work at the Ministry in the first period. But I can certainly answer questions, it’s just going to take me longer.

Q. Okay. My hope was that you'd be able to see it on the screen so that what I'm saying is correlating to actually I'm reading the actual document itself. But essentially, under that – under the Empowering Māori chapter, there's three key actions. And the first one is, embed partnership and representation. And underneath that heading it says, “to uphold te Tiriti principles. Processes and mechanisms will be resourced and designed alongside Māori to help tangata whenua to actively participate in the climate response”. That's what that document says. And then if we come into the second Emissions Reduction Plan, which is the couple of years later, under the Mitigating Impacts with Māori chapter, it says: “Why mitigating impacts with Māori is important.” And it says: “Recognising Treaty of Waitangi, this section underscores a partnership approach in climate action. It stresses the importance of including Māori in the development and execution of climate policies, ensuring these actions are fair and that Māori perspectives and Treaty rights are acknowledged and respected.” That's what that second Emissions Reduction says. Do you agree that upholding rights and recognising rights are different?

A. Certainly the way that the two emissions reduction plans are worded and expressed there is certainly different. You're right there, they’re different words. I don't think I can really give a really deep view on the specific differences in terms of what they mean in practice though at the level you're asking.

Q. Yes, no, okay, and perhaps maybe it might be a question better put to the witnesses tomorrow that might be talking about the engagement with Māori in relation to this policy development. But just from your general understanding as a public servant and in the work that you've done in advising, do you agree that upholding is at least a stronger standard than recognising a right?

A. I think that's the natural meaning of those words, yes.

Q. And so, would you be aware whether that kind of shift was a directive or request by the minister?

A. I'm not aware of any sort of direct change this kind of thing. We gave quite a lot of advice on just how to – in ERP2 for example, just how to act – how to give effect to te Tiriti and particularly fulfil the obligations that are set out in the Climate Change Response Act, and we gave them quite a few options for how he might want to do that because there's not just one way of doing it. And what ERP2 reflects is the minister's decisions, right, but the particular thing you're talking about I don't remember any specific conversations or anything.

Q. Okay, thank you. Are you aware that there's a reduction in the visibility of Te Tiriti or the Treaty of Waitangi between the first and second emissions reduction plan? There are 25 references to Te Tiriti and three on the Treaty in ERP1 and there's no references to Tiriti and only three references to the Treaty in ERP2. Are you aware that there's a reduction of recognition of te Tiriti in those two documents?

A. I hadn't done that kind of count in that regard. I suppose I'd say that ERP2 is I think a shorter document overall.

Q. Do you agree that that, on the face of it, suggests the de-prioritisation of te Tiriti between the two documents?

A. I really wouldn't characterise it that way. From my own experience, the Minister of Climate Change is very actively engaged in the advice around how to best reflect Māori interests throughout the development of ERP2 and very much wanted that advice, keen to test options with us.

Q. Thank you. I'll come back into the safe zone of your evidence for my own sake I should say. And can I get you to go to your paragraph 21.

A. Yes, sure. I should say, look you really can ask me questions about Hemi Smiler's evidence too. I don't – sorry my hesitation answering those is not because it's not something you can ask me about, I just – it just takes me a little bit longer to remember.

Q. No, absolutely, I completely understand that. Thank you. So from paragraph 21 you're talking about making decisions in relation to the 2050 Target and related amendments. And at your paragraph, over the page, 23, it says that ministers were advised that engagement with Māori might be appropriate, but the minister chose not to do that. Is that correct? T

A. This is – it's probably worth looking at our actual advice to see the stream, sorry. The starting point here was actually ministers were not intending to do a public engagement or consultation process or any engagement. So our advice needs to be seen in that context. We advised that the particular ones that are the footnoted there, we advised that once Cabinet had made a decision we suggested that it might be useful to let particular Treaty partners know of the decision shortly before the public announcement. That's what that is broadly referring to. We also gave general advice that there would be time – that there could be – there is an option to build in testing with people in general, but that – yes, sorry, that's, yes, the advice was around you could let Treaty partners know following cabinet post – pre-announcement, and also you can engage, there's an option to engage in general if you like.

Q. And so in relation to what is there in relation to where that – what that advice was directed at, he chose not to do it on that occasion in relation to that?

A. It didn't happen, that's right.

Q. Right. And so, and then they were told through the usual channels after the announcement?

A. Yes, that's right, yes.

Q. And so, in that particular instance, is it the case that there wasn't really an opportunity to participate or influence decision-making processes in relation to that?

A. Treaty partners weren't engaged in the context of the methane target change.

Q. Right. And so, further down at paragraph 26, you're talking about the preparation of the Regulatory Impact Statement and you discuss impacts on Māori from paragraph 28. Are you able to shed any light or whether the minister considered the content of the RIS in respect of impacts on Māori and whether any subsequent amendments were made?

A. Yes. Let me think. So, what was in, yes, the Regulatory Impact Statement or abbreviated to RIS, the advice in the RIS around impacts on Māori was also advice. It was a stream of advice that we gave as this policy process progressed. The RIS at the end is actually – the RIS is a thing that goes to Cabinet at the time of making the decision that kind of summarises all of the advice. So it's in the RIS but it's also in a stream of advice that goes towards the decision. So what is in the RIS is the general understanding of impacts on Māori that we'd gathered from previous analysis and also previous engagements because a lot of the impacts on Māori that would go towards the change to the methane target are also very similar to ones that would go towards different targets and that kind of thing. So my understanding is the minister did consider that over the course of making a decision and receiving multiple pieces of advice. I don't, I don't think I was personally in any discussions with him about it but he certainly received advice on it.

Q. So once you receive a RIS, can decisions be made, amendments be made after it's been received in relation to further amendments from that point onwards?

A. Yes, that's totally possible. So the way it actually works with RIS' in general. So when Cabinet makes a decision, Cabinet gets a Cabinet Paper saying – a minister brings a paper to Cabinet saying here is the decision I want to make, and that's the Cabinet Paper, and when it's a regulatory proposal is, basically that means a changing the law proposal, you need to attach your Regulatory Impact Statement, and that is not the minister speaking, that's the Department's voice. So this is a summary of the Department's advice. So when Cabinet as a whole is making the decision, they have the Cabinet Paper which is what the minister wants to do. They've also got the Department's analysis of it. And it is possible that Cabinet might go, "I see your cabinet paper and what you want to do,

Minister, but I see your department…" – this is very general by the way, this is not about this specifically, "…but I see your department has looked at some other options. We're actually going to do one of those other options instead." So it very much is possible to change a decision, a proposed decision based on what's in the RIS.

Q. And so, do you know whether any further amendments were made in relation to the RIS in regards to impacts on Māori?

A. No, I don't think there were.

Q. Thank you. I'm interested to discuss the other amendments to climate policies, so kind of pushing a little bit more down into your brief and I come up at paragraph 48 which is where that actually begins. But I'm actually more interested in coming to paragraph 54 where you're talking about efficiencies. And is my reading of this correct that one of those ways of creating efficiencies is by reducing the amount of consultation that needs to occur?

A. Where consultation is a bit duplicative and repetitive, that's – yes, we looked at, when we did this review, we looked at, okay, well where are opportunities where it looks like the amount of efforts, both from government but also from everyone feeding in is somewhat a proportion to the actual value of that.

Q. Right.

A. So yes, consultation was one of them. There's a lot of consultation.

Q. Yes. And so, in relation to updating an Emissions Reduction Plan, which is at your paragraph 72, and amendment to our National Adaption Plan which is at your paragraph 75, that's one of the areas where it suggested that in amendment is made where consultation doesn't need to happen. Is that correct?

A. Yes, that's right.

Q. Updating an emissions plan and amending a national adaptation plan, those can be quite big things that can occur in the process. Do you agree?

A. In some cases, yes. It sort of depends on the context but it could be quite significant.

Q. And so, taking a consultation standard out on those two particular processes, there's the possibility that it could have increased impacts on outcomes, and I'm not talking specifically about Māori, I just mean generally at this stage.

A. Yes. Sorry, you're still going?

Q. No, sorry.

A. That's right, yes, depending on what the changes are, they could really change the nature of impacts, that's right.

Q. Right. And I can see here that although the amendment is that the minister can update and Emissions Reduction Plan or amend a National Adaptation Plan at any time with no consultation, that's subject to the minister considering the impacts on Māori. So that's like a protection mechanism potentially. Is that how it would be characterised?

A. Certainly the minister was keen to retain the requirement to consider the impacts on iwi and Māori, yes.

Q. But the extent to which impacts – So, the extent to which impacts are considered in relation to Māori, that's entirely at the discretion of the minister, is that correct?

A. The requirement is to consider the impacts on iwi and Māori, the exact I guess outcome from that consideration is at the Minister's discretion.

Q. Right? So that terminology, "consider impacts on Māori", that's not – that doesn't require the minister to actively protect Māori in that consideration, doesn't it? It's just – he's just gotta consider their interests along the broad spectrum of other things that he has to consider?

A. Along the broad spectrum but the impacts on iwi and Māori are one of the ones that has been singled out. So there's various other impacts that probably would need to be considered, economic and **(inaudible 12:09:14)** and that kind of thing but that hasn't been singled out.

Q. Thank you so much. I appreciate your time this morning. Actually we'll leave it there and I appreciate your time and giving your evidence before the Tribunal this morning.

JUDGE MILROY:

We now have Phoenix Law. My apologies, I'm looking at the wrong one. We actually have – apologies. We've got differing documents here. Kāhui Legal. My apologies.

(12:10) MR MAHUIKA TO REBECCA PREBBLE:

Q. It's a bit odd doing this on the screen. I can see the Tribunal but not you, Ms Prebble, but tēnā koe.

A. Tēnā koe. Look, I'm here somewhere.

Q. So am I. I'm acting for an organisation called Te Taumata, so a economic consultancy and lobbying group but particularly in relation to Māori forestry interests for the purposes of this inquiry. Look, I just wanted to follow on from some questions from my friend and It's just in relation to the nature of the Crown's obligations to engage with Māori. When you're talking about the changes, paragraph 12 of your evidence I'm at, to the CCRA, you make the comment that ministers decided not to carry out public consultation with stakeholders, noting that consultation was not a statutory requirement for these changes. See that there?

A. Yes.

Q. It's not the Crown's position though is it that there are not Treaty obligations at play when it comes to climate change?

A. There are certainly treaty obligations at play when it comes to climate change and you see that reflected in, well, s 3A of the Climate Change Response Act.

Q. Yes, but it's not just a matter of the Crown consulting when it places a statutory obligation on itself to do so, is it? These obligations apply more broadly.

A. I agree with that as a general statement, yes.

Q. Yes, or otherwise the consequence of that wouldn't be that the Crown consults when it tells itself that it should consult but otherwise has an obligation?

A. Maybe, maybe.

Q. Well, yes, in fact, if statute is the place that obligation is derived from then only the Crown passes statutes, Māori don't get to do it even though we might like to.

A. I agree with the general point that the Crown has treaty obligations to consult and act in partnership even where a statute may not specifically direct it.

Q. Yes, and that's because as I think your evidence notes and your counsel also noted it in opening, climate change is significant for Māori, isn't it?

A. Yes, that's right. My evidence covers the various impacts.

Q. Yes. Well if we look at forestry in particular, your evidence is that New Zealand is unique because a lot of the carbon sinks in New Zealand are forestry related, aren't they?

A. That's right. Yes, the uniqueness is more about the – how much we use forests and removals base from forests as a means to meet our various targets.

Q. Yes, and 30% currently projected to be 40% of forestry in New Zealand is Māori owned, isn't it?

A. I'm actually not completely sure. I think I have known the answer to that but I believe that you know so that probably is right.

Q. Yes. I think your counsel says it in his opening submission.

A. Should have been listening to him closely? But yes, that's certainly right, yes.

Q. And just to clarify the nature of those interests, a large proportion of that land will be land that was returned through Treaty of Waitangi settlements?

A. I believe so, yes.

Q. Yes, and a significant proportion of that land will be land that's Māori land. So it's an economic activity that's occurring on Māori land?

A. I believe that's right, yes.

Q. Yes, so, and these are I think words that various of the Crown witnesses have used the position of Māori in relation to climate change is significant and in fact disproportionate.

A. Yes, that's right. There are reasons why the impact on Māori is disproportionate, yes.

Q. Well it's disproportionate for a number of reasons including that the contribution of Māori is disproportionate. New Zealand relies heavily on forest and up to 40% of those forests are on Māori land or owned by Māori.

A. Well that's right. The more general point that Māori interests are more overrepresented in the primary sector in general which is one of the areas where we would expect the impacts of the transition to be most felt.

Q. Yes. But significantly, Māori are disproportionately large contributor in the sector that we rely upon in calculating our net emissions.

A. Yes, that's right, yes.

Q. The principal way that we look to manage that or a principal tool that the government relies upon is the Emissions Trading Scheme, isn't it?

A. The Emissions Trading Scheme is the government's principal tool for meeting our various budgets and targets, that's right.

Q. And just to be clear about what it does. It's a market-driven initiative or at least claims to be so?

A. Yes, it's a market, it's a market established by the government and framed by, like, a legal framework rather than a kind of a market that's grown up organically, but it is a market, yes.

Q. Yes. Well, I think the policy around it explicitly states that it's meant to be a market-driven mechanism as opposed to, say, carbon tax or something like that.

A. Yes, you're completely right, it is intended to be a market and to try and find the most efficient way of making that reductions.

Q. Yes. And so, it does that through the provision of incentives and disincentives if you like, incentives to plant trees, disincentives to clear land if you're thinking about in a forestry context.

A. In the forestry context, yes, that is what it incentivises, yes.

Q. Yes. And because it's market driven it does that through the way that emissions are priced, doesn't it?

A. Yes, the carbon price is the main thing that either is an incentive to plant more trees or, or fewer trees for now.

Q. Yes. So in other words, depending on what the price is, you'll have an incentive to either clear or to plant?

A. I don’t know if the incentive would ever be to clear, would it? But – sorry, I’m just thinking this through. Well, the price would affect the strength of the incentive to plant.

Q. Yes. So if you think about an area like the East Coast of the North Island, quite a rugged and isolated area, not a lot of alternative economic uses for land. So there’s a significant interest in forestry.

A. Yes.

Q. I don't think that's a controversial statement, is it?

A. I don’t think so.

Q. And you'd accept it as well that in a region like that where, you know, there are limited land uses and forestries are significant land use that has implications that are beyond just the value of a particular stand of trees, doesn't it?

A. There are definitely implications for forestry that go far beyond the Emissions Trading Scheme and Climate Change policy, that’s true.

Q. Yes, so they – to the extent that it supports economic activity in an area then it supports social and cultural, survival, particular community.

A. Yes, there seems like certainly a link there.

Q. Well, if you don't have jobs, you don't have people.

A. Yes.

Q. Yes, and if you don't have people then, you know, you don't do things like populate a marae, you don't have young people to take care of older people because there's nowhere for them to live or to work, so therefore it's doesn't make sense for them to live there. All of those things apply in a community such as the East Coast community, don't they?

A. Yes, look, this seems right to me, like it's clearly an area where you have a lot more expertise than me but I don't – there's nothing you've said that seems different to what my overall impression is.

Q. Yes. So if you think about the application of economic incentives to undertake activities in a particular area and you think about the idea that this is a market driven mechanism, and whether people invest or are able to invest depends very much on the maintenance of that market and the maintenance of the value and the mechanism you create, doesn't it?

A. It would have a big impact, yes.

Q. Yes. And so, if you do things which have a negative impact on the way that that market operates, then that arguably has a negative impact on investment, doesn't it?

A. I think that just must be true, like market volatility and that kind of thing is certainly something that we genuine – really recognise as a bad thing for all of those investment incentives that you're talking about.

Q. So if we talk about the Crown's changes to the CCRA, and my friend has already asked you some questions about this, so this is the section from paragraph 12 through to paragraph 38 of your evidence I think covers that.

A. Mhm.

Q. Actually probably go further, to paragraph 47. And I'm interested in trying to get an understanding of the sequencing of some of these events. I just want to try and clarify that.

A. Yes, sure.

Q. Because you'll be aware won't you that when the announcements of these amendments occurred, the price of NZUs dropped by about 20%.

A. Are you talking about the methane changed specifically or the entire package of changes?

Q. Well I think it's the entire package of change –

A. Yes. I think what you're referring to was actually not so much the methane change or at least it wasn't immediately following that but rather the announcement of the various efficiency changes. That was when we saw a significant drop in the carbon price.

Q. Yes. But either way when this bundle of changes was announced, that was the impact, wasn't it, the carbon price drop by 20%?

A. Yes, we are often quite careful to not try to say too much about cause and effect in terms of the carbon price because it is very market sensitive, but in this – and we don't – this particular occasion it was relatively obvious that that was a market response to the announcement of those changes.

Q. Yes. Why would that be? Were the changes unexpected?

A. We've had a bit of feedback from different people about why that happened. From our own internal perspective, we certainly treated the changes as market sensitive. So we have quite strict protocols around

announcements for market sensitivity reasons. It's always you've got to tell everyone at the same time basically that – so you can't really have some people knowing material information to the market before others. So we have strict protocols. When there's a market sensitive announcement, we manage that very carefully and we put out a pre-announcement saying something's coming everyone, the day before, and then we announce the actual thing on the day. So this package of changes was treated as market sensitive and that at some level we knew that it could affect the market. We don't, and we would probably always – it would always probably be a bit foolish to try and actually predict the specific impact saying, you know, this is a 20% or a 5% or anything like that. We don't do that, that's just a bit more than anyone can realistically do. But we certainly treated them as market sensitive and that we acknowledge that there could be an impact.

Q. Yes. So it highlights two things firstly, doesn't it. First of all, it highlights how sensitive the market for NZUs is to policy changes and policy announcements.

A. In that experience, certainly illustrated the sensitivity.

Q. Yes, and so to the extent that Māori are heavily invested in, say, the forestry sector, they are particularly vulnerable to those fluctuations, aren't they?

A. I think that's a, yes, that's a logical conclusion, that's – changes to the Emissions Trading Scheme and the volatility affect the carbon price which affects incentives for forestry and the economic case for forestry, Māori being overrepresented in that sector, would be disproportionately affected.

Q. Yes. So, although the changes were changes that the Crown was talking about for the purposes of efficiency. Actually, there was immediate cost, wasn't there, to Māori forestry owners through those efficiency changes.

A. There was a loss in value, that's right.

Q. Yes. Well, that's a cost, isn't it? Is it something else?

A. A cost is a loss in value, yes.

Q. It's a 20% reduction. So if I had a $100 the day before the announcement, the day after the announcement I have $80.

A. Yes, that's a 20% loss in value, that's true.

Q. If I then look at the process that was taken. This was, you know – I accept that you're focusing there on the change in the carbon targets, although it's interesting as a process of engagement. So I'm going to step through it because I was trying to develop a chronology and I was trying to work out the relevant times at which ministers were advised about the likely impact on Māori, in terms of these policy – in terms of this particular policy change, acknowledging that it's part of a suite. So if I look at the key milestones, and we'll ignore the Coalition Agreement, if I look at the table of paragraph 12 there was a methane review panel established in June of 2024. You then had recommendations from the Climate Change Commission in November of 2024 and then in December you get the findings from the Methane Review Panel and those are published. Were they known or did they know the Commission's conclusions prior to publishing their findings or was that just – did they take those into account between November and December 2024?

A. Sorry, did who know the Commission's finding, sorry?

Q. The Methane Review Panel.

A. Oh, I don't think so. The Commission is pretty tightly held with its advice, so they would have been run completely independently of each other.

Q. I wasn't meaning to suggest that I – you know the process better than me and I was just trying to understand –

A. Yes, sure. No, they wouldn't have. Well, sorry, I actually don't know this from – I mean, from personal experience, but I'm sure they wouldn't have interacted. The Commission is – yes.

Q. And so, if I go to the paragraph 21, so in February of 2025 officials give advice to the ministers for Climate Change and Minister of Agriculture, then in '22 the ministers received advice on the target review, and I think it must be about that time, am I right, at paragraph 23, this is the advice on the ministers perhaps thinking about engaging with Māori was about that time, about March 2025?

A. Yes, I think it was about March 2025. I'd have to look at the specific piece of advice but I think it was around there and it was kind of – it was early anyway. Early in the year.

Q. Yes. And so, the ministers come back with options, this at paragraph 25, in May. Officials prevent further advice to ministers in June. And then at paragraph 26 you do talk about the Regulatory Impact Statement. But my understanding is that that's slightly out of sequence because that was in September of 2025, is that right?

A. Let me just read this myself, hang on. Quite a lot was happening at this time. I can understand why it's a little bit hard to get your head around it. Yes, so advice to ministers in June and then the Regulatory Impact Statement. So that's a summary of our advice that goes to Cabinet. So you tend to only prepare that shortly before a Cabinet once you have given your advice, if you see what I mean, because then it summarises everything.

Q. Yes, I understand. I was just interested that it was referred to there when I thought it was in September because if you go to paragraph 31 you have officials drafting the Cabinet Paper in July, officials in paragraph 32 give further advice in August and then final Cabinet Paper is on 22 September of 2025. And so, when you've talked earlier about the ministers receiving advice through the Regulatory Impact Statement, my understanding is that it wasn't received at all. So other than the advice that was received in March, the only advice that the ministers got on the impact in relation to – or about the impact on Māori, was in September of 2025 –

A. I don't –

Q. At the end of it, not during the middle of it.

A. Sorry.

Q. I'm trying to understand when it was that the ministers actually were being asked to make this trade-off –

A. I see.

Q. – about different Māori interest in relation to climate change. I'm not trying to trick you into it. I'm just trying to understand exactly what happened because it's not clear from the narrative. And I think it's important as to when ministers knew about this.

A. Yes, sure. So I think the Regulatory Impact Statement thing is throwing you a bit. That's not the only piece of advice that ministers got and it's not the only piece of advice that discussed impacts on Māori. So between

early 2025 and the eventual decision on the methane target, the Ministers of Agriculture and Climate Change received a stream of advice from the Ministry for the Environment and Ministry of Primary Industries about all aspects of the target options et cetera, et cetera, et cetera, and that advice was various assessments of impacts on Māori for the methane target change. The Regulatory Impact Statement referred to, that's a thing that summarises all of that advice that has gone before and goes to Cabinet. So Cabinet has visibility of that prior stream of advice. But it's not the entire thing that the decision-making ministers get.

Q. Right. So when you refer to the Regulatory Impact Statement at paragraph 26, I mean, the reason that you refer to it there is because there was advice that was going during that period that covered the matters that were set out in the Regulatory Impact Statement? I'm still – I'm just a little confused because, you know, like If there's all of this advice going through, I'm curious as to way you rely on the Regulatory Impact Statement.

A. I see.

Q. You don't highlight the other areas of advice that were apparently given to the minister.

A. Yes, sorry, I can feel I'm being a bit unhelpful. So –

Q. No, look, I genuinely want to understand because I was curious by reading it.

A. Yes.

Q. I can ask the question in writing because I'm conscious about time.

A. I'm going to have one more go. So, we did provide a series – a string of advice, and we footnoted quite a lot of it. A lot of it has been – all of it I think is disclosed to the Tribunal. The reason you prepare a Regulatory Impact Statement as well as all the advice you have already given is, well, it's because the Cabinet Manual says you have to, but because it's useful for Cabinet to have visibility of the overall summary of the advice. Why – you're asking why we particularly referred to it in the evidence as opposed to that other stream of advice. The reason is really, there's not a lot of kind of magic and that, it's just actually the Regulatory Impact Statement is quite a useful document that summarises all the advice so you can refer

to the one rather than like these 10. But I didn't mean to give it more dramatic status above the rest of our advice.

Q. Yes. Perhaps if I, well, just I'll wrap up this question because I think I'm going to have to ask you some questions in writing about this.

A. Sure.

Q. I mean, so ultimately the Regulatory Impact Statement summarises the position that the Crown – that officials reached and summarise the advice that was reached in relation to that. Did you advise on the impacts on carbon pricing?

A. We treated the announcement as market sensitive, but we didn't give advice on the expected impacts on the carbon price. We actually almost never give advice on the expected impacts of the carbon price. It's actually just to – we advise when things are market sensitive and we would expect the market to be interested, but we don't really say – it's almost impossible to say, “and this is what we think the price impact will be”, and there's actually arguments – you can make an argument either way in terms of up or down in the carbon price, it is very hard to predict.

Q. Yes. You under – I mean, I'm curious about this. So, you don't even make a comment as to whether or not you think it would have a positive or negative effect, you just don't say anything about it, you just say it's market sensitive?

A. Yes, that's normally right, that's an accurate reflection of our practice. I'm not saying there couldn't be – like, there might be situations where we would say we're expecting, you know, et cetera, et cetera, impact on the market price. But that would normally be something that's more, I guess, more a direct impact. So for example, we might say that in the – for time we might say that is more like when we're advising on actual Emissions Trading Scheme settings. This is a much more general framework announcement. It’d be unusual for us to make a prediction about what might happen to the price, and the market sensitivity point. It's more a consideration around how we – the controls we put around the announcements as opposed to the policy analysis, if you see what I mean.

Q. Although, I mean as we've established policy settings affect the market, don't they?

A. I think that's, yes, obviously what has happened, so yes.

Q. Yes. In this case it affected the market by 20%.

A. My observation at the time was actually more the other sets of changes rather than the methane target change that we're talking about now, but very happy to talk about those other changes in more detail too.

Q. I'm just talking about, I mean, your explanation is that you think about things in policy terms, not in market terms, but actually the two are related, aren't they?

A. The two are related. I don't mean to say that we never think about market terms because actually that is a really big part of our work. For the particular methane targets, that wasn't a big part of our actual analysis and advice.

Q. No, but it's a cornerstone, isn't it, of the Crown's climate response, so therefore it must be relevant, whatever the policies are that you put in place around climate change?

A. Yes, the 2050 target is it is a cornerstone of the Crown's policy response to climate change, yes, that's right.

Q. And so is the ETS.

A. That's right.

Q. Yes, and Māori are heavily invested in it. So anything that affects that market affects Māori significantly, doesn't it?

A. Yes, that's right.

MR MAHUIKA ADDRESSES JUDGE MILROY – QUESTIONS IN WRITING (12:36:30)

HEARING ADJOURNS: 12.36 PM

HEARING RESUMES: 1.33 PM

JUDGE MILROY:

Welcome back everybody. So we're continuing with the questions for

Ms Prebble and we are now up to questions from Sykes & Co. Kia ora, Mr Vincent.

(13:33) MR VINCENT TO REBECCA PREBBLE:

Q. Tēnā koe Ms Prebble. Ko Sam Vincent tōku ingoa. I'm a lawyer with Annette Sykes working on a number of the claims in this inquiry.

A. Tēnā koe.

Q. I want to question you about Emissions Reduction plans one and two, and the requirement from section 3A(a)(d) of the Climate Change Response Act that the government must include in an Emissions Reduction Plan a strategy to recognise and mitigate the impacts on iwi and Māori of reducing emissions and must ensure that Māori have been adequately consulted on the plan.

A. Mhm.

Q. Thank you. I want to start by getting of you on different aspects of ERP1 which might be said to amount to or be part of such a strategy. So do I have it right to start with that the relevant chapter is chapter two, Empowering Māori?

A. Could you bring it up? You're on ERP1 at the moment, is that right?

Q. Yes and that's at page 52.

A. Yes, great. I think that's just ERP2 there.

Q. I see.

A. Yes. Sorry, look, ERP1 I am familiar with and can absolutely answer questions but just it was a longer time ago and it's – I don't have such direct knowledge so it's quite helpful to me to bring it up.

Q. Absolutely. All right, so I know it's small.

A. That's fine.

Q. Okay. So the first action there, so this is on page 52, is the establishment of the Māori Climate Platform. Sorry, I'm sure I got that right…

A. I just saw it. I saw Māori Climate Platform.

Q. Yes, bottom of page 52. There it is. Is that it?

A. Yes, yes, action 2.1, yes.

Q. I understand that the details of the Māori climate platform are not the focus of your evidence. But would you agree with me that while a goal of

the Māori Climate Platform may have been to develop a strategy to advance a Māori led approach to an equitable transition, the setting up of the Māori Climate Platform was not in and of itself a strategy to recognise and mitigate the impacts on iwi and Māori of reducing emissions?

A. I think it's accurate to say that just the existence of the platform is not itself the strategy.

Q. And I'll take you to Mr Smiler's affidavit at paragraph 133, and the last sentence of that paragraph, chapter 3, this is talking about ERP1, "Equitable transition provided policies and actions to mitigate the impacts of mitigation policies across a broad range of groups including iwi and Māori." Have I got that right?

A. Yes, that's what the evidence says, yes.

Q. Thank you. Would you agree with me that the policies in chapter three, the equitable transition chapter, those policies, that they do not amount to the required strategy to recognise and mitigate the impacts on Māori of reducing emissions?

A. I think it's more chapter 2 that is intended to more satisfy that legal obligation.

Q. Right.

A. Although, sorry to interrupt. I mean, it does seem like some of chapter 3 actually does go towards that too, so I don't want to completely say, but my understanding was that there's primarily the chapter 2 that this was – that spoke to that.

Q. Well just keeping on chapter 3 for a moment. If we could go to page 66 of ERP1. Sorry it's a little bit hard for me to see – yes, that's it. So we've got a proposed action there which is developed inequitable transition strategy. That equitable transition strategy is actually mentioned already today. If we can look at page 67, we have an outline of initial objectives, that's the right-hand page, for an equitable transition strategy. Now, would you agree with me Ms Prebble that we have what looks like the beginnings at this stage of a robust equitable transition strategy?

A. The equitable transition strategy in ERP1 was – our assessment at the time was that it satisfied the legal requirements.

Q. Right, are you talking about the requirement also in the CCRA for there to be a strategy not just to deal with the impact of emissions reductions on Māori but more broadly as well, is that what you're referring to?

A. Yes I am, that is what I mean. I think the – sorry, I'm just trying to refresh my memory on the legislative requirements for this. But I believe that some sort of strategy to mitigate the impacts is a legislative requirement. I might just need to double check the Act, but I think it is.

Q. Yes, well I suppose what I would ask you to comment on is, and I understand you're saying you can't exactly remember what the legislation provides, but isn't it the case that the Emissions Reduction Plans, they do require such a strategy to be within the Emissions Reduction Plans? Including –

A. Sorry.

Q. Sorry, I'll leave it there.

A. Sorry, look, I think that is right. I would love to check the actual legislation for the words right now. There's quite a few requirements of Emissions Reductions Plan but there is something about that so I think that is what that was about.

Q. Right, well the issue I wanna raise is that an action point in ERP1 was the development of such a strategy rather than the laying out of such a strategy itself, would you agree with the way I've characterised that?

A. Do you mind actually making it a little bit bigger? I'm just reading the Equal Transition Strategy. So are you saying that actually what this is, the action is to develop an equitable transition strategy as opposed to there is an equitable transition strategy in ERP1?

Q. That's my suggestion to you.

A. Yes, okay. yes, I think that is what that says, yes.

Q. Right, would you agree with me then that there are various policies and in chapter 3 of EP1 which would support an equitable transition but would you agree with me that they really are just policies which support that rather than a strategy to achieve that?

A. Look I think that is a correct interpretation of ERP1 in that an action was to develop a strategy which suggests that ERP1 itself does not contain one yet otherwise you sort of just say there it is on page 12 or yes. So I

think yes that is right. Sorry about my vagueness here, I actually just – this isn't the part of ERP1 that I'm super familiar with, but I do think that you're right from what you're saying.

Q. Okay, I'll go back to chapter 2 then, Empowering Māori, just on aspects of it which might be part of the required strategy to deal with the impact of emissions reductions on Māori. So that's, again, that's going back to page 53 of ERP1. The other action there that I'm identifying is action 2.3, support the development of a Māori climate strategy. Now, would you agree with me, Ms Prebble, that that also does not amount to the required strategy to recognise and mitigate the impact on Māori of reducing emissions?

A. That action is to support the development of a strategy. I am confident that the ERP1 met the legal obligations of what was required to be in it.

Q. Right, my ultimate question really about ERP1, drawing on what identified is, isn't it the case that ERP1 did not contain the strategy – did not contain a strategy – let me go back to the legislation just to make it clear. That it did not contain a strategy to recognise and mitigate the impacts on iwi and Māori of reducing emissions?

A. I think a lot of that depends on how you interpret the word strategy because I think it is, like, it's correct that one of the actions is develop a strategy. But then when you look at what ERP1 actually contains, it is a number of actions that seek to recognise the impact on Māori of climate change and that's – when you look at those collectively you probably would call those a strategy despite the fact that there is also an action there to specifically develop another document or piece of work.

Q. All right, I'll shift to ERP2.

A. Thanks, I'm a bit more familiar with that.

JUDGE MILROY ADDRESSES MR VINCENT – TIME (13:43:58)

MR VINCENT TO BECKY PREBBLE: (CONTINUES)

Q. Now we can go to page 92 of ERP2. Right, now I'm glad you are more familiar with this, Ms Prebble. Am I right that what we've got here on

page 92, these are the elements of the required strategy, that same required strategy in ERP2?

A. Yes, that's correct.

Q. So, existing universal support, sector-led initiatives, Māori-led climate priorities, that refers to the Māori Climate Platform?

A. Yes, yes it does.

Q. Yes. And recognising mātauranga Māori as a guide to local action, which is followed by one sentence, the government recognises the importance and opportunity of mātauranga Māori to iwi, hapū and whānau as a guide to reducing emissions and adapting at place?

A. Mhm.

Q. Āe. Now, would you agree with me that what we have there does not amount to a strategy to mitigate the impacts of emissions reductions on Māori?

A. MfE's advice at the time was that this satisfies the legislative requirements.

Q. I think in the interest of time I might need to end it there, your Honour.

JUDGE MILROY:

Thank you, Mr Vincent. Mr Lyall.

MR LYALL ADDRESSES JUDGE MILROY – TIME, MR VINCENT CAN CONTINUE (13:45:58)

MR VINCENT TO BECKY PREBBLE: (CONTINUES)

Q. I will take that, thank you. Okay. So I will just turn to sector-led initiatives. And then I will rely on Mr Smiler's brief at paragraph 188 and 189 where he explains what's relied on there as I understand it. Now, at 188 he refers to MPI's programme Māori-led approaches to reducing biological emissions. Can you see that Ms Prebble?

A. Yes.

Q. Would you agree with me that policy is pointed – that's primarily a climate mitigation policy rather than a policy that mitigates the impact on Māori of emissions reductions?

A. Yes, I think that is right, that's around – I don't actually know a huge amount about that, it certainly is around reducing emissions, yes.

Q. And then if I turn to paragraph 189, Mr Smiler has referred to the policy mentioned in ERP2 of limiting land conversion from agriculture to forestry. Do I have that right?

A. Yes, that's what he's referring to, yes.

Q. Right, and then what I'm suggesting to you, tell me if you agree with me, rather than a policy that mitigates the impacts on Māori reducing emissions, isn't this just the limiting of emissions reduction policy?

A. I agree that it's not a policy about mitigating the impacts on Māori associated with climate change, that's right, it's around – well, it's actually around ensuring that certain land use classes are retained for their most productive use.

Q. Right. So this doesn't feed towards the required strategy to reduce the impact on Māori of policies that reduce emissions?

A. I see what you mean. Okay, yes, well I suppose it's related to the general set of things and that impacts on Māori from climate mitigation are quite multi-dimensional. There's the actual impacts of climate change, then there's the impacts on Māori as being by virtue of being somewhat overrepresented in the sectors that are most likely to feel the transition, and then there's impacts are sort of as part of the general population but as being overrepresented in various vulnerable groups. And so, it's really that second one, that it's something that goes to the impacts that Māori may or may not feel as by virtue of being quite overrepresented in the primary sector really.

Q. Doesn't my suggestion stand though that this isn't a policy that mitigates – maybe it's semantics, I probably don't need to go further into it, I think that's clear enough actually. That's all right. So if I can go to paragraph 150 of Mr Smiler's brief. So I'll read this and tell me in case they get it wrong. The government decided to take a different approach to mitigate the impacts of emissions reductions policies as in ERP2 by focusing on universal tools to provide support to Māori and other affected groups such as income support measures and the climate dividends. These actions were intended to address broad economic impacts

associated with emissions reductions. Is this largely what's referred to in the universal support part in that chapter?

A. Yes it is, that's correct.

Q. Right. Is it fair to say that that broadly summarises the government's approach to addressing the impacts of emissions reductions, emissions reduction policies on Māori and ERP2?

A. I wouldn't characterise it quite like that. It's – when we talk about, in general, climate impacts on Māori, there's all the three categories, there's impacts by virtue of being exposed to climate risks due to where Māori live, there's also impacts due to being overrepresented in the primary sector, and then impacts by virtue of being potentially part of groups that may be likely more affected by the climate transition one way or another. So to be extent that there are job losses in certain sectors where there's a high proportion of the Māori representatives or just generally, you know, higher petrol prices for example affect people, lower income people more and we have Māori more overrepresented in that category. The univers – so the last things I said, that's more what the universal support things go to but there are other parts of the overall strategy for **(inaudible 13:51:36)** impacts on Māori that do go to other of those dimensions.

Q. Can you say what those are?

A. Well, Māori Climate Platform is quite a good example that's much more funding that is for particular Māori initiatives that are very much more by Māori for Māori and often span adaptation and mitigation initiatives depending on the circumstances.

Q. I suppose my suggestions you about the Māori Climate Platform, aren't we talking about particularly now that it's, if I could put it this way, taken in house by the Ministry for the Environment, isn't this about funding, this is just funding for specific mitigation and adaptation projects? Sorry, I'll finish that. Funding for specific projects rather than – how would I put this – its particular projects rather than I suppose a broader policy framework that mitigates the impacts of emissions reductions.

A. I do think I understand what you mean. I would say that there is actually a more of a strategic overlay to the way that the platform goes about its work. It's probably more something that Anne and Gina tomorrow would

be able to talk in a bit more detail but certainly the Māori Climate Platform now, well, to some extent in-house as you say, it's developed very much in partnership with Pou Take Āhuarangi and there's an important kind of strategic overlay there. So I probably – it's not quite – I don't think it's right to say it's quite as narrow as that but yes.

Q. I guess just my last question's really given, have I have missed anything? Have I missed anything in trying to say, in trying to identify the parts of ERP2, I'll just focus on ERP2, which really might amount to this required strategy?

A. No, the strategy is the part of ERP2 that you had on the screen earlier with that and I think we've touched on all the parts. There may have been one box that we haven't talked about but I think we've talked about the parts that – the strategy is contained in that chapter of ERP2 that you popped up.

Q. I suppose just seeing my final question is would you with me, given what we discussed that it's lacking in terms of really being a set of perhaps what it should be which I'll suggest to you is a set of policies designed to achieve mitigating the impacts of emission reductions on Māori?

A. That wasn't the advice we gave. The advice to the minister was that there were a number of different options that the minister could take to satisfy the requirement in s 3A and also in the body of the CCRA, and there were choices about the extent of it but all of the options are possible ones the minister could take.

Q. All right. Those are my questions. Thank you.

JUDGE MILROY:

Over to you, Mr Lyall.

(13:55) MR LYALL TO REBECCA PREBBLE:

Q. Ngā mihi, your Honour. Tēnā koe, Ms Prebble. I'm hoping that I'm beaming through loud and clear.

A. Loud and clear, tēnā koe.

Q. My name is Lyall and I represent some of the claimant groups. I think the common thread between them is that their whenua is largely rural and will

be disproportionately impacted by the effects of climate change. But having said that, the features of that whenua albeit their rohe are all different really. They expand lake areas, commercial forestry, beaches, the full gambit. So that's the, I guess, viewpoint that my questions are being put from. They're less interested in the real nitty-gritty of policy development and more in either practical expression or chances to have input along the way.

A. Great.

Q. I'm also at somewhat of a disadvantage because a lot of my questions have been either covered or part covered so we will be jumping around a little bit over the next 10 minutes or so, so bear with me please.

A. Maybe I'll get a second go at some of them.

Q. I will see if I can avoid that. I think the first point is that you effectively start the time period for the mahi done for the Efficiency Review, one of the workstreams with the statement from the Prime Minister to Parliament, and it was in response to that that Christina Hood and Paul Young sent a letter which outlined their views and some of policy options. Are you with me so far?

A. I am with you, yes.

Q. First of all, some of those proposals were incorporated into the changes that were then made is my understanding, is that right?

A. From Christina and Paul? I think so, I'd have to go back and double check. There were quite – certainly Christina and Paul's letter was very helpful and we had a few chats with them about it. I think there were some that we ended up taking forward. I'd have to just – there were quite a few different changes and a lot of them came from various people but I think that is right.

Q. And just to be clear, they weren't asked to or invited to submit that letter, that was something that they undertook of their own initiative?

A. I think that was off their own back as you say that they had – I think that's right, after the Prime Minister's statement. I think the reason I'm slightly confused actually, I can't quite remember on this point, is that had they not proactively sent us something I think we would have asked their thoughts anyway. No, no, they did do it proactively. No, that's right. So

I'm remembering more now, yes, we didn't ask them for that. It was very helpful but it was unsolicited.

Q. And that's in circumstances where I think you would agree with me that very little on some areas to none engagement or consultation had taken place on the proposals?

A. At that point yes it was pretty early so no we hadn't done – I don't think we had done any. It's certainly true that we hadn't done much if any.

Q. I guess the risk there is, isn't it, that by not going out and consulting broadly or engaging broadly particular with groups like my clients who are on the whenua doing the hard yards as it were, that you might miss sensible pragmatic recommendations which might not otherwise occur, and then they just don't make it into these types of policy amendments?

A. I can speak generally and then specifically if that's all right. In general there's, I mean, if you don't talk to people and engage or engage more narrowly than you could, there's of course always a risk that you missed something, that's right. In this context, the choice around engagements, we did do engagement on this. We didn't do a full public consultation but the Ministry did talk to quite a few different people with – interested in different elements of the changes. The thinking for not doing a public consultation, well there were two elements really. First was just timeframes would've made that tricky but also it's relatively technical. By technical I mean, you actually need to have a reasonably deep understanding of the Climate Change Response Act Framework to kind of understand what we're talking about and it's a relatively – the people who are actually interested in this kind of thing like the overall sequencing of different advice and reports and when does the government have to respond and that kind of question tend to be a relatively smallish group and – yes, smallish kind of group.

Q. Is the catch-22 there that groups can't build up the capacity to properly engage on these sorts of issues and have that knowledge to be part of the conversation because they haven't historically been involved in these conversations so the situation tends to repeat itself?

A. I think it's reasonable to say that actually you do, as a person being engaged with, you do learn from engagement and if you're not

contributing to something then that potentially was an opportunity to learn that you didn't have, I think that's fair.

Q. Well, then I take our first jump around now. I'm looking at document – might be the easiest way, to take you to it. It's part of the bundle that was filed with your supplementary evidence and it's MFE0140276. There's not page numbers on the documents that I have. But perhaps if I Just read out this sentence and you might know what it was referring to or you might not and we can actually bring it up if needs be. But this is the –

Q. Yes, probably be – yes, read it out. Sorry, I didn't mean to interrupt. Why don't you read it out and let's see if I do know and we might need to bring it up.

Q. Sure. So this is the briefing scope and process for efficiency approvements.

A. Yes and what is the date sorry?

Q. It's 5 March 2025.

A. Yes.

Q. And on the page I'm looking at it says, "we provided you with advice on 12 December 2024 and options for a CCRA Amendment Bill," and I haven't seen that advice or anything further referring to that advice that's on the record, and that predates the Minister's announcement to Parliament. Are you able to give us any more information about what that piece of work was and whether any engagement or consultation took place in developing that?

A. Yes, sure, I do know about that actually and I think that advice, well it's not in the bundle but I don't think there would be – I can't see why we wouldn't disclose it, it's probably just a question of making the documentation manageable. Policy decisions or discussions between Ministry for the Environment and the Minister of Climate Change did predate the Prime Minister's announcements which is probably quite good you don't really – good to have talked about a little bit before the Prime Minister announces it. And early thinking really the genesis was, the Minister of Climate Change was, after going through 2024 which is quite a big Climate Change Response Act year actually, he asked us to think about, well are there any opportunities to improve the overall

efficiency of this apparatus. Feels like there's a lot of – it feels like there could be opportunities. He asked the Climate Change Commission actually to have a think about that too and the Climate Change Commission wrote him a letter setting out a number of possibilities and that letter is publicly available, the Climate Change Commission put it on its website. That – I'm trying to remember what they came up with, well, actually one thing I always remember there is a year in the overall framework. Something like – it's something like 2028 or something. It's in the future, but there's one year in which the government must respond to the Climate Change Commission's assessment of the National Adaptation Framework. About two months before the government then has to do a new – sorry, National Adaptation Plan, not framework – but two months before the government has to then do another national adaptation plan and it just seems a bit like, well that doesn't really make any sense responding to the old one just in the two months period before you're about to come out with a new one. It seems like just a sequencing that – like government will be able to press print on the new plan at that point. There's not a lot of value and kind of going back to the old and saying, well this is what we think about that, because it would naturally be incorporated in the refreshed one. So that's just one example but that was one thing that the Climate Change Commission highlighted as a thing but probably wasn't ideal from a sequencing point of view. So it was all of that kind of thing. They had a number of other ideas too, it was all pretty helpful. But that was towards the end of 2024.

That's right, and then the Prime Minister's announcement of the statement to the house just saying we're having a look at this. That was early 2025, and then that March advice follows that. So you're right there wasn't – the first – the March advice was not the absolute first piece of advice we had given about that. We did give something in December. I'm actually – I can't remember exactly what it said to be honest but said something like, oh well, we've had a few discussions with you, Climate Change Commission has written a letter, this is the sort of thing we're thinking about.

Q. That ultimately led to the line by line review that you led?

A. Yes.

Q. You say a small team. How many people were involved with that?

A. It really was quite small, I think about four or so.

Q. In your terms of reference for that, were you guided by the 1.5 degree Celsius goal or Treaty principle, or what was the…

A. Yes, sure. The goal was –

Q. **(inaudible 14:06:03)**

A. Sorry, I thought you had finished. The goal was not to either like increase or decrease ambition or anything like that. It was really how do we make the current framework work more effectively? So what we were doing was looking for areas where the – we were testing, well, what's the outcome sought by this provision, this legislative requirement, and is the value that the public gets from that outcome worth the effort that this particular thing takes to do. So it was scoped with – it was scoped in that way and it wasn't around the kind of overall goodness or badness of anyone provision, it was more a, right, well, if you were looking to make the system more efficient here are the areas where we would say look first. And there are of course trade-offs associated with all of those things. There's nothing in the CCRA that's like sort of completely pointless. It's around relative value and where you see the best, most public benefits.

Q. We're getting to the area in your brief, I think it's around paragraph 55 where you talk about this and looking at the value of each requirement relative to the resources needed, and I can see that the resource is needed, might be able to be readily quantified, but when you're talking about the value for requirements, are you immediately comparing apples with oranges there?

A. I think I understand what you mean, like, the value of any one thing is something that involves an element of judgment and people really definitely will have different views on the relative values of different things. What we really tried to do in that was give a sense of our understanding of at the time how much people did value these things based on what we'd heard. It was a first cut though and I can – and it wasn't done in a sort of a – it was an early judgment about where the best places to or the first places one might look are.

Q. You say based on what we'd heard, but that was obviously at a point where consultation was negligible.

A. Oh yes, you're right.

Q. **(inaudible 14:08:38)** consultation on this?

A. No, you're right, sorry I didn't mean to interrupt you, I thought you were finished. We hadn't consulted or engaged on these particular proposals so it was based on more general feedback that we had heard via other engagement. For example, people telling us that the consultation and engagement load felt quite heavy.

Q. So three discrete issues to whip through before I finish my time. The first is the carbon neutral government programme which has been shifted from a 2025 goal to a 2050 goal. I – looking across the evidence and different justifications filed, there seems to be various reasons given for that. But my main point is if the government of the day is seeking to show some ambition and set an example, isn't that a key place to start from?

A. That change reflected really two elements. So the carbon neutral government programme in its entirety was not really changed all that much. It is sort of in its fundamental components more or less like it was for the last few years. But the neutrality goal that you're talking about, so that's a cross-government goal for the public sector to be carbon neutral by 2025. That goal was shifted from 2025 to 2050, and the reasons for that were 20 – 2050 is much better aligned with our overall whole economy goal of being net zero by 2050. But also that 2025 is not a realistic goal for the public sector to be carbon neutral by. Achieving that would require buying offset credits on the voluntary market and actually in New Zealand my understanding is actually there just are not enough New Zealand based credits to buy even if the government did have a lot of money around to buy them, they actually just don't exist yet, nothing of that quantity.

Q. Has any analysis been done that you're aware of what the additional emissions will be based on that decision to extend the deadline by 25 years?

A. Not specifically on that. The public sector is covered by the general emissions projections that the Ministry for the Environment does, and

when we do projections we take current policy for whatever it is. So prior to that change, well, the difference would be post and prior. I don't think actually in our emissions there was any kind of measurable – in our projections, I don't think there was any kind of measurable difference associated with that policy change. But the way we do projections is on whole of economy.

Q. The last thing I wanted to raise was the Climate Implications for Policy Assessment or CIPA where central government agencies estimate the greenhouse gas emission implications of policy proposals, and there's been a significant narrowing of the situations in which those need to be provided. My question would be, doesn't reducing the information available for ministers and the general public undercut the efficiency of the Crown's climate response, in particular where there hasn't been engagement. I think it's a poorly framed question but if you could respond, otherwise I'll reframe it.

A. No, that's all right, I'll give it a go. The intention of those changes to the – we tend to pronounce it CIPA but there's no – we're not necessarily in charge of how to pronounce acronyms. But the changes to the CIPA were intended to focus it more on policy impacts where there is actually something relatively material. One of the challenges we have in climate change is that it's so broad and so all-encompassing that for almost anything one might do as a government you can probably come up with some sorts of climate change impact. But that sort of degree thing is not necessarily actually all that helpful as for decision makers. So the idea was to narrow it so that – or focus it really rather than narrow it so that what CIPAs actually address are where there is actually a material thing that really does need to be taken into account by decision-makers.

Q. What analysis was undertaken to show that the new parameters would capture effectively those types of decisions though? In the ranges of options presented, I mean, without having guidance from groups who rely on receiving that sort of information in order to form an opinion when they're going to give a submission, say, to a Select Committee, how was that framed or how did you make sure that the types of information relied on would be captured?

A. Look, I'm afraid this is getting to a level of detail that it's just a bit beyond my recollection. I do know that we had a team working on this for a good six month period and they certainly did do analysis. I'm afraid I just can't really recall or at least I don't know if I was ever quite close enough to it to be able to speak to that.

Q. Perhaps something I could put in writing, it might fairer that you follow up that way.

A. Yes, I think that's fine. There certainly was advice on this.

Q. Those are my questions, your Honour.

JUDGE MILROY:

Thank you, Mr Lyall. We will just take a microbreak before we move to Loader Legal.

HEARING ADJOURNS: 2.15 PM

HEARING RESUMES: 2.19 PM

JUDGE MILROY:

Now, we have questions from Loader Legal, so I'm hoping Dr Hewitson is now available.

MR JASPIER SONTIER:

Kia ora, actually I'll be asking the questions rather than Mr Hewitson. Thank you, your Honour.

(14:19) MR JASPIER SONTIER TO REBECCA PREBBLE:

Q. Tēnā koe, Ms Prebble. Ko Jaspier Sontier tōku ingoa. I'm representing three claimants today: Ms Mereana Peka, Mr Thomas Henry and Rita Beckmannflay.

A. Tēnā koe.

Q. So my questions are relatively focused today, I just have a couple, but essentially I'm wanting to look at the part of your evidence that deals with local government and in particular the section that's around paragraphs

48 to 53 of your brief of evidence, which talks about other amendments to climate policy and is headed Adaptation.

A. Got it.

Q. Great, okay. So in this section you describe Cabinet's September 2025 decision to create a new statutory function which would require territorial authorities to prepare adaptation plans for priority locations. And firstly, I was just hoping to put a question to you from one of our witnesses that we had last year which is Mr Stephen Knight-Lenihan. It's not particularly necessary for you to have read his evidence but have you had a chance to look over his?

A. No I haven't actually, sorry.

Q. Okay, no worries. It's quite a generic question but I just thought I would put it to you and see if you have an answer to it.

A. Sure.

Q. And so, essentially in your evidence at paragraph 49 you say that further guidance may be produced on a non-statutory basis in relation to these adaptation plans, and Mr Knight-Lenihan was wondering what guidance, if any, currently exists or is being developed to assist councils to make trade-offs in adaptation which would prioritise or take into account Māori values or locally derived Māori solutions?

A. Yes, sure, look, I'm afraid the answer is really that it's just a bit too early to say. So those particular changes that Cabinet agreed last year have not been enacted yet and in fact they haven't actually been introduced to the house yet. So while there will be quite a lot to work through in terms of implementation and, you know, a really key concern I imagine will be how the take into account and appropriately prioritise needs of Māori communities. It just hasn't happened yet, it's really all for the future.

Q. No worries, and I imagine that may be the essence of your answer for most of these questions, but I will move on. Secondly, these are just questions from myself and our clients. Other than reliance on existing mechanisms under the Local Government Act, has the Crown provided or does it intend to provide any specific guidance to councils on how they can identify and engage with affected iwi and hapū in developing adaptation plans?

A. I'm not sure actually. I'm not aware of a kind of a current intention but that does seem like a thing that the government would ultimately need to consider. Just the witness after me is Katherine Wilson who is much more focused on the adaptation side of things. So hopefully you've got – you've put yourself down for the cross-examination questions to her too, she might actually have a bit more closer knowledge of that kind of discussion.

Q. Yes, I have and I'm planning to ask her similar questions as well thanks. So next, this is also to do with those adaptation plans but I would be curious to see if you have any thoughts on this as well, on whether the adaptation plan proposals accompanied are – sorry, are accompanied by any binding national direction which would require territorial authorities to incorporate Māori values and interests into the planning, and essentially just wondering whether the Crown is planning to leave that to local authorities' discretion?

A. I don't think there's a decision on that point yet. I think it's just still too early. Sorry, you are right, but that that might be my answer to a few things.

Q. Yes. And then on paragraph 52 of your evidence, which is still under that section, you mentioned that Māori groups in your consultation raised concerns about resourcing for small rural Māori communities to engage in adaptation planning, and I was wondering whether considering this since, what specific resourcing, if any, the Crown plans to allocate to ensure that small rural Māori communities can meaningfully participate in the development of adaptation plans?

A. Well, I don't think there has been a decision on any resourcing yet. The general points that actually developing a local adaptation plan is a relative – quite a hard thing, you know, it's quite a big job and small communities, Māori or otherwise, may not actually have the resources to be able to do it properly, that's very much a thing we are conscious of and have heard.

Q. Yes, and I just guess indicating our sort of concern around that and hope that the Crown doesn't tend to do that. And then on to my final question, which is also at paragraph 52, you note that it was stated during engagement that consideration must be given towards how Māori-led and

council-led adaptation plans interact. And I was wondering if you have resolved that yet or whether you have any thoughts on that question of how these two would interact?

A. Look, I don't sorry. It's definitely gonna be something that needs to be resolved in the future before the system can be up and running and work, but I'm afraid I don't have anything to add right now.

Q. Thank you very much for your answers. You'd be happy to know that I'm quite quick with my questions so hopefully someone else can make use of that time.

JUDGE MILROY:

Thank you, Mr Sontier. We now have Oranganui legal.

(14:26) MS EVE RONGO TO REBECCA PREBBLE:

Q. Tēnā koe. My name is Eve Rongo and I'm counsel for Ngāti Kōata. Ngāti Kōata iwi in the Marlborough Sounds, they have brought this claim specifically to highlight a very significant taonga that they have on Takapourewa Island and that's the tuatara. So a lot of my questions will be framed around their protection of the tuatara and Takapourewa Island in particular. So at paragraph 25, you talk about the modelling and the policy analysis and you described how it relied heavily upon scientific and economic modelling frameworks. Do you remember that?

A. I'm just refreshing my memory, just a moment.

Q. Thank you.

A. Yes, particularly in – it is relation to the methane target change. Yes, yes, got it, thank you, yes.

Q. Do those modelling frameworks incorporate mātauranga Māori, Māori environmental knowledge?

A. I don't think so. I'm not super close to the specifics of the technical modelling but – and I don't think. I wonder if I should offer to come back with a firmer answer on that. Like, my understanding is no but actually the modelling is really quite a technical skill set.

Q. Okay. At paragraph 12, you talk about developing the policy for the Amendment Act, and my question is around whether the Ministry

undertook any iwi specific analysis of climate impacts within particular rohe?

A. I don’t think within particular rohe. What we did, we gave advice on the overall impacts of this change and the overall impacts on Māori for the various options for changing it, and we drew from analysis that – the results of engagement we had on other changes. There wasn't direct engagements with Treaty partners or with actually anyone on this particular policy but we had engaged with Treaty partners on a number of things that sort of shared similar features. So we drew a lot of that into our advice but it wasn't based on particular rohe.

Q. Okay. So you don't know then whether the Ministry had done an analysis on Takapourewa Island or on Ngāti Kōata at all?

A. I don't – I’m not aware of any analysis, but also be pretty surprised if there was some, like I think that level of granular detail is beyond what we normally do.

Q. Guess the reason I'm asking is because Takapourewa Island contains 90% of the world's tuatara population, and the sex of the tuatara's determined by the temperature of the soil that their eggs are hatched onto. And the climate change policies have a massive impact on Ngāti Kōata and their role as kaitiaki of the tuatara and not only culturally, not only it's a part of their identity and who Ngāti Kōata are but it's a huge burden on their shoulders to ensure that that species continues. And climate change, the way that it's going with the warming of the soil on Takapourewa Island, we're already seeing some of the impacts of those decisions that are being made by Ngāti Kōata. So my next question is around whether you would accept that the climate change decisions that are being made will have a significant impact on Ngāti Kōata rohe?

A. That's a bit – you’d have to – it’s quite a complicated thing, like, the chain of events that leads from one sort of policy decision around a framework in Aotearoa that – being some sort of contribution to the global warming and then back down impact in a particular area. I think that's just a bit too – it requires too many sort of assumptions in X, Y, and Z and a cause or chain of events for me to really say yes or no to that one.

Q. But you'd accept that without talking to Ngāti Kōata and having that input into what can be done to properly assist them in looking after the tuatara, that the Ministry wouldn't be fully informed to be able to give advice?

A. I'm confident that we gave good advice and it was on a robust information base, but it's also true that we're not aware of the specific impacts on this rohe.

Q. Thank you. Those are my questions.

JUDGE MILROY:

Thank you, Ms Rongo. We now have questions from the panel.

MR MAHUIKA ADDRESSES JUDGE MILROY – LEAVE (14:31:51)

(14:32) BASIL MORRISON TO REBECCA PREBBLE:

Q. Thank you, Judge. Ms Prebble, thank you most sincerely for your submission and evidence. Can I refer you to the summary of evidence please and just a clarification for me please, you note on 15 and in particular 15.3, you talk about approximately 48,000 farms in the country and I guess they range from two hectares to thousands of hectares I guess. Now, we know that there are growing number of settlements that are taking place and have taken place, plus the market itself of iwi involvement in the agricultural sector and that's been identified, right? Question to you then is that last paragraph, how technologies to reduce agricultural missions are being developed and the government is actively supporting these new technologies through initiatives like AgriZero. Now the question really is, the impact that that is having on Māori on their farming activities, the question is what are those initiatives in simple terms, and secondly, are they working?

A. It's a great question. AgriZero is a partnership between the government and the private sector to develop particular emissions reducing technologies or to develop emissions reducing technologies for – that can be used in the agricultural sector. And the government's invested $400 million in it. It's actually quite exciting. There are a number of quite promising looking initiatives. There's one called EcoPond which is this –

I'm not quite sure exactly how it works now that I think about it but it basically, it reduces the methane emissions from farm effluent pits quite significantly. I think maybe in Mr Smiler's evidence he might talk about the specific numbers and that, I'm afraid I can't recall them in my mind but it is – it's material. There's also a methane inhibitive vaccine for some animals that makes it – it's not like, gets rid of all, but it does actually reduce the amount of methane that actually animals admit. So it is that kind of thing. A lot of these things are at a kind of early but promising stage of development. I think there has been really quite a shift in the last sort of three years or so whereas previously it almost seems like methane emissions, well, gosh, we've just got nothing, but actually there now are some real promising shoots and things like they're coming through AgriZero, some of them, and there are also some ones that are just being developed by other people, not through AgriZero.

Q. Okay, does that extend to new grass cultivars and breeding, that sort of stuff, is that included in that?

A. That's not one of the ones I've heard of more recently but I suppose it could be encompassed and I'm actually not totally sure about that. I haven't heard about a new grass one being part of AgriZero myself, but that's not to say it doesn't or couldn't exist.

Q. Thank you.

(14:35) PRUE KAPUA TO REBECCA PREBBLE:

Q. Kia ora Ms Prebble. Just had a couple of questions, a lot of it's been covered already. I just wanted to ask in terms of your own expertise and experience, do you have or do you have a background in climate change or climate change science or…

A. Well, not really, but I have been working in the climate change policy area for about two years. Prior to that, I was in the Ministry for the Environment but I wasn't working on climate change policy, though that sort of primary thing I did, I did the old resource management reforms. And before that I worked at the Treasury for 10 years, so I did economic and fiscal policy. So the sort of the language of economic trade-off so that kind of thing is quite familiar to me in that regard. But my training actually was as a

lawyer and I worked as a lawyer for two or three years. Not for all that long really but I really think of myself is a policy person rather than any specific discipline like science or anything like that.

Q. Thank you. So in terms of obviously some of the evidence that we've heard during our weeks of hearing, some have come from people from a science, economic and so on background dealing specifically with climate change, I guess my issue is do you have any concern about the fact that in decisions that rely on highly on official advice, that there may be a short for in terms of the expertise that might be necessary for best practice, make best decisions?

A. So I'm really confident in the advice that the Ministry of the Environment gives. Like, I really, from a policy person in terms of thinking about the various elements that would need to be considered in any policy decision, really I'm quite proud of our advice and I think we do a good job in a complicated situation. We do have quite a few scientists who do work at the Ministry of the Environment, and just because I'm not a scientist, they're around and they certainly feed in. We also have economists, we have people who are more trained in the specific climate change discipline because it is now a discipline of its own. I think policy advice as a field is quite, you get people from all sorts of different backgrounds, and the challenge of it is often distilling that into I guess a meaningful frame for decision-making that allows decision-makers to really understand the impacts and trade-offs of the choices they face. But in a way that's not completely overwhelming and certainly in the climate change area as you will have been experiencing, it really can be quite technical both on the science side, and then you've got the kind of accounting side as well. It's another fairly technical area. Distilling that into a meaningful set of decisions for decision-makers can always be like it is a challenge but I am quite proud of the way we do and I do think we do a good job. Not to say we can never improve and I'm really – I'm hoping that, well, in fact really expecting that the results of this inquiry will really help us quite a lot. But the same time I do, yes, I have confidence in our advice.

Q. So you were asked some questions earlier about the influence of political aspirations I guess in relation to the policies that come out of the Ministry and obviously it's clear from the Coalition Agreement that there were issues around this, that was clear from ACT Party policy for example that there were specific issues like abolishing the Climate Change Commission and so on that were part of their policies going into 2023 and obviously part of the Coalition Agreements. How – I guess what we've heard a lot about has been the fact of a movement away from mitigation, a particular efficiencies in terms of cost saving particular sectors, not always iwi and Māori, so Mr Mahuika asked you some questions about the Treaty responsibility and so on. So how much of – I'm struggling for the right words, but how much of a difficulty is it as a policy analyst, giving advice to ministers, particularly when the choice that they make is not to have public consultation on some aspects, how difficult is it to remain true to the issues such as international obligations and the science that you've talked about that's within the Ministry and so on, and being able to do that in an environment where there is a, perhaps a political aspect to the outcome that's being put forward?

A. I think the first observation I'd really make here is that with – seems a bit tried, I hope this doesn't come across I'm being flippant, but like within government, a lot of things are political. With climate change, it is an area where different people have really, really different views on what the right approach is, like it is quite a polarised and polarising set of issues. And that general polarity that, you know, is also kind of true for – it is an area where you see different governments taking quite different approaches. The thing that I think has been enduring – the climate – the Zero Carbon Framework has been quite enduring and it's, so far anyway, and it's – one of its strengths is that it has – it's quite strict on the targets and the budgets that you must meet but relatively flexible on the way of achieving those. I, sorry, I don't know if I'm answering your direction question, I'm always thinking about some top of mind things that it brings up for me. From my own – is when I was more junior I worked at the Treasury for a long time as I've mentioned and I see the Fiscal Responsibility Act and the Fiscal Responsibility provisions is somewhat analogous to what we are also

working within in the Zero Carbon Framework that is quite strong statements of principle about the overarching framework but quite flexible underlying approach. In an area where there really are quite diverse views, that can be really helpful because it allows people to stick to, sign up to an overarching framework and the current government has been clear that it is committed to the various climate change targets and budgets that were set by a previous government. It's been clear of its commitments to those. It's taken a different approach to meeting them. I think it's a strength of the system that it allows that flexibility. I don't know really answer your question but I got quite, I got distracted.

Q. Is it fair to say that in the juggling of targets in the changes in the methane and so on that seem to a very non-scientific person like myself to be lowering the standards to be less that it makes it more achievable and therefore it's easier for a government if you set lower targets and you can achieve them more easily that you can tick it off and say well we're meeting our targets that we set and therefore we're meeting our international obligations, would that be a fair description?

A. I think it's just important to just contextualise that with – So most, most of the targets that the previous government set, the current government has not changed. So it's changed the methane target for 2050. But the various other targets and budgets, so Emissions Budgets 1, 2, 3, nationally determined contribution, the first one. Those are the same. So those have not been changed. So the – so depending on how one measures overall ambition, there are lots of things that are still the same. The – in relation to the methane target in particular, the new target is a lower target than the previous target. So to that extent it is easier to meet in that regard. There's still quite a range in the new methane target. Our current projections which is what we actually think will happen have us in the sort of central scenario, more at the upper end of the range of the new target. It's a little bit – the projections out to 2050. I don't want to say that there is a lot of certainty associated with those projections because that would probably be a mischaracterisation of what it means, have a projection out to 2050, it's really too far in the future to say we're like definitely on or off track or definitely going to meet any one number. But

for what is the central scenario has us landing at more or less up end of that new range target.

Q. Just a couple of – so the changes that were referred to I think in the updated memorandum from counsel about the changes to section 3A, and it seems within that memorandum a reference to the fact that there is a kind of direction I guess to the Ministry and to those who are drafting the legislation to lessen the reference to te Tiriti o Waitangi, that it should be take into account I think are the words that are used in the memorandum, and that's the direction that's coming from the Minister at the moment, is that correct?

A. That review is – yes, is largely correct, but that review is led by the Ministry of Justice and the Minister of Justice. So I have fed into that via the Ministry of Justice but I haven't directly advised a minister on that. The Cabinet decision was to, across all Treaty clauses, to standardise the language so that the standards that base – that each Treaty clause say it says is take into account. So that would be a change to section 3A of the Climate Change Response Act which currently says give effect to.

Q. Thank you. And just one other, you've made references in your evidence to concentration of collectively held Māori assets in the agriculture and forestry sectors, and limitations on Māori sheep and beef farmers. Just interested, do you have or how do you collect the information about what kind of numbers we're talking about Māori sheep and beef farmers and those sectors, do you have that information or do you acquire it?

A. The Ministry for Primary Industries actually directly collects it. We work very closely with the Ministry for Primary Industries on this policy **(inaudible 14:48:53)**.

Q. And they give you the numbers?

A. Yes, they give them to us. We don’t directly count.

Q. Okay. Thank you.

QUESTIONS FROM KEVIN PRIME – NIL

(14:49) PROFESSOR DAVID WILLIAMS TO REBECCA PREBBLE:

Q. Tēnā koe, Ms Prebble. David Williams asking you two or three questions. You've had quite a number of questions from counsel about paragraph 12 on the Minister's decision not to engage in consultation on the 2025 Amendment Act because it wasn't required by an Act of Parliament. So just stepping back from this immediate context, as a senior public servant, lawyer trained, can you make any comment on the expectation of a civil servant with respect to consultation with iwi, hapū, hāpori Māori in regard to any major issue?

A. Yes. As I said before, like just because there isn't a requirement for consultation in the statue, that's not the end of the matter in terms of being a good Treaty partner, and my understanding of the Treaty and the principles rather is that actually in many situations where there is not explicit legislative requirement for consultation, there is some – it is hard to be, to really live up to those principles without engagement in some form.

Q. Thank you. You just had a brief mention of food production but no question from counsel, so can I just ask you about, you refer in paragraph 33.6 and then paragraphs 39 to 42, about the recognition of food production as an element of the amended legislation. And when I first saw that I thought we were talking about food security for New Zealanders but we're not because a lot of this food is sent overseas, 80 to 95% of some of our crops. So this Act is called the Climate Change Response Act. Can you tell me what on earth food production has to do with climate change response?

A. There are quite a few various factors that are reasonable to consider when in the overall question of, well, what should our path towards emissions reduction be. So how much we can want to contribute to the global effort is of course a really primary one. But the actual section of the Act that the food production that is now in is around the setting of emissions budgets, and in the section around setting of emissions budgets there are quite a few factors already that the minister is required to consider, the Minister around the Climate Change Commission, things like economic impacts, social impacts. It's quite a long list actually. Food production is within that list. So the relevance of that is, this is quite a significant part of New Zealand's economy. It's an area where we might well expect that some of the impacts of transition or some of the pace of change would have big impacts. It's recognising that this is one of the things that the government would like to be taken into account when setting out that – when arriving on an emissions budget.

Q. Right, thank you. Gross national product and stuff might be affected.

A. Yes, that's one of the things. Yes, that probably is already taken into account by the kind of economic impacts but yes, you're right, yes.

Q. My third question and last one is you had some questions about the proposals to pass legislation relating to the statutory functions of territorial authorities and requiring them to adopt adaptation plans and so on. So the Crown position as I understand it is that territorial authorities are not the Crown and they're not Crown entities. They are statutory established to do certain functions. So as a Crown public servant, what do you see is the, well, do you see the idea of delegating to territorial authorities requirements to do certain things as a useful mechanism for meeting the Crown's Treaty obligations?

A. The Crown is the Treaty partner. I agree with that. I think it would never be – would not be like the only thing you would do in that area. I think where there's a sort of a nuance there is that well actually in developing local adaptation plans it really does seem like a good thing that territorial or authorities work with the local Māori groups. That's not to say that is a complete discharge of the Crown's obligations as a Treaty partner but

rather a certainly useful and relevant important thing that territory authorities would need to do.

Q. So it's one instrument amongst many that you'd like to use?

A. That's probably a good way of putting it, yes. A lot of this is actually still to be developed, so talking in a slightly in principle way.

Q. Yes, well, good luck with the work, thank you. That's my questions, thank you.

(14:55) JUDGE MILROY TO REBECCA PREBBLE:

Q. Thank you. A number of my questions have been asked but I'll just follow up on that last question from Professor Williams about what's still in development and there's various mentions of the Resource Management Act in the evidence, and we're all aware that that's going to be changing and I'm just – are you able to tell us anything about how climate change will factor into the…

A. Yes, so, I'm not actually super close to those changes, but in terms of climate change mitigation, so the emissions reduction side of things, that is separate. So limited if any mentions of – so the idea is that the new Planning and Environment Acts would not be the primary instrument by which the Crown addresses emissions reduction because actually we have the Climate Change Response Act and the Emissions Trading Scheme, and the various leavers within that would be expected to influence decision-making already without needing to kind of also empathise it within the new planning legislation. That's the basic kind of principle. On the adaptation side, there's more nuance of that because there's a lot of – there's more obvious interception like when you're thinking about spatial plans that fairly obviously if there is an area within a spatial plan, that is very much at risk from climate change then that is something that very much should be taken into account. So that's slightly different on the adaptation side.

Q. Yes, I just want to ask your opinion about how – you mentioned that it would be expected that climate change, the provisions related to climate change in the Act and so on would naturally form part of the considerations of whichever bodies now are going to be the ones making

the decisions under the Resource Management Act – well, the new, the amended legislation. How certain are you of that? Because, you know, one might think that there are mixed signals coming from the government about different things and including where New Zealand's ambition is in terms of climate change and our meeting our national determined contribution and so forth. So, it does seem strange to me that that would be left as an assumption.

A. I guess talking about like maybe very specifically the Emissions Trading Scheme, which is our primary tool for reducing emissions always, yes, noting that obviously agriculture is not part of it but it is still half of our emissions or just slightly under half. The Emissions Training Scheme incentives operate on everyone regardless of whether you, in a legislative or separate legislative scheme that says you must think about climate change, like, the Emissions Trading Scheme just exists separately and does place its incentives on people. So exactly how that plays out in the future is, like, what incentives that will be whether it's incentives to plant more trees or to switch to electric vehicles or to stop – retire one's cold boiler or all that kind of thing, exactly what it is will depend a bit on the economics of various different things and what actually makes sense for the person making the decision at the time. But that's basically the philosophy that this is essentially we have already a legislative scheme that sets out our climate change response and the various leavers within that, to also then repeat it within a different piece of legislation that is fundamentally about something slightly different. That could be quite confusing and mixed signal or potentially end up doing things that are ultimately potentially inefficient or not actually completely aligned with each other. That's the basic philosophy there. But the question –

Q. But as you say, a big part of our emissions are not part of the ETS, and that's agriculture, and that will be for rural local authorities or territorial authorities, a big issue. I mean, a big part of their considerations.

A. There are – agriculture is not in the Emissions Trading Scheme. That's true. The various – the approach to agriculture does. There is an approach to agriculture though, the sort of the market and technology driven approach that with a lot of – noting the increase in emissions

mitigation technology that is really coming online sort of from about now. That's the approach. The question about how certain of it am I? I think I wouldn't be a very good public servant if I said I was very certain. There's always a lot of uncertainty.

Q. Thank you. I'm just aware that having enforced the time limits on others I should bear in mind the time limit on myself as well. Just another question that I had was that we did have a proximation, not sure it was a proclamation but let's call it that, by, previously by the government, by the previous government, that there was a climate emergency, and there does seem to me, especially I suppose in relation to the change in the methane emissions targets a loss of urgency, and I suppose the other aspect of it is that which was part of the questioning by Mr Mahuika about the market signal that was given. And I suppose the question I've got is what lessons have been learnt by those giving the advice to the ministers about how if you tug on one part of the system it's going to actually impact another in ways that seemed to have been unexpected?

A. The market correction that – correction's probably the wrong word. The market impact that happened towards the end of last year, I did not expect that. I personally – that was more dramatic than I was expecting. We knew we treated the announcements as market sensitive but the actual size of the market reaction, look just honestly it did take me by surprise but I have taken back on board and we all have taken that on board. There are various things we're thinking about in terms of reflections for ourselves.

Q. And my last question, and it's rather difficult I admit. There is an aspect of taking into account future generations and I just wonder how that analysis is done, how much weight is given to that, how much thinking goes into what our grandchildren are going to be dealing with? Because the world will be considerably different. I just think as an example that we may well be facing huge migration of peoples from the centre of the earth and New Zealand might look like a good place to come to. So how is all that factored into the advice given to ministers? Because it's easy to prioritise what's happening now.

A. It is and one of the, you know, I think one of the great challenges in climate change policy is the kind of weighing up of the future versus the present, and an appropriate kind of decision-making path through that doesn't unduly prioritise one at the expense of the other. Look, I'm afraid I'm not gonna answer this question in what will feel like a really satisfying way other than technology that is really genuinely hard. I think the – having a 2050 target does give us a kind of a north star, I mean 2050 in some ways isn't actually all that far away. My own children will be sort of just sort of adults walking around doing similar things to me in 2050 I guess, rather than having sort of a further out way thing.

Q. Well I suppose the issue is that they may not be doing what you're doing or what we're doing.

A. They may be doing something quite different for reasons that we haven't expected and haven't predicted.

Q. Thank you. Can I just say, so thank you very much for your evidence today and the time that you've given to us. As you mentioned yourself at various points, there are bits and pieces of further evidence that you'd like to produce for the Tribunal and for counsel and there are some written questions that will be coming to you as well. So we look forward to receiving that further evidence in due course. Thank you again and we'll take a break. I'm just going to canvas the –

MR PREBBLE ADDRESSES JUDGE MILROY – RE-EXAMINATION (15:05:35)

(15:06) MR PREBBLE TO REBBECA PREBBLE:

Q. Thank you, Ms Prebble. I just had a few questions on some of the points that have been raised by my learned friends. You were asked questions first about ambition by Mr Bennion and that was with respect to the NDC including he mentioned the dictionary definition, and he took you I think to paragraph 10 of Mr Smiler's evidence where he talks about the phrase "highest ambition" and that's discussed in the same sentence as the phrase "in light of national circumstances", and I wondered whether you could explain the connection between those two concepts?

A. Yes, I can. The phrase ‘highest possible ambition’ is one that’s contextualised by the, I suppose, the overall purpose of the Paris Agreement which is that countries set their own NDCs. It's not sort – there’s no sort of central Paris committee that hands out, “here's your NDC”. The judgment is for the countries themselves. And as part of that consideration, what is our highest possible ambition, our own individual national circumstances are like a highlighted thing that is expected that we would take into account.

Q. Thank you. You were then taken to the Climate Change Commission's monitoring report in July 2025 by Mr Bennion and that report says the removal of the equitable transition strategy as a result of amending ERP1 introduces risk to the adequacy of the government's ability to support partnership with iwi Māori and emissions reduction and address impacts of the transition to a low emissions future. And my understanding is MBIE is in a better position to explain why it was removed. I don't intend to ask you about those details. But from your perspective, in what ways does Emission Reduction Plan 2 continue to support partnership with Māori and iwi and address impacts of transition?

A. The second Emission Reduction Plan contains a chapter that really sets this out, and the kind of core pillars of that overall approach, the kind of continuation or noting of the various universal support mechanisms that are available, that are available for anyone who is affected by the climate transition. There's also some specific initiatives and particularly I'm thinking of the Māori Climate Platform that very much aim to produce solutions that are much more in a kind of Māori-led ethos. There's also some specific sector initiatives around – and there are some, particularly in the agricultural sector, that are particularly targeted at Māori in the agricultural sector whom – various tools to reduce emissions in that regard.

Q. Thank you. You also were asked by counsel when talking about the market and the implication of the market dropping 20%, and you noted that the advice given at the time was that it was market sensitive and it's unusual to predict what might happen. And I just wanted to ask, do you have a view about whether Māori considerations are taken into

consideration before those decisions are made? So obviously there's an impact to the market but your view about whether Māori interests are taken into account before the actual decision-making?

A. In that particular example, the advice that we gave certainly did set out the expected impacts on Māori of different – that example is the methane target. So I understand it was taken into account in decision-making just to the extent that it was set out in our advice. The methane target advice was just one stream of advice. That market impact that we saw was actually not really immediately after the methane target announcement, it was a few weeks after that, it was a package of other changes. And those other changes, impacts on Māori were taken into account, and the advice on those other ones too.

Q. Thank you and this is matter for Anne Haira and Gina Rangi, but just to clarify a few points to the extent you're able to on the Māori Climate Platform, is it correct to say that that platform is still operating as a policy initiative?

A. Yes, it is.

Q. And is that explained to the best of your knowledge in ERP2?

A. Is the Māori Climate Platform explained in ERP2?

Q. Yes, the continued existence of it?

A. Yes, I think so, I think it just mentions it, yes.

Q. And are you broadly familiar with the joint work programme between MfE and Pou Take Āhuarangi on that platform?

A. Broadly. I'm actually not really deeply involved but I am broadly familiar. Yes, I know that it exists.

Q. And that funding has gone towards projects through that platform?

A. That's right.

Q. You were asked also about engagement over a particular rohe when it came to changes to the efficiency over the last, of the CCRA, over the last 12 months, and that was particularly in relation to the tuatara. Do you consider that there are other assessments that address risks? So obviously that was – I understood those questions were particularly focused on the efficiency review, line by line review, but are you aware of

other assessments that address risk from climate change on Māori under the CCRA, and what are they?

A. Our advice across a number of things often does speak to either impacts on Māori or risks to Māori and particularly when in the risk context it's often more in the impacts of climate change, more than the kind of adaptation area. So certainly things like the National Adaptation Plan that I briefly mentioned or someone briefly mentioned today. It briefly came up by someone, whether it was me or not, that actually, that went into some detail about risks to Māori in particular areas. In the climate mitigation area we more talk about impacts and interest as opposed to risks I guess. Certainly it's a stream of our advice which is in the broad ambit – a lot of our advice is within the broad kind of umbrella of the Climate Change Response Act, yes.

Q. Thank you and that really just – so my understanding is therefore yes and predominantly in the adaptation space and you were just finally asked by her Honour some questions about what was still in development referring to the RMA and the role of local government and I guess just a question about, is that from your perspective more of an adaptation or mitigation issue and how would you see that?

A. I think the nexus between planning and land use planning and climate adaptation is a very, is quite a close one, and you particularly see that or likely to see that in the development of spatial plans, spatial plans being, you know, here's a piece of, largish piece of land, here is what we're going to use the different bits for… I think obviously climate related risk or just natural hazard risk in general actually would obviously be a really important consideration in putting together a spatial plan that is workable and functional. Climate mitigation I think is slightly different in that it's – a lot of the policies do work at that kind of whole of economy level and have impacts locally, but the policy sits at the whole of economy level. For climate mitigation it's rare to have a policy that is just about one region or area, the policy is generally about the national level and then the impacts made for region by region but the policy tends to be set nationally. And that's I think probably the distinction around or at least one way of

thinking about the distinction between what the Climate Change Response Act does and what the planning system does.

Q. Thank you, those were my questions, thank you very much for your evidence today, Ms Prebble.

JUDGE MILROY:

Thank you again, Ms Prebble and as I was saying we look forward to your further evidence in due course.

HEARING ADJOURNS: 3.15 PM

HEARING RESUMES: 3.33 PM

JUDGE MILROY:

We are handing back over to you from Mr Prebble to introduce our next witness, or Mr Fong.

(15:33) MR FONG CALLS

KATHERINE MARY WILSON (SWORN)

Q. Tēnā koe, Ms Wilson, can I begin with some formalities, can you confirm that your full name is Katherine Mary Wilson?

A. I can.

Q. And that for the purposes of this inquiry you have prepared a brief of evidence?

A. I have.

Q. And for the benefit of the Tribunal the appellation number for that document is #A141. And Ms Wilson, I also understand that you've prepared a summary of your evidence to assist the Tribunal?

A. I have.

Q. Can I invite you now to present that summary.

(15:33) KATHERINE WILSON: (#A141-(b))

Tēnā koutou katoa. Thank you, Madam Chair and members of the Tribunal. Ko Catherine Wilson tōku ingoa. Ko Pou Whakahaere Te Rōpū Urutau i

Te Manatū mō te Taio. I am the General Manager of Adaptation for the Ministry for the Environment. And I just want to provide a brief summary of my evidence and provide a short update on some of the policy areas where some progress has been made since the filing of my original evidence.

REFERS TO SUMMARY OF BRIEF OF EVIDENCE #A141(b)

Climate change adaptation involves efforts to manage the negative effects of climate change on people, ecosystems, and the economy, and also to maximise any opportunities that naturally arise as a course of change.

It is very closely linked to natural hazard risk management. In New Zealand, communities are exposed to a wide range of climate-related natural hazards, including flooding, coastal erosion, landslides and drought, as well as non-climate hazards including earthquakes and volcanic hazards. Managing natural hazard risk has long been a function of central and local government, particularly through land use planning, infrastructure investment, emergency management, and community preparedness.

Climate change is expected to alter the frequency, severity, and spatial distribution of climate-related natural hazards, and to increase the likelihood of compounding and cascading impacts. This presents a challenge for natural hazard risk management, in large part, because climate-related risk is inherently uncertain over the long term. This uncertainty means that risk management approaches need to be flexible and capable of being adjusted as conditions change and as new information becomes available.

Adaptation is a challenging and a dynamic process. Adapting to the effects of climate change is a continuous process of risk management. It involves regular assessment of how risk may be changing, planning and implementing adaptive actions, evaluating whether those actions are effective in managing risks, while also meeting other objectives that may be held, and then adjusting progress accordingly.

Adaptation always involves trade-offs and value judgments. There are multiple objectives, many choices, and competing interests for decision makers to consider. I also observed that local government and communities are generally best placed to understand local risks and decide whether and how to protect each of their assets, to consider what other options exist, and how to provide for future needs and cope with the uncertainty that is inherent in looking at a long-term risk.

A one size fits all approach will be insufficient in addressing the needs of many Māori communities, with mātauranga Māori at a hapū and iwi level informing local climate adaptation responses. That said, the government still has an important role to play in providing consistent settings to guide adaptation responses even when a decentralised approach is taken.

In broad terms, New Zealand's climate adaptation response comprises:

1. Adaptation policy cycle under the Climate Change Response Act 2002. This involves the development of a National Climate Change Risk Assessment, which then must be responded to by the Government through a National Adaptation Plan. And that National Adaptation Plan is then subject to independent monitoring by the Climate Change Commission. The Minister of Climate Change must then respond to the Commission's monitoring report, and the cycle repeats itself.
2. The National Adaptation Framework is a work programme currently under development, which provides an enduring and long-term approach to adaptation in New Zealand. This is not designed to replace the current legislative settings, but to strengthen, supplement and guide the existing system of response.
3. There is also a wide range of other legislation and instruments. Adaptation is a cross-system, long-term issue, with levers for intervention sitting across numerous portfolios such as emergency management, insurance, infrastructure, funding and financing, housing and resource management. This reflects the fact I highlighted earlier that New Zealand is a hazard prone country and has developed

extensive hazard risk management systems throughout its time. As a consequence, there is other legislation as well that is also relevant to adaptation at national and at sub-national levels. I have listed some other examples of these in my longer brief of evidence.

As with my evidence, my summary here today focuses primarily on the first two components of our adaptation climate response, and touches on some elements of the third where that is appropriate.

Under the Climate Change Response Act, the first part of the adaptation cycle is National Climate Change Risk Assessment. This assesses the national-level risks to New Zealand arising from the effects of climate change and identifies the most significant risks. The Climate Change Response Act requires the Minister to prepare a first National Risk Assessment and for the Commission then to prepare all subsequent National Climate Change Risk Assessments at least once every six years. Then, in response to each Risk Assessment, the Minister of Climate Change must prepare a National Adaptation Plan within two years of the latest Risk Assessment.

A National Adaptation Plan must set out the government's objectives, strategies, policies, proposals and timeframes in response to this National Risk Assessment, and it must set out how the most significant identified risks will be addressed via actions for relevant government agencies, as well as the measures and indicators that will enable regular monitoring and reporting on the implementation of those strategies, policies and proposals.

As this is a six-year adaptation cycle and a six-year National Adaptation Plan, it sets out a forward work programme and change is to be expected through this time.

The Commission is currently required to monitor and report on the implementation and effectiveness of each NAP every two years following publication. And monitoring is an important part of the Climate Change Response Act framework in the legislation. This independent assessment

helps to make progress visible and can identify where there are further opportunities that could be taken and challenges to act upon, given the long life of a National Adaptation Plan.

The Minister is then required to officially respond to the Commission's report within six months of it being published. In addition to keeping the progress visible, this also provides transparency and flexibility, which is necessary given the range of objectives that the Government must consider, both in the National Adaptation Plan and more broadly for New Zealand.

I discussed the detail of the first National Climate Change Risk Assessment, the first National Adaptation Plan, and the subsequent review by the Commission and the Government response to that review in my evidence. I will not repeat them here but will just note throughout the development of each of those, there was a considerable engagement with iwi and Māori.

By way of illustration, the first National Climate Change Risk Assessment was based on Arotakenga Huringa Āhuarangi: A Framework for the National Climate Change Risk Assessment for Aotearoa New Zealand. It combined Māori and stakeholder engagement with scientific, technical and expert information to inform the assessment. Similarly, during the preparation of the first National Adaptation Plan, the Ministry for the Environment commissioned Ihirangi (then operational arm of Pou Take Āhuarangi, the climate pou of the National Iwi Chairs Forum) to describe an indigenous worldview of adaptation, recognising that a te ao Māori worldview of adaptation is not generally reflected in the approaches of government. The Rauora framework was developed as a result of this. Many submitters, which included various Māori stakeholders, were supportive of the Rauora framework. And the NAP was published with the Rauora Framework included as a lens to consider further approaches to progress adaptation.

In early 2024, the Minister of Climate Change sought approval from Cabinet to progress an "Adaptation Framework". This is intended to establish an enduring,

long-term, joined-up approach to adaptation with clear guiding principles, and a clear leadership and responsibilities for bringing it together.

The National Adaptation Framework is intended to provide some decision making principles to guide:

1. Both, proactive actions to reduce risks before a major event occurs; and
2. also longer-term recovery decisions. Not primarily emergency response, those things that happen immediately in the face of severe weather events, but those that come next that are about rebuilding and resilience for the future.

The National Adaptation Framework was published in October 2025. It has been developed through four pillars or workstreams:

1. The first one, risk and response information sharing.
2. Roles and responsibilities.
3. Principles for investment in risk response.
4. Principles for cost-sharing pre- and post- event.

During cycles of policy development on the issues covered in this work programme, there were two Select Committee inquiries. One conducted by the Māori Affairs Committee and a second one by the Finance and Expenditure Committee, which also had the benefit of submissions that had been made up to the Environment Committee which had initiated its own inquiry prior to an election. These Select Committee inquiries created further opportunities for perspectives of iwi and Māori to be heard and understood by decision makers across Parliament. The Government also established the Independent Reference Group on Climate Adaptation, which has also helped to inform policy.

During the development of the National Adaptation Framework, officials from MfE met with 18 groups in 2024 and 24 groups in 2025 (which included Post Government Settlement Entities and other Māori groups). We have also

engaged with the National Iwi Chairs Forum and Te Tai Kaha, which is detailed more extensively in the summary of Anne Haira and Gina Rangi.

Across the groups that we have engaged with, key themes raised included giving practical effect to Te Tiriti o Waitangi through clear legal duties that flow into local decision making, enabling Māori led and tikanga based participation in adaptation planning, and seeking resourcing for practical adaptation actions at place. This feedback included calls for dedicated Māori funding, support for marae and community resilience, and improved access to fragmented or siloed data sets. Groups also emphasised the need for bespoke approaches for whenua Māori and cultural infrastructure that might reflect collective ownership models. Concerns were raised about the risk of deprioritising small, rural and remote hāpori through the development of a National Adaptation Framework.

Conversations with Post Settlement Governance Entities and some yet to settle groups were focused on how proposed settings would affect them in their rohe, given their particular climate risks and constraints. While common themes emerged from many of these conversations, groups highlighted differences in what was being experienced at different places, reinforcing the importance of flexibility in both the framework design and its application at the local level.

Since my brief of evidence was filed with the Tribunal in August 2025, the Government has advanced a suite of policies and initiatives. These are aimed at strengthening climate-resilient planning and minimising the long term costs from climate change and natural hazards. These measures are summarised to supplement the earlier evidence and to provide a more comprehensive account of progress on this work.

As I mentioned, in September 2025, Cabinet agreed to establish the National Adaptation Framework to ensure that people know what risks they face and what the plan is to address those risks. The key initial steps are:

1. to develop a National Flood Map that unifies national and local data, which is readily available for everyone to use;

2. amendments to the Climate Change Response Act to clarify requirements for local government by requiring them to undertake adaptation plans in priority areas; and
3. further amendments to the Climate Change Response Act to provide a power to make regulations that would prescribe further the content and process requirement by which local government would go about developing these adaptation plans.

In determining which locations adaptation plans are required for, consideration is to be given to the needs of rural, urban and Māori communities. Regulations prescribing the process of developing these adaptation plans will also include considerations relating the needs of rural, urban and Māori communities. These work programmes will progress after amendments have been made to the Climate Change Response Act to give effect to Cabinet's decisions that I've just outlined.

Cabinet also indicated a direction of travel on policy around cost-sharing, with decisions on this pillar of the National Adaptation Framework scheduled to be taken in the next term of Government.

In October 2025, the Government published the National Adaptation Framework, outlining 16 initial actions, including those that I've just identified.

These actions form the building blocks of the Framework and, overtime, the intent is to keep building on these actions to support an enduring, long term approach to adaptation for New Zealand.

The first part of this being about provide, clear, trusted risk information. In October 2025, the Government announced it will develop New Zealand's first National Flood Map to provide a trusted source of flood risk information for the whole country. The map will unify the best available local, regional and national-scale data, so everyone can access information to help them make informed decisions. The first-generation map is expected to be publicly

released in 2027. It will be improved and expanded on over time, as new science, data and technology become available.

MfE has been working with local government to catalogue the local and regional flood models that currently hold and is currently procuring a supplier for the first stage of this National Flood Map, which focuses on developing a national framework and supporting data architecture to be able to integrate these models together.

The intention is that the National Flood Map will support decision-making by providing transparent data in one place that can be used alongside local knowledge to make it easier for Māori communities to access information and understand the risks they face to inform their risk management planning.

In September 2025, when Cabinet made decisions indicating its direction on pillar 4: cost-sharing, those decisions signal a longer-term shift towards settings that ultimately better reflect risk and strengthen incentives for risk management. This includes an intent to move over time towards an end state policy position where the Crown no longer distorts risk signals by providing financial assistance to homeowners suffering significant losses after major events, particularly in the form of residential property buyouts.

In the near term, Cabinet has indicated that:

1. Central government's support for local government recovery planning primarily covers infrastructure rebuilding and resilience. In some instances, property level resilience measures (which may include buyouts) may be part of area wide resilience measures, where that is the most cost-effective option.
2. Where central government does continue to provide discretionary financial assistance, the objective is not to fully cover losses that have been suffered, but to focus the support on mitigating genuine hardship that has been felt in these particular circumstances.

Further policy work is underway, with additional decisions on costs-sharing expected in the next term of Government.

Through engagement on the National Adaptation Framework, Māori groups raised concerns about a market-based or beneficiary pays approach to cost-sharing. We heard that these would exacerbate existing inequities and fail to reflect the collective, cultural and historical nature of whenua Māori. Māori emphasised the Crown's obligation to protect Māori land, taonga and communities, and called for bespoke funding arrangements.

Cost-sharing policy settings are intended to consider the particular circumstances of Māori landowners and interest holders, including the legal and cultural status of whenua Māori and other protected Māori land, and the collective ownership and decision-making structures. The Independent Reference Group and the Finance and Expenditure Committee both recommended bespoke approaches to whenua Māori and cultural assets be progressed in the context of the cost sharing work programme.

To help support this ongoing workstream and future advice to incoming governments, MfE is working with Pou Take Āhuarangi and Te Tai Kaha to examine legislative and regulatory barriers to risk reduction decision-making for iwi, hapū and Māori landowners.

In October 2025, the Regional Infrastructure Fund invested a further $96.8 million into 32 regional flood resilience projects across New Zealand. The projects include early flood warning systems; and a range of new and upgraded infrastructure that will help protect communities against flooding. These include stop-banks, spillways, culverts, gravel realignment and extraction, rock walls, and streambank stabilisation.

In November 2025, the Government held public consultation on an exposure draft of the Local Government (Infrastructure Funding) Amendment Bill, which included in it to replacing development contributions with a development levies system. In conjunction with this, it agreed in principle to the Commerce

Commission becoming the regulatory agency for development levies (subject to further work).

In November 2025 Standards New Zealand was commissioned by the Ministry for the Environment and commenced work developing two standards; one on flood hazard modelling and the other on natural hazard risk analysis.

In December 2025, Te Waihanga, Infrastructure Commission, published guidance to support agencies on asset management to improve natural hazard risk management.

I mentioned at the beginning a key focus on strengthening existing settings for hazard risk management, and a core legislative framework for this relates to how natural hazards are managed under the resource management system.

A new National Policy Statement for Natural Hazards, under the current Resource Management Act 1991, came into force on 15 January 2026. This National Policy Statement requires local authorities and decision-makers to assess and manage natural hazard risks in a consistent, risk-based and proportionate manner. It has a strong emphasis on avoiding very high risks, requires the use of the best available information and also requires consideration of the impacts of climate change at least 100 years into the future.

The aim of this National Policy Statement is to ensure that new development is more resilient, which will lower the social, economic, cultural and environmental costs of future natural hazard events.

Some amendments have also been made to the RMA itself (through the Resource Management (Consenting and Other Systems Changes) Act 2025) to strengthen councils' ability to respond to new information about natural hazard risks as this emerge.

These changes enable planning decisions to be based on the latest understanding of natural hazard risk, such as when a council receives new or updated information or following a natural hazard event.

Some key features of these recent RMA amendments include:

1. expanded powers for councils to decline land use consents or to impose conditions where significant natural hazard risks exist;
2. new natural hazard rules in proposed plans take immediate legal effect upon notification; and also
3. new regulation making powers are now in force to support faster response and recovery activities following natural hazard or other emergency events.

The Planning Bill and the Natural Environment Bill, introduced in December 2025 and now currently before the Select Committee, carry over and build on these RMA changes.

Together, the Planning Bill and the Natural Environment Bill aim to establish a modern framework for how the planning system will safeguard people, communities, and the environment from natural hazard risks.

I can't speak too much of the detail of those proposals, especially as they're currently before the Select Committee, but I particularly wanted to highlight the goals that are sitting in these two bills that relate to natural hazard effects, which includes the effects of climate change. The Planning Bill would require persons exercising functions under the resulting Act to seek to achieve a range of goals including "… to safeguard communities from the effects of natural hazards through proportionate and risk-based planning". The Natural Environment Bill would require persons exercising functions under the resulting Act to seek to achieve a range of goals including "… to manage the effects of natural hazard [sic] associated with the use or protection of natural resources through proportionate and risk-based planning". Both Bills define "natural hazard" as

including "… the effects of climate change on [those occurrences that meet the definition of "natural hazard"]".

What I've summarised here outlines the multiple layers of the legislative and the regulatory framework that the Crown has established and continues to develop and adapt to ensure that the risks and opportunities of climate change are being considered by decision makers.

There are three broad elements to this policy response.

Firstly, the national level cycle in the CCRA centred on assessing national level risks, developing a national level plan to address the most significant, and a monitoring and a review cycle.

Secondly, work under way through the National Adaptation Framework to strengthen the tools and settings that particularly guide local government who are best placed to lead conversations with their communities about the particular risks based at each place.

And thirdly, other reforms to frameworks that guide decision makers on relevant policy areas.

I hope this summary and evidence is helpful for the Tribunal for the important work in front of you.

JUDGE MILROY:
Thank you, Ms Wilson. I'll just check with Mr People. Sorry, Mr Fong.

QUESTIONS FROM CROWN COUNSEL – NIL

JUDGE MILROY ADDRESSES MR SHARP AND MS DORN (15:58:53)

(15:58) MS DARSHINI DORN TO KATHERINE WILSON:

Q. Good afternoon Ms Wilson. My name is Darshini Dorn and I represent four claims in this inquiry, including the New Zealand Māori Council and various district council and Māori committees. Thank you. So our witness Dr Anthony Cole has given reply evidence to your brief. I'm just wondering, have you read his reply evidence or are you familiar with it?

A. I have had a chance to have a brief look at it, yes.

Q. Thank you. I'll just be paraphrasing but the questions I'll ask you are based on the comments that he has made in his brief. So I just wanted to talk about the National Climate Change Risk Assessment and the *Method* report. So in paragraphs 45 to 50 of your evidence, you detail that through combined Māori and other stakeholder engagement, the assessment identified 10 most significant risks which are set up in paragraph 49, and then at 50 you identify additional risks of particular significance to Māori, which include risk to Māori social, cultural, spiritual and economic wellbeing and cultural heritage sites from loss and degradation of lands and waters, ongoing sea level rise, changes in rainfall and drought. Loss of species and biodiversity. Increased extreme weather events and fire. And then a risk of breach of Treaty of Waitangi obligations from a failure to engage adequately, is that correct?

A. Yes, that's right.

Q. So our witness, Anthony Cole, he contends in his evidence that these additional risks identified as significant to Māori are actually incomplete, and at paragraph 126 of his evidence he says that the risks identified are absent of a Māori cultural perspective of risk, including cultural reference points such as mauri, the wairua, domain, and other dimensions of Māori knowing. Do you have a response to this comment?

A. I think what I would say to that is that what you've identified here is the results of the first National Climate Change Risk Assessment. I understand, although I was not part of it myself, I understand that that work was undertaken in a reasonably rapid timeframe, given the breadth of work that is required to identify national level risks, and although many efforts were made to bring in Māori perspectives and views, it is inevitable that there will be other perspectives and views that may not have been

captured within the first of the National Climate Change Risk Assessments.

Q. Thank you. And just to follow up. So you've said elsewhere in your evidence that there's been extensive engagement. Are all these engagement processes conducted in a really rapid timeframe, would you say that's adequate to provide for a Māori voice?

A. I think when you look across the decade of policy work on adaptation, there have been many touchpoints for engagement. I don't think it's accurate to say that all of those engagement processes have been rapid or too short, but what we can see from where we sit now is the combination of voices kind of coming together into this stage of the policy process.

Q. Thank you. I'd now like to take you to that *Method* report that you refer us to paragraph 48, and I can bring it up on my screen if that's helpful.

A. Yes please, I don't have that in front of me.

Q. Thank you. So I'll just bring this up. Are you able to see that document?

A. I can, if you could make it a little bit bigger that would help me.

Q. Yes. Is that better?

A. Thank you, yes.

Q. Okay, so this is the *Method* report that you refer us to at paragraph 48 of your evidence, and looking at 4.2.1, the heading Māori perspectives on the risk assessment process. So similar criticism that Dr Cole made is made under the first bullet point that the current NCCRA framework is not positioned within a Māori framework and, therefore, the relationship of mātauranga Māori to the domains in those brackets there and their risks are unclear, and that in some instances this restricted their ability to frame risks from a Māori perspective. And then again, at page 42, which I'll just scroll down to, in the feedback the concerns were raised that the participants were unable to inform that methodology. And so, I put it to you that although engagement occurred, it was inadequate because it failed to properly account for Māori's own perspective on risk, and that a methodology based only on Western concepts of knowing is incomplete when assessing risks for Māori. Do you have a response to that?

A. I think the *Method* report does a very clear job articulating the limitations that it has and that it was able to complete in the time that it had available.

Q. Thank you. And just one more from this *Method* report at the top here. So the participants commented that a preferred approach would be to establish a parallel Māori Climate Change Risk Assessment process to run alongside the NCCRA process which would be driven and developed by Māori. And I'm just asking, was there anything done to resource a parallel Māori Climate Change Risk Assessment process?

A. One of the major focus areas of the joint work programme that we currently have underway with Pou Take Āhuarangi is funding for them to support iwi and hapū to undertake Climate Change Risk Assessment processes at place. This is driven and developed by Māori. It's a joint work programme with agreed priorities whereby funding has been made available for that to happen.

Q. Thank you, thank you for your answer. Moving onto another question, so just paraphrasing our witness Anthony Cole, in his evidence he states that the Māori rangatiratanga space needs to be further developed and elevated rather than a heavy reliance on consultation. So given his concerns as well as those raised by the participants in the *Method* report, would it be fair to say that mere consultation is not appropriate nor adequate and actually collaboration or co-designing of these processes is necessary, particularly because there are significant risks identified that are unique for Māori?

A. I think adaptation is particularly challenging and is a policy area where dialogue is very important. This is one of the reasons why the current policy framework around adaptation plans provides for time and a process for dialogue and engagement.

Q. Thank you. And moving to your final paragraphs of your brief of evidence, which is paragraph 133 to 134, so just briefly you say there was extensive engagement with iwi in Māori through the development of the NCCRA and the NAP that it has informed your climate response and you acknowledge that more can be done to involve Māori voices in decision making and you're committed to strengthening your engagement

practices. Could you point to or give examples of any specific measures that MfE has put in place to strengthen engagement practices with Māori?

A. I cannot think of any particular measures around our engagement practice off the top of my head but that might be something to test with Anne Haira who leads that part. What I would say is I know that we do have measures where we're tracking, giving effect to our Treaty Settlement obligations, many of which for the Ministry for the Environment relate to participation and engagement. That's not a full aspect of engagement but in terms of the Ministry's practices that's probably something that other parts of the Ministry are better placed to answer specifically for you.

Q. Thank you. And given that adaption is local specific, do you agree that engagement should not just be iwi focused but needs to be at the hapū and the local community hapori level which you refer to in your summary as well about the concerns of de-prioritisation of rural hapori?

A. Absolutely. Adaptation really requires engagement from all of those affected at place which would include hapū level as well.

Q. Thank you, thank you for your answers. Those are all of my questions and thank you for your evidence today.

(16:09) MS KUDRAT TO KATHERINE WILSON:

Q. Tēnā koe Ms Wilson. My name is Kudrat. We represent three claims in this inquiry, one of them are based in Taranaki, one are in Horowhenua and another group on the East Coast by Mangatū. So just to situate you where our claimants. And I will be referring to your main brief of evidence and the helpful collection of documents you filed and there are a lot of synergies to my questions that have already been asked. So I'll just jump straight in and wanted to go to the first National Climate Change Risk Assessment that you discuss at paragraph 50 onwards and you make some really interesting, well, you note interesting points there, risks identified significant to Māori. So at 50.4 you talk about risk of a breach of Treaty of Waitangi obligations from a failure to engage adequately and protect current and future generations of Māori from the impacts of climate change. But the point I'm really interested in, particularly

interested in was at 51.5 where you talk about the risk to the ability of democratic institutions to follow due democratic decision making processes under pressure from an increasing frequency and scale of climate change impact. So having made this statement, interested in your view on what this means for Māori and Māori interests at critical moments and doesn't this make a case to resource and partner with Māori from the bottom up?

A. So you're referring specifically to 51.5, the risk around the ability of democratic institutions to follow due democratic decision making processes.

Q. Yes.

A. I think that risk is one where the way in which our democratic institutions are functioning so far to date, do not appear to have been significantly put under pressure from an ability to follow due process because of increasing frequency and scale of climate change impacts in terms of the kinds of decision making that they have taken in relation to large scale climate change. Due process has generally been able to be met.

Q. Understood, but that's at risk – that is a risk for the future. So I wanted to come to the Rauora Framework, and you have mentioned it quite a bit in your evidence, and going specifically to the document in your bundle, so for the record it's at MfE.008.030. So I want go through the full report prepared by Ihirangi, but the way they describe it, it's an indigenous worldview framework for National Climate Change Adaptation. So it's an indigenous framework for adaptation and it looks to the root causes to achieve an equitable transition to the goal of a zero carbon future. And so, they discuss in their report that it doesn't start from a minimalist or reductionist lens but it starts from an indigenous worldview. That's a markedly different starting point which is one of abundance or Rauora. So that's quite a different way of looking at adaptation. It's not looking at a starting point or a target of trying to manage to a 1.5 target but it's from a concept of abundance, would you accept that?

A. I think that's an accurate summary of Ihirangi’s report.

Q. Yes. And if the Registrar could just bring up the model please itself. It's on page 7 I believe and if you could just make it a bit larger. Thank you.

So on the left you've got an extractive economy, and to move through a just transition process and moving to a Rauora framework there are certain values and there are – if we could just scroll slightly to the bottom please – there are climate resilience and transformation must haves. Do you see that at the bottom? I might read them out because they're quite small. It talks about accelerating ecological restoration. It's manaaki, mātauranga Māori, hoki whenua mai, advanced constitutional transformation to reaffirm Te Tiriti o Waitangi, shift economic control to communities, re-localise economies, and whakapiki oranga o te wai ki uta, ki tai. So if we take an example of ecological restoration, under the Rauora approach, you won't be starting from a point about, say, a species is going extinct, what must I do to stop that. It's a more holistic approach and looking at how do we help them, the species, thrive. Would you agree with that? Is that a fair way of looking at just that one point?

A. In terms of what was in Ihirangi's report to us?

Q. Yes.

A. Yes.

Q. Then looking – so at hearing one of this inquiry, Taranaki claimants presented evidence and one of them was a Toitū Taranaki 2030 document which was about looking at a model to advance transition in their community but also has more national goals in it. And if we could please just go to the next page. The model that you see used in their strategy is very similar to the one used by Ihirangi. And so we've already discussed that adaptation isn't a one size fits all situation, but here's a community group with the localised response using very similar concepts and models. And so, isn't this an attempt to address one of a – a really challenging concept at a localised level?

A. So do you want my comment on Toitū Taranaki's…

Q. Yes, yes.

A. I don't really have much to say about their document.

Q. Okay. Well, just going to the next page there are a few policies that they suggest that need to happen, and things like public using – public transport promotion campaigns and restoring and expanding public transport services as an example. They discuss a supporting circular

economic infrastructure for example. So these are just concepts that they've and policies they've identified in the document. So coming to the Rauora Framework that's actually in the National Adaptation Plan 1, So that's on page 30 if we could please bring that up. That's not quite the same as what we've seen in the Rauora Framework by Ihirangi, is it?

A. That's right. What we have developed in the National Adaptation Plan was a simplified version of the report that was provided by Ihirangi that we drafted and with agreement from Ihirangi included this version of it to provide something of a bridge that can help with the different languages that people use to understand the challenge and opportunity of climate change from te ao Māori worldview and the way that our policy making process tends to work.

Q. I understand. But then if I look at some of the things missing from this framework, things like advancing constitutional transformation to reaffirm Te Tiriti o Waitangi, shifting economic control to communities and re-localising economies. That's quite different, right. It's missing from – significant parts of the Rauora framework are missing from this iteration that end up in the final report?

A. So this – the part that you see here that's included in the National Adaptation Plan does not purport to be an exact replica of the report that was provided by Ihirangi. This was a version that we developed and agreed with Ihirangi for inclusion in a government document.

Q. Right, thank you. I read the report by Ihirangi and they make a comment at paragraph 7 about non-indigenous rules and regimes being gift wrapped in Māori values, often leave Māori with only glossy reports, graphics and translated proverbs as evidence that they participated in planning, design and development. So when I look at that and I look at this Rauora Framework in NAP1, I can't help but feel that it's a bit of that. It's just a repackaging of an indigenous model for what adaptation could look like. Would you like to comment on that?

A. So I think what we have with the framework here is – what we agreed with Ihirangi was that this forms a basis for ongoing conversation for adaptation policy.

Q. Thank you. I guess moving to more recent changes and I don't know if you were here for the morning session but there was some discussion about the Climate Commission's monitoring report on emissions reduction, and I'm conscious that you're an adaptation expert, but one of the points put this morning was that the Government doesn't have a specific lever to achieve strategic partnerships with iwi Māori through the transition as the equitable transition strategy was removed during the amendment of the first Emissions Reduction Plan. So that's the equitable transition or just transitions removed from the Emissions Reduction Plan. But then when we look to adaptation plans, there's no such iteration of just transition or equitable transition when we look at the most recent National Adaptation Plan.

A. I think there's two things for that. I think the first one, as you say I'm not a mitigation expert, but the things to do with the Emissions Reduction Plan, there are specific legal requirements around equitable strategy, and I apologise I'm not across the specific details of those but that's kind of one aspect of it. I think the other thing that I would say about the National Adaptation Plan is the whole focus of the National Adaptation Plan is a transition. It's about how we transition our systems, our practices, our ways of being, how we reduce vulnerability and build resilience. And so, it is inherently that kind of plan and it sets out strategies, policies, objectives and proposals.

Q. Okay. I guess I'd like to maybe come to funding and there's been some discussion about the Māori Climate Platform today and I looked at the website this morning just to reorient myself on where the Platform is because there's been a lot of change. So it says who can apply and it says it's a closed invitation only contestable fund, and those invited include PSGEs. I guess when I look at equitable transition, that's not really – it doesn't match with a closed invitation only contestable fund, does it?

A. I can't speak to any of the detail about the Māori Climate Platform.

Q. Right. And also not about funding available to the Māori Platform?

A. That's part of the detail of the Māori Climate Platform.

Q. Right. I guess I will move on to the next point which I was interested in the workstream on mātauranga Māori and at paragraph 84 you discuss an addendum of policies in chain, and there are a number of policies that are due to be completed by March 2026. So one of them being a tool or guidance specific to mātauranga Māori and mātauranga indicators. So if it would be good if you could file those at the end of March 2026, whenever they're ready, be helpful.

A. I can definitely get the part of the Ministry that is working on the Mātauranga Māori programme to provide an update of wherever they are at that point.

Q. Thank you. But I guess I'm just interested also that adapt – that you aren't across the different sort of teams that work on adaptation, so there's no – so you don't have oversight on the work they do and how they influence adaptation policies?

A. I think there's – you can organise your work in many different ways. I think what you are kind of commenting on if you like is a reflection that adaptation is fundamentally across all the different policy domains.

Q. Yes.

A. So there are multiple work programmes that bring adaptation issues into them and they delivered and overseen by different people, as they relate to when they come into specific matters of adaptation policy, we coordinate across those, but specific points of detail that you're after are probably best to speak to the person who's definitely working on them at the moment.

Q. I understand, thank you. I also had a quick look at the National Policy Statement on natural hazards that came up yesterday and there's been a lot of discussion about whenua Māori being particularly susceptible to effects of climate change. But when I look at the policy statement there's no mention of Māori or whenua Māori in that document. Would you want to make a comment on that?

A. The core objectives of the National Policy Statement on Natural Hazards were to address the particular challenge prior to the new planning system coming into effect to give some stronger tools to councils to stop new developments in areas of highest risk. So if you like, it's kind of filling a

bit of a gap in our current framework before the new planning system legislation comes into effect.

Q. I guess, on a related point and I think this will be my last question to you, is about rate caps that were recently introduced by the government, and you mentioned in your summary as an update. So my understanding that the Government will legislate a cap of 4% per annum on rate rises, and the exceptions of the cap is during an extreme circumstance such as a natural disaster or catching up on vast under investment with infrastructure. So given that costs are an issue and you've acknowledged that central government can't bare all cost, does the central government pay local government rates on Crown land?

A. Some parts of central government pay rates. So for example, the office building I work in pays rates but other parts of central government don't pay rates.

Q. And has climate modelling or projection about increase in rainfall or sea level rise intensity and severity of extreme weather events being modelled in relation to councils under impact of rate caps?

A. I can't speak to what modelling officials at DIA might have undertaken to inform that.

Q. Right, so that's something to take up with DIA officials. And that proposal was assessed for its implications on the NAP, would you know?

A. In terms of officials at D – What I would probably say is those proposals come to other agencies for comment and what I can speak to is the exceptions that you just outlined to the rates capping in terms of expenditure required to recover from natural disasters and to catch up from under investment in infrastructure are the sorts of expenditure we would expect to be the largest majority of costs as it relates to adaptation. So from that perspective, those were the things that our advice focused on in terms of feeding into the rates capping proposal.

Q. Kia ora, thank you so much. I will leave my questions there. Thank you.

JUDGE MILROY:

Thank you, Ms Kudrat. Our next questions are from Phoenix Law. Ms Boatwright.

(16:33) MS BOATWRIGHT TO KATHERINE WILSON:

Q. Tēnā koe e te Kaiwhakawā. Ahiahi mārie, Ms Wilson. Ko Ms Boatwright tōku ingoa. I represent several claims within this inquiry. I won't state who they are except for they are situated all over Te Ika Māui primarily in Te Tai Tokerau. So hopefully that gives you a little bit more context. To support my questioning today, I will refer you directly to several paragraphs within your brief of evidence and I note that my learned colleagues have already started to take you through some of the parts that I wish to question you on so I won't traverse in those areas as in depth as I had initially planned. But to begin, I would just like to take you to paragraph 8 of your brief.

Q. Okay, thank you.

Q. Awesome. Is it correct that to respond to the effects of climate change that are already occurring or expected to occur, policy and legislation must be adapted to respond accordingly to those changes?

A. Some change is already occurring, so it depends which effects we might be particularly thinking about.

Q. Yes, so particularly thinking about the likes of severe extreme weather events, the rising of sea levels, a lot of landslips and erosions in that case.

A. Yes, so there's quite a lot of work currently underway to reform legislation and regulatory settings to take account of that.

Q. Of course. Thank you for that. So just moving on, I just now want to take you to paragraph 25 of your evidence where you discuss a decentralised approach to adaptation may be more enabling for Māori to adapt effectively to climate risk as a one size fits all approach may not adequately address these needs, is that correct? Of Māori, I mean.

A. Yes, that's what's in my evidence.

Q. Yes. And so, why would a decentralised approach be more appropriate for Māori in the context of this adaption to climate change? Perhaps you can explain further please.

A. So one of the things that we are particularly weighing up when we think about the policy framework for adaptation is what are the sorts of things that central government is best to do and given that it spans across the whole of the country, and where is it more appropriate to have

decision-making happen closer to place. One of the things we were particularly thinking about in relation to that was there are different perspectives on what should happen in relation to managed retreat. Some people have suggested that the Crown should run a process. In particular, this comment is really about that. We don't think it's appropriate and would be more enabling for Māori for there to be a decentralised approach which looks at what are the nature of the risks, what are their aspirations and objective, what are the options available to address those risks for the future?

Q. Thank you. And further in that same paragraph, you also state that mātauranga Māori at a hapū and iwi level can be critical in informing these responses. If this was the case, would that mean that effective climate adaptation policy needs to consider mātauranga Māori when developing these policies?

A. I think particularly when it's adaptation policy about what happens at place. So I think there's a wide range of mātauranga Māori that would be relevant to informing climate adaptation responses at place.

Q. Thank you. I just now to take you to paragraph 59 of your brief. It's just one further question in relation to the commission of Ihirangi as I'm aware that my learned friend Ms Kudrat has spoken to you in depth about that, but why was it considered necessary for the Ministry to commission the Ihirangi report describing an indigenous worldview of adaptation at the time of 2021 when it was first commissioned?

A. The reason why we did that was partly a reflection on the limitations of the National Climate Change Risk Assessment that we earlier discussed. This was a next step on in terms of how might we go about doing things differently and that was one of the approaches that was taken at that point in time.

Q. Thank you. Now I just want to move to paragraph 70 and 71 where you begin to talk about central government having or holding a responsibility to establishing regulatory framework that guides how local government carries out its responsibilities. You also note that there is currently no explicit requirement for adaptation planning outside of addressing natural hazard risks, correct?

A. Mhm.

Q. And so, why is adaptation planning currently linked primarily to natural hazard management rather than being a stand-alone planning requirement for government in general?

A. Well, adaptation is a stand-alone requirement for Central Government in the form of what is required by the Climate Change Response Act. So the Climate Change Response Act creates the requirements for central government that drive consideration of adaptation across all of the different policy areas. At the local government level, that is where the responsibilities have been devolved for most of what is required around natural hazard risk management, and as adaptation is fundamentally focused on the problem of our changing profile from natural hazards, it's appropriate to consider those at both of those levels.

Q. Of course. And you also state that central government is exploring ways to clarify that adaptation should form part of natural hazard management in order to integrate adaptation planning into the core functions. How would clarifying this relationship between the two levels of government help ensure that climate adaptation is more effectively incorporated into local council and regional council planning and decision making to prevent or to better support their responses to climate change?

A. So the particular policy that that part of my brief of evidence was talking about is the work that central government has subsequently undertaken and that Cabinet have taken decisions on to require local authorities to develop adaptation plans. So that's what that particular part is actually referring to, and I can talk in more detail about those adaptation plans, I covered them a bit in my opening statement in terms of what they would cover.

Q. Thank you and now we have seen the effects of major natural disasters such as Cyclone Gabrielle a couple of years ago, the recent January 2026 flooding that affected majority if not all Māori across Aotearoa. Do you agree that it is in fact all and not some Māori who are affected by the impacts of climate change?

A. I think all people in New Zealand are affected by climate change. So yes, I would say that.

Q. So I'm just mindful that a lot of my next part's also been covered by my learned friends. I just want to move to just your closings, some of your closing remarks that was traversed my learning friend Ms Dorn. There was one part where you say that you acknowledge that more can be done to involve Māori voices in decision making. In your view, what would effective participation of Māori in the development of climate change policy look like in practice, if any? I think there are a lot of different ways that we could think about that, from where I sit within the adaptation part of our work programme, I think effective participation would be one that takes – can align with our Treaty partner priorities, timeframes, interests in a way that we can line up the way that we need to get feedback and hear Māori perspectives on all parts of the policy process and surface those into our advice for ministers. So as a public servant obviously my job is to provide advice to ministers about that, and for that to continue to be an iterative process so that ministers are informed, but the process of policy is an ongoing one. That is informed by ongoing engagement with Māori.

Q. And just lastly on that, I note that we have the Select Committee processes where public consultation is opened up for the public to provide their own whakaaro and share their own perspectives. In your view as a senior public servant, do these to Select Committee processes alone provide sufficient opportunity for Māori perspectives to be heard, to shape, for example, the climate change adaptation policy or is more needed? Following on from your answer to my previous question.

A. I think Select Committee processes and being able to have broad public input, a really important part of the policy making process. At Ministry for the Environment, we look for opportunities to bring engagement in where we can.

Q. Tēnā koe Ms Wilson and thank you very much for your time this afternoon.

HEARING ADJOURNS: 4.46 PM

HEARING RESUMES: 4.49 PM

JUDGE MILROY:

Kia ora anō.

JUDGE MILROY ADDRESSES COUNSEL – TIMETABLE (16:49:30)

(16:50) MR SONTIER TO KATHERINE WILSON:

Q. Tēnā koe, Ms Wilson. Ko Jaspier Sontier tōku ingoa.

A. Tēnā koe.

Q. Apologies, I just interrupted you a bit there. But I'm representing three claimants today, Mr Thomas Henry, Ms Mereana Peka and Ms Rita Beckmannflay. And I'm not sure if you were there earlier to see Ms Prebble's evidence but we are mostly interested in questions around local government and the role of the Crown and informing local government around adaptation changes. And so, I think I'm mostly focusing around that, my questions to you today. And so to just begin at paragraph 25 of your evidence you state that mātauranga Māori at a hapū and iwi level is critical to informing climate adaptation responses. Have you got the up in front of you?

A. I do, thank you.

Q. Kia ora. My question is, what tools or guidance currently exist to assist territorial authorities to incorporate hapū and iwi derived mātauranga Māori into the adaptation decision-making?

A. At present local authorities don't have a specific statutory function to undertake adaptation, although many are trying to do that within the scope of their existing frameworks that they've got. So because there is no specific statutory requirement, there isn't guidance that exists as at the moment for how they would undertake that particular function.

Q. Thank you. And then what about, is there any guidance on how Māori values are locally derived Māori solutions are to be identified, assessed or weighed in adaptation planning?

A. So again, because there isn't a statutory requirement around adaptation planning, there isn't guidance that currently exists for how to do that.

Q. Do you know whether is much a plan to incorporate those into amendments to that?

A. So what the work programme looks like at the moment is Cabinet has taken the decisions to require local authorities to undertake adaptation plans. That needs to go through its legislative process, and once that has concluded its legislative process then regulations will be developed to provide guidance to local authorities in how they are expected to complete those adaptation plans. They'll set out process requirements and some content requirements, but it's probably a bit early to say what those would be give them we haven't even introduced the legislation yet and that has yet to go through a Select Committee. What I can say is in the decisions that Cabinet has taken, the way in which local authorities are to undertake the adaptation plans are to consider the particular needs of rural, urban and Māori communities. So that gives us a steer as to the expectations of what should be coming through in the regulation. So that's what we have at present in terms of decisions that have been taken.

Q. Next, I'm hoping to ask you just a question that arose from one of our witnesses, Mr Stephen Knight-Lenihan who posed a number of questions to the Crown. Have you had a chance to read any of his evidence?

A. I have had a brief look at his evidence.

Q. So you may have seen that he's got sort of a few stop points in his evidence where he said question to the Crown and I just had one question around that. I wonder, I think this may be easier if the Tribunal was able to give me screen sharing capabilities and I can put the section that he's asked up in front of you. Okay, so this is the section that I'm interested in and he's talking about the following intended outcomes from the first NAP and these three actions and he wants to know whether any progress has been made on those. And so, I wonder if I just address each point and ask about that. So firstly, Action 3.2 around the development of climate risk and resilience information portals. Can you confirm whether any progress has been made towards that and whether these portals are operational and accessible?

A. Yes, there has been some progress made on these information portals. So there are two things that have been developed. The first one is that the Ministry for the Environment has created a new website which includes within it freely available information about climate risk

projections. That brings together a number of data sets that previously were behind pay walls and have been made available to everybody. The other part of that action that has also been progressed is the Natural Hazards Commission has established their natural hazards portal which provides a way into understanding natural hazard risk at a property level. It's fair to say both of these are only very partial. They are building blocks towards the intent of that action. and over time they will come together. The other significant aspect that I mentioned in my opening statement was around the decision Cabinet's taken to create a national flood map which is driving the development of significantly improved data sets and risk modelling that will then go into these portals. So we've got those three parts underway at present.

Q. I see. Thank you, and then on action point 3.10, has there been any development on this?

A. So that action was the responsibility of Te Puni Kōkiri and they have undertaken some research on this, they have a report which I understand that they have circulated, I think it's publicly available on their website.

Q. Thank you and then finally, action 3.27 around developing a framework.

A. Yes. In 3.27, I believe is an action that's the responsibility of the Ministry of Culture and Heritage, and that one I think they may still be working on that one. I think that is still in progress.

Q. Thank you very much for that. He's also asked the question 19, but I imagine that could have a – you may take a while to answer that. It's quite broad. Unless you've got anything very brief that you could address here?

A. There are many other action – I probably would need a slightly more specific area of inquiry to be helpful to you on that one.

Q. Yes, I was thinking that may be the case, I'm happy to just leave it there. I think that should be all so I can stop the share, and then I have a couple more questions. Turning back to your evidence at paragraph 125, you acknowledge that Māori are disproportionately represented as a population at risk from climate hazards and that many Māori communities face barriers to effective participation and adaptation planning. I will just give you a moment if you want to get that in front of you.

A. Thank you.

Q. I also asked Ms Prebble a question around this, but this was during consultation around adaptation planning. She gave evidence that there was a concern from Māori groups about the ability of small rural Māori communities to participate meaningfully in adaptation planning process. And of course that is, as you've mentioned earlier, that is still in development. But I wonder whether as yet you know whether this concern has been considered more generally or around this and whether there are plans to allocate any resourcing to this?

A. One of the concerns that we heard around whether small rural hapori would not be adequately considered has come into the policy decisions that have been taken and that is at two stages of the process. So the first part of requiring adaptation plans is that the particular areas where an adaptation plan is required has to be determined in a spatial plan. And one of the reasons why specific consideration must be given to the needs of rural communities, urban communities and Māori communities is partly in response to what we heard through our engagement that there are different and unique needs, and to make sure that it's not just a population based approach which would tend more towards traditional cost benefit metrics. That's in one part, and then the second part in the process of adaptation planning itself, the things that we will eventually need to develop regulations for again, specific consideration for the unique needs of rural communities, Māori communities and urban communities are intended to be provided for through those regulations. So while I don't have specific detail proposals for you, I think the decisions that Cabinet's taken, that's how they have decided to give effect to and respond to some of that feedback that we heard.

Q. Thank you for that. My last area of questions is referring to paragraphs 94 and at 94.1 of your evidence where you've referred to the Climate Change Commission's 2024 progress report which found that adaptation is not happening – my apologies – that adaptation is not happening at the scale or pace required, and you've also stated at paragraph 24 and at 114.3 that local government is expected to be the primary decision maker for adaptation. So just in response to this, I

wondered whether there has been considered – an accountability mechanism has been considered which would ensure that territorial authorities actually deliver adaptation outcomes for Māori communities?

A. It's probably a bit early in the process of that. It's a very good question though and one that we should consider in our ongoing policy work.

Q. Thank you for that, that's all my questions for today.

JUDGE MILROY ADDRESSES MS RONGO, MS TE WHENUA – TIMETABLE (17:03:50)

(17:05) MS RONGO TO KATHERINE WILSON:

Q. Tēnā koe Ms Wilson. I am Eve Rongo. I am the lawyer that represents Ngāti Kōata. I'm privileged to only have one claim so I'm actually able to dig quite deep into their claim issues, but now I'm worried that I'll be known as the tuatara lawyer. I have some quick fire questions that are very simple or have already been covered by my friends previously just so I can set this scene for where I want to go with you. So we'll go through these ones quite quickly. So the National Climate Change Risk Assessment identifies risk to coastal ecosystems from sea level rise and extreme weather events, correct?

A. Yes. I'm assuming you are reading from it. I don't have in front of me but I assume you're reading correctly.

Q. Thank you, and that assessment identifies the loss of species and biodiversity as a significant climate risk, correct?

A. Yes.

Q. And the assessment further recognised that climate change poses risk to Māori cultural heritage sites, correct?

A. Yes.

Q. And it acknowledged that those risks will disproportionately affect Māori communities, yes?

A. I think – I'm not sure if those words are in the Climate Change Risk Assessment but that is a natural implication.

Q. Thank you and the Risk assessment also recognised that failure to adequately engage with Māori about climate impacts could create risks or Treaty breaches?

A. Yes.

Q. And your evidence notes that there are significant gaps and knowledge about the impacts of climate change on Māori cultural heritage and wellbeing, correct?

A. Yes.

Q. And you would accept that iwi whose rohe include coastal islands and marine ecosystems may therefore face particular climate risk, correct?

A. Yes.

Q. Okay, and another just quick question, your evidence states that local communities are generally best placed to understand and manage their own climate risks, correct?

A. Yes.

Q. And you'd accept that local government resources are minimal with funds largely raised through rates and not national taxation?

A. I definitely agree with the second half of that sentence in terms of where local government gets their revenue from, yes.

Q. Thank you. Now Ngāti Kōata are kaitiaki of Takapourewa Island in Te Tauihu and it's an island ecosystem with globally significant biodiversity. Are you aware of that?

A. Yes, thank you.

Q. So 90% of the world's tuatara population is on Takapourewa and the – Takapourewa actually has the highest biosecurity that our country has to protect that ecosystem and taonga species. But the problem we're having at the moment is that the sex of the tuatara are determined by the temperature of the soil. And we're now getting a lot more males which are more aggressive. The females are getting smaller because the males are taking all the resources on the island. So for iwi such as Ngāti Kōata, a small iwi that is responsible for what I'd say is a nationally significant ecosystem at Takapourewa. Would you accept that effective adaptation planning requires both national and iwi level risk assessment?

A. Yes, I think with these sorts of issues, there is a range of different things that climate change affects that are more amenable to be looking at at the national level as well as the local level where they're not so much about place based making, yes.

Q. Now, did the Ministry undertake any specific climate change assessment for Ngāti Kōata rohe?

A. Not that I'm aware of.

Q. Did the Ministry engage with Ngāti Kōata about the climate risks affecting their taonga species?

A. The Ministry through its regular pānui will have issued invitations to engage to all PSGE. And we leave that, who we engage with, depends on who responds to those. I'm not aware of any specific engagement with Ngāti Kōata.

Q. Are you aware that evidence from both the Crown and from Ngāti Kōata have stated that Tuatara are not necessarily able to be translocated or moved off Takapourewa Island due to predators or disease?

A. I am not aware of that evidence.

Q. You note that Māori participants requested stronger partnership in climate policy development, correct?

A. Yes.

Q. And they also sought clarification about equitable funding arrangements, you'd agree?

A. That was definitely a theme that often came up in engagement, yes.

Q. And you'd accept that those requests suggest that Māori did not feel they were currently participating as equal partners in this adaptation planning?

A. Adaptation planning is not a thing that is happening at yet. So a lot of this engagement is very early stages engagement.

Q. Okay, and I also wanted to touch on the opportunities that Ngāti Kōata had to feed in. We particularly find that we're asked to provide feedback after decisions are made, whereas Ngāti Kōata feel that they should be at the table when the thoughts are still being brainstormed right through to the later stages. So can you tell me whether Ngāti Kōata had opportunities to feed in all the way through that process?

A. I cannot recall what the specific opportunities would have been in the National Adaptation Plan development. I think there will also have been, in addition to the National Adaptation Plan, other programmes of work that the Department of Conservation will be leading that will be quite relevant to the issues that you talk about and I captured in the National Adaptation Plan but I don't have specific visibility of their engagement practices.

Q. Okay, thank you.

JUDGE MILROY:

Thank you, Ms Rongo. So over to you, Ms Te Whenua.

(17:12) MS TE WHENUA TO KATHERINE WILSON:

Q. Tēnā koe Ms Wilson.

A. Tēnā koe.

Q. Tēnā koe. My name is Tania Te Whenua and I am representing two claimant groups within this inquiry. One is Te Urunga o Kea, the Te Arawa Climate Committee, and also Ngāti Uepōhatu who are of the Ruatorea area. So the specific line of questioning that I'd like to raise with you today is in response to or with respect to I should say, the brief of evidence of one of our witnesses who you may be aware of Ms Dale Takitimu, do you know Ms Takitimu?

A. I know Ms Takitimu, yes.

Q. Thank you. For your benefit and the benefit of the Tribunal, the Tribunal will remember that Ms Takitimu's brief of evidence is appellation #A101 and within that she set out a number of her credentials which links her to the work that has been done by the Ministry on Māori Climate Advice specifically as a foundational member of Ihirangi. Were you aware that Ms Takitimu was a foundational member of Ihirangi?

A. Yes I was.

Q. Ka pai and that Ms Takitimu was a consultant of the Ihirangi Trust that contracted to the Ministry of Justice over – sorry, of Environment, over climate issues. There's an error in her brief. You were aware that she was contracted?

A. Yes.

Q. But she also became the co-chair of the Interim Ministerial Panel for Māori Climate Change from March 2022 to September 2023, were you aware of that?

A. Yes.

Q. And that she became a member, the co-chair of the Māori Climate Platform later incorporated as Oho Mauri from September 2023 to March 2023 [sic], you're aware of that also?

A. I'm personally not aware of what happened at that stage but if that's in the evidence, yes.

Q. Ka pai. In her brief evidence from paragraph 25, Ms Takitimu sets out some of the frustrations that she experienced as part of the engagement to develop the National Climate Risk Assessment (NCCRA). She describes the origin of the initial engagement as woefully inadequate and not resembling anything honourable with respect to implementation of Treaty relationships. Would you have any comment to make on her perspective of the initial engagement with Māori?

A. I don't have any comment other than to acknowledge that's her perspective.

Q. Do you know what the initial engagement looked like? So I think I recognise your brief began at or around 2022 but –

A. That's right.

Q. – this initial engagement is dated at or around 2020.

A. So I think you're talking about the engagement on the first National Climate Change Risk Assessment, am I right?

Q. Mmm.

A. Which you're correct, was before my personal time there, so I don't have detailed knowledge of that specific engagement.

Q. She describes the initial engagement as being only four forecasted hui which wasn't in turn reduced to one hui with Māori. Are you aware of that?

A. I think that is what is described in the *Method* report as what they did in their Stage One and then there was some additional engagement in Stage Two afterwards.

Q. So that's correct from your perspective?

A. In terms of what happened in Stage One of the Risk Assessment, yes.

Q. Ms Takitimu goes on to say that in her view the Commission relied on internal or advisory knowledge and repurposed a cultural framework developed for Treasury which was neither – it was not mana whenua engagement nor was it adequate Treaty partner engagement. Would you agree with that?

A. That's her description of what she experienced.

Q. I suppose, are you aware that the Commission relied on internal advisory knowledge in the first instance –

A. So if we're talking about the first National Climate Change Risk Assessment, that was undertaken by a group of experts that were contracted by the Ministry for the Environment. So the current Climate Change Risk Assessments being under **(inaudible 17:17:35)** for the Climate Commission but the first one I think there was a separate group of – I just want to make sure we're talking about the first one, not the Commission led process.

Q. I can clarify if you like. It is around that time, 2020. So in the chronology of her brief –

A. Okay.

Q. – presume she's talking about the first one.

A. Okay.

Q. So sorry, are you able to answer the question?

A. Apologies. Sorry, what was the specific question? Apologies.

Q. Is it correct or in your view, did the Commission rely on internal advisory knowledge and repurpose that as a cultural framework as opposed to engaging with Māori Treaty partners?

A. To the best of my knowledge, they did not rely only upon internal knowledge and they did seek input from other experts outside of the Ministry. That did also include utilising the Treasury Living Standards Framework as part of that but it was not only an internal exercise.

Q. Do you know if they engaged with iwi?

A. My understanding is there was a small amount of engagement with some iwi.

Q. Are you able to potentially clarify that in writing? The degree of engagement.

A. Yes, yes.

Q. Thank you. Ms Takitimu then goes on to describe the NCCRA adopted in 2020 as having a lot of Māori window dressing. Do you have any comment to make on that?

A. I don't have any comment to make about her assessment of it.

Q. Do you think it lacked substance in regard to measuring risk relative to iwi Māori priorities?

A. Well, I think the 43 risks that the National Climate Change Risk Assessment identified do cover a lot of risks that are substantial in terms of how they impact iwi, Māori, hapū both from the substantive policy issues they raise as well as a range of risks that are particularly called out as being of particular significance to Māori or having a disproportionate impact on Māori. We heard earlier it has not captured everything. But it is quite substantive in my opinion.

Q. I guess the question is whether it's sufficient to meet Treaty obligations, which is I guess the criticism that Ms Takitimu is making. In her brief, she goes on to describe – sorry, can you hear that background noise, I hope it's not distracting?

A. No, it's okay.

Q. Ka pai. What occurred in the latter half of 2020 and then the entirety of 2021 when Ihirangi were contracted and the engagement began with MfE, she felt, at paragraph 44 of her brief, she raises a criticism that the engagement process of Māori within – with the Crown and Crown agents becomes heavily bureaucratic and that because of what she describes as a bureaucratic merry-go-around it frustrated the ability of Ihirangi to do substantive work with iwi toward adaptation of climate change. Is that assessment do you think?

MR FONG ADDRESSES JUDGE MILROY – BRING UP RELEVANT PARAGRAPH (17:21:46)

MS TE WHENUA ADDRESSES JUDGE MILROY – BOE OF DALE TAKITIMU, #A101, PARA 44 (17:22:09)

MS TE WHENUA TO KATHERINE WILSON: (CONTINUES)

Q. Paragraph 44.

A. Okay, thank you, yes, I can see paragraph 44. We never – we contract public money. There are paperwork processes that we need to go through in order to do our due diligence and to be able to demonstrate the prudent use of public money. This can be frustrating sometimes. I can appreciate it might be frustrating that's part of our responsibilities in terms of how we manage public funding.

Q. Do you think it's characteristic that such bureaucratic processes should take the entire year, which is noted at paragraph 42 there in the brief, is that generally characteristic of engagement with Māori?

A. No, I would not say that would be characteristic of engagement with Māori nor would I agree that MfE's processes required a year to undertake that contracting process.

Q. So you disagree with that point. Do you agree that the bureaucratic process stymied the ability of Ihirangi in this case to carry out substantive work with iwi?

A. In the funding that was contracted with Ihirangi, there was extensive engagement and work with Māori particularly around at place climate risk assessments and the development of climate risk information that brought together particular mātauranga Māori or information from various iwi or hapū at place that were brought together. We prioritised keeping that work going as fast as possible and most of the work programme where there were some delays in the contracting process related more to those things that were kind of what we termed in that the Crown facing in terms of the things that would happen in relation to the policy processes.

Q. Are you able to describe a little further what you mean by "at place" and who brings those forward? Are those "at place" –

A. Yes –

Q. – aspects that you talk about brought forward by Māori communities or MfE?

A. Yes, that was the work that Ihirangi was conducting. So this was funding that we provided to Ihirangi to run climate risk workshops with iwi, hapū, and to develop a climate risk information portal which was accessible.

Q. Were those your priorities or Ihirangi's?

A. Those were Ihirangi's priorities.

Q. That Ihirangi wanted to develop a hub?

A. Yes.

Q. Is that the – what was the extent of the work that you – that MfE enabled Ihirangi to carry out?

A. I think the specific detail of how much work was undertaken we can provide to you in writing in terms of how far they got with the funding.

Q. Thank you, that would be really helpful because at paragraph 46 Ms Takitimu makes the claim that the iwi facing work which Ihirangi wanted to be undertaking for the National Iwi Chairs Forum was being stalled by the Ministry at every step. Do you have comment on that?

A. I think we would probably have a different perspective of that.

Q. Please feel free to share your perspective.

A. My recollection at the time was we worked very hard to ensure that the work programme that was iwi facing continued that we were not holding things up. And that was one of the reasons why it was divided quite clearly into an iwi facing part of the work programme and a Crown facing part of the work programme.

Q. Would you agree that the iwi facing part of the work programme is really the critical aspect of the Crown meeting its Tiriti obligations in partnership with Māori, would you agree with that proposition?

A. I think that there are many aspects to how the Crown needs to consider its Treaty obligations in relation to climate change and they don't stop at a joint work programme with Pou Take Āhuarangi or Ihirangi.

Q. No, that's right. Would you agree that the work that iwi are unable to do by the Crown are really critical to, and thinking about the way that the Tribunal to date has viewed and interpreted the Treaty principles in action, would you agree that that is really critical to the Crown meeting its Treaty obligations?

A. Sorry, I think I lost a bit in the middle. What is the **(inaudible 17:28:45)** that you're asking about?

Q. Sorry, the work by iwi at the coal face, would you agree that that is critical to the way that the Crown meets its Treaty obligations, by enabling iwi to take these measures at the coal face to adapt for example with respect to climate change to create their own strategies, to assess their own risks. Would you agree?

A. I agree that adaptation poses significant challenges to all iwi, hapū and communities around New Zealand, and the Crown must think very carefully about how it can best fulfil its Treaty obligations in relation to the principles of partnership, active participation, active protection – sorry, and participation, and things may look different at different places in terms of what that looks like given the different risks or challenges in different areas.

Q. Yes, and those localised different risks and challenges are another reason why, would you agree, that it's so critical that local hapū and iwi have that opportunity to make their own risk assessments, carry out their own strategies or determine their own strategies and implement them? It's exactly that point that you made, which is why with – particularly with respect to climate change, the localised iwi facing Crown enabled work is so fundamental to the partnership, isn't it?

A. That has – yes I agree that has been a key priority that has been resourced in the joint work programme with Pou Take Āhuarangi Ihirangi and also as it continues today.

Q. It's wonderful to hear that and I'll be asking further questions of those who have more in depth knowledge, perhaps Ms Rangi tomorrow, Anne Haira, but – so I'm wondering with respect to your knowledge, what is the work, again I suppose you'll put this in writing, but some of the things that you're really proud of that MfE funded in relation to, for example Ihirangi, because you can see even by the paragraphs that are brought up by our Tribunal today that Ms Takitimu who was at the core of that work is quite critical. Your perspective would be helpful as to what you are proud of in terms of what the Ministry enabled Ihirangi and Māori to achieve in this timeframe.

A. I think the key kind of part sitting in the joint work programme over multiple years with Pou Take Āhuarangi, the funding that has gone into specific Climate Change Risk Assessments that have been led by the technicians for Pou Take Āhuarangi at some point in time Dale was part of that but there are other technicians now as well that focus on funding the risk assessments that have been able to be undertaken by iwi, hapū at place led by Māori, not a thing from MfE but for those communities. That's the first piece I guess in the adaptation policy cycle. And so, being able to contribute to that first piece is one of the key outcomes from that joint work programme.

JUDGE MILROY:

Sorry, Ms Te Whenua. We've reached time. From what you've said earlier, you might have five minutes or so of questions left for tomorrow morning?

MS TE WHENUA:

Yes, I'd appreciate that, Ma'am. Thank you very much and thank you, Ms Wilson, very much for your responses today.

JUDGE MILROY:

Thank you. So we're at the end of our time for today. So I'll ask our kaumātua, Matua Kevin, if you would kindly close for us.

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING ADJOURNS: 5.34 PM

HEARING RESUMES ON TUESDAY 17 OCTOBER 2026 AT 9.03 AM

TECHNICAL ISSUES (09:04:15 – 09:04:50)

KARAKIA TĪMATANGA (KEVIN PRIME)

(09:05) JUDGE STEPHANIE MILROY: (MIHI)

Tēnā koe e Kevin i paihere i a tātou ki te taha wairua. Mōrena tātou. Welcome to our second day of hearing week six and we resume with the continued cross-examination of Ms Wilson, and I believe – Ms Te Whenua you're online and you were to complete your across examination this morning. So without further ado we'll hand over to you for that.

MS TE WHENUA:

Tēnā koe e Matua Kevin, nāu i whakatau tō tātou hui i roto i te pono me te tika.

(09:06) MS TE WHENUA TO KATHERINE WILSON: (CONTINUES)

Q. Mōrena Ms Wilson.

A. Mōrena.

Q. Mōrena. I suppose given that I have a short time left to complete my cross-examination, realising that I could take you through the brief of evidence and would take some time, I suppose, the level of detail that Ms Takitimu being so close to the action, knew and understood about the goings on of Ihirangi, Rauora and the Māori Climate Platform. I will use my short time with you to cut to the chases with respect to your will house around climate adaptation and reserve are the questions for Ms Rangi and Ms Haira.

A. Okay.

Q. So I wondered if yesterday we spoke about what projects had been done. I asked you a question around what projects the Ministry for Environment had been able to support at the coal face within Māori communities. So I know you were gonna go away and get that information. I don't expect that you've got it yet but follow on question from that is given that you're

the general manager for adaptation is it telling that you don't have that information at hand.

A. I think the way that we organise ourselves across our policy responsibilities within the Ministry reflects the fact that adaptation is a policy area that touches into many different areas. And so within the Ministry for the Environment, we have got multiple teams that work on different aspects of the policy response. There are also other government departments that are significant in terms of their contributions to the policy response. It's not something that I can speak to the detail of all of the actions that the whole of the ministry or other government departments have been responsible for.

Q. No not other government departments, but at least within the ministry, given the status of Māori is Treaty Partner, do you think it's fair to for us to expect that the general manager would be across the adaptation programme for Māori communities?

A. What I am aware of is the work programmes that the ministry is progressing, and I can speak to those which I have already done and identify, however other parts of the ministry are leading and are better place to speak to the detail of those which I believe is what you're interested in.

Q. How much funding has been provided for those programmes?

A. That's part of the detail I think within the Māori climate platform funding, there's $9 million dollars. If you're talking about – there are number of other projects as well, there are various ones that were funded via the jobs for nature programme as well that have climate resilience benefits, but I don't have the specific figures of those to hand.

Q. Yesterday we heard from your colleague Ms Prebble that 400million had been contributed by the Ministry for AgriZero projects within agriculture, is that – as a comparative do you think it's equitable that the Māori Climate platform receives only 9 million?

A. I believe that Ms Prebble was referring to the whole of government contribution to AgriZero rather than the Ministry's funding and I don't have figures of the whole of government contribution to climate resilience projects for Māori.

Q. Do you think it's equitable, Ms Wilson?

A. I can't speak to that as I don't have the figures about what the whole of government contribution would be.

Q. I have a ministerial brief in front of me from February 2024 that was written by your colleague Claire Maihi, General Manager at the Ministry for the Environment – sorry, I'm not sure given just off this brief what she's the general manager of – Te Tiriti and Te Ao Māori. I'm happy, with your leave, Ma'am, to provide this – a copy of this brief following this question. I presume that since it's a Ministry for the Environment brief, Ms Wilson will be aware of it. At paragraph 24 of the brief it talks about the amount of money that's been distributed to specifically to the climate platform it says: "Through the first round of climate emergency response fund funding, a multi-year appropriation of 30.5 million comprising 19 million non-departmental and 11.5 million departmental funding was received for the Māori climate platform initiative for the financial year ending – sorry 2022 through to 2023, and to the financial year '25 to '26." And that was following Cabinet approval of the platforms continued development and operation. It then goes on to say: "These funds were drawn down to the ministry." My question from Ms Wilson is, how was that money spent?

MR FONG:

Your Honour, I hesitate to interrupt my friend, but I'm not sure if it's fair to assume Ms Wilson that's perfect recall of all briefings prepared by the Ministry. I wonder if it's easier if not just for Ms Wilson, but for all of us, to have a copy of the briefing shown on the screen just so we might understand the context of a question of a bit better.

MS TE WHENUA:

Ma'am, I am happy to put this question in writing, given the time allowance for me to complete cross in five minutes today and follow up with the witnesses Haira and Rangi.

MS SYKES:

Ms Te Whenua, Ms Sykes here. Perhaps my friends from the Crown may assist you. A number of documents were served late on Friday that I've been going over. What's the date of that briefing document by Ms Haira and my friends from the Crown actually may have provided that document very late last week? And if they have, could they put it up on the screen, please.

MS TE WHENUA:

The 9th of February 2024.

LOCATING DOCUMENT TO PUT UP ON SCREEN (09:13:02 – 09:13:34)

JUDGE MILROY:

Ms Te Whenua, I think you will need to put it in writing just because we're having difficulty finding the document.

MS TE WHENUA:

Yes, Ma'am I am happy to do that.

LOCATING DOCUMENT TO PUT UP ON SCREEN (09:13:50 – 09:14:15)

MS TE WHENUA TO KATHERINE WILSON: (CONTINUES)

Q. That is the correct document that I'm referring to and my question again for Ms Wilson is with respect to the monies outlined at paragraph 24, totalling 30.5 million that were drawn down by the Ministry at least at the date of this briefing, February 2024, how was that money spent?

A. What I am aware of is that some of that money has been reprioritised within the wider government savings initiative. as to the specific details of how that reprioritisation decisions were taken and the residual funding, those are probably best put to other witnesses who have referred to the Māori climate platform documents in their evidence.

Q. Are you aware of any of this money being spent on adaptation projects within Māori communities?

A. What I am aware of is that some of that a significant proportion of that funding, the final funding, whatever there is the final amount was after reprioritisation has been allocated toward climate resilience projects within Māori communities.

Q. And you'll provide the details of those projects and writing. We've confirmed that from my line of questioning yesterday, is that correct Ms Wilson.

A. That's right. Thank you, thank you Ms Wilson. Thank you, Ma'am. That will conclude my cross-examination for the morning.

JUDGE MILROY:

Thank you Mr Whenua. We're not up to Tribunal questions.

MR LYALL:

Your Honour, I hesitate to jump in.

JUDGE MILROY:

Sorry, Mr Lyall, yes you have got some time too.

MR LYALL:

I did have a few questions, I don't think it'll take the half hour that I've estimated.

(09:18) MR LYALL TO KATHERINE WILSON:

Q. But first of all, mōrena Ms Wilson.

A. Mōrena.

Q. My name is Lyall. I represent for four claimant groups, Te Upokorehe, Ngāti Porou ki Hauraki, Te Ruapani ki Waikaremoana and the grouping of claimants from Waimate-Taiamai-ki-Kaikohe, which is in the Far North probably easiest to say gathered around the area of Lake Ōmāpere, Kaikohe, Waimate. I think if we could start with something that I think should be axiomatic, you would agree with the statement that the best adaptation is of course mitigation.

A. I would say that adaptation requires a range of different actions and the appropriate policy responsible depend significantly on what the particular

impacts are adaptation is fundamentally about how we change to deal with the unavoidable effects of climate change.

Q. So, no matter what is done now, mitigation by some degree of adaptation is going to be required.

A. Yes, yes, that's correct.

Q. Your evidence records that the government had intended to introduce adaptation legislation in late 2025 and that's yet to be introduced.

A. That's correct.

Q. Mr Bennion, my learned friend talked yesterday about the need for ambition and mitigation efforts. Given the need for adaptation and knowledge of what could be existential consequences, do you have a view on why we are seeing such slow movement on settling an approach for adaptation from central government? Where's the ambition?

A. What I can speak to is the progress on the amendments to the Climate Change Response Act is one that the government is taken its decisions on what those policy proposals are, those were taken in October of last year and the government is working as fast as it can to bring that legislation through into the house. What we're seeing in terms of the time frames reflects the prioritisation of house time and the range of priorities that the government is looking to progress across all of their objectives, so this work continues. What I understand is that it remains a priority for the government to continue progressing this and that it is continuing to come through.

Q. Practically speaking however, we're gonna come up against the election and caretaker period shortly. So it's likely that that work will be delayed out into the period following the election, would you agree?

A. It is likely that the legislative process will continue on the other side of the election. That's correct.

Q. Now given Māori's interest or just proportion of effect by adaptation is like could have on Māori, do you accept that a Waitangi Tribunal report which deals with these issues would be crucial in developing legislative response?

A. I think there is much that the ministry will be able to benefit from the Waitangi Tribunals conclusions when a report comes out.

Q. Is space actively being reserved in the process to allow consideration of a Waitangi Tribunal report at the moment?

A. At the moment we are progressing on the legislative timelines that we have for amendments to the Climate Change Response Act. Adaptation touches on a wide range of different topics and issues. The other programme of work that will come after the Climate Change Response Act amendments will be the second National Adaptation Plan which will start working on after the climate change commission releases at second national climate change risk assessment in the coming months. I am not aware of this specific timelines on which the Waitangi Tribunal will be issuing its findings, but I'm sure that when they come out we will consider them very carefully and look to bring them into the policy process wherever that is up to at that point in time.

Q. Yesterday in the evidence of Ms Prebble, we noted that some of the proposals that were put forward one of their weaknesses or risks in the process was the lack of time for consultation or robust consultation, given that you've said that decisions have been made on this? Are you giving advice to ministers that the period now would be a prime time to conduct that sort of consultation with stakeholders and with Te Tiriti partner?

A. We are in the process of developing some advice to ministers about potential opportunities for engagement and dialogue in the period ahead.

Q. And are you able to say more on that, who you are seeking to engage with? Will this be the same sort of targeted top down approach that we've seen in evidence so far or will a broader approach be taken here?

A. In terms of the options, some of the things that we are considering is the potential benefits or otherwise of trying to align engagement particularly with Treaty partners, with other engagement that is planned for other work programmes across government versus a different approach that might be specific to the adaptation policy proposals. There’s pros and cons to the different approaches. We're trying to look for what approach might best provide for the widest kind of input while also recognising iwi, hapū time constraint, as is everybody, and trying to look for the most effective opportunities. As I say, this advice is still in development, and we haven't provided anything to the Minister yet.

Q. When you are preparing that sort of advice on consultation or engagement how do you go about assessing the level of Māori interest in the various policies that are gonna be consulted or engaged on. Do contact TPK or what's the process behind the scenes for officials such as yourself?

A. So, we have other parts of the Ministry where you just heard previously another GM, Claire Maihi leads our Te Tiriti and Te Ao Māori policy group within the Ministry. We get advice from that part. We work very closely together. Treaty impact analysis is undertaken. We also look at what has been heard in engagement previously. So, we have 10 years of adaptation policy, where different forms of consultation and engagement have occurred that we can draw on to build up a starting picture of what are likely to be the relevant rights and interests here in addition to some of those earlier consultations and what we might've heard through submissions. We also send out to regular pānui from the Ministry to keep PSGEs and yet to settle iwi informed of our policy work programmes and we have issued a number of invitations to engage on this policy work programme over the last few years and respond to those who take up that invitation. So, we've got a number of those different sources of information from some iwi and hapū who have responded to those invitations that we can draw from to help inform our advice on what might be an appropriate approach from here. Obviously also guided and supported by the advice from other colleagues across the Ministry who are the ones who also connect with TPK and helped to make sure that we are sticking to the guidelines for engagement.

Q. Looking at the frameworks in the various reports that you discuss in your evidence, would you accept that the focus of those tends to be on engineering infrastructure or financial risk?

A. Which reports are you referring to, sorry?

Q. Well, I think it's a broad point, we could take the proposed approach for New Zealand's adaptation framework for an example. But I mean they – the entire government approach or strategy document does – might, in our view, focus on infrastructure or financial risks which need to be

mitigated through adaptation rather than on the impact on health, people, community. Would you agree with that broad?

A. I understand what you're saying now. So I think the organising framework for the whole of government work programme is kind of structured in the national climate change risk assessment which is structured into the five domains across the natural environment, communities, governance, the built environment and economic and financial systems. Coming from that other agencies across government also have responsibility for delivering on those actions. Some of what I think you're referring to in the national adaptation framework does have a particular focus on looking to address the policy gap as it relates particularly to residential development, which is not necessarily preferencing hard infrastructure, but is about looking at the challenges for residential development. I would say there is a health adaptation plan that the Ministry of Health has developed and is responsible for the national adaptation framework should be read in conjunction with the National Adaptation Plan. It's not a substitute for it.

Q. And do consider that there's a risk of the different areas within this broader structure being siled or different departments not speaking to each other or talking past each other when it comes to adaptation.

A. I think there's always challenges in coordinating across government and finding the time. There are a number of kind of forums and information sharing that happen across government in an effort to try to avoid that. It's always something that we can keep working on and getting better on also trying to not spend too much time just talking to each other and need to also deliver for New Zealanders.

Q. And one of the best ways that can be achieve is talking directly to those New Zealanders, Māori among them. Do you accept that to properly engage with those communities and understanding of their cultural and social impacts of climate change on them, is required on Crown's part?

A. I accept that that's one of the key interests for Māori and that we would require engagement to understand that fully.

Q. And to enable those communities, Māori communities to communicate that research would be a key part of that effort and that research let's be

able to take in within the communities themselves. Would you accept that?

A. That could –

Q. I mean –

A. – part of it, yes.

Q. I think what I am saying here –

A. There has been quite a bit of research, yes.

Q. Yes, well I think the – for Māori communities to be able to engage in the adaptation framework or adaptation planning than they need to be able to have access to research tools, independent research and the funding that goes and that goes hand in hand with them being able to communicate with government, is the broad point that I'm getting at, and you wouldn't disagree with any of that would you?

A. No, I think in being informed is a key part of being able to engage.

Q. So, what funding or support for specific Māori communities, marae based Māori communities for instance is available and how's that address at the moment? So this is **(inaudible 09:32:51)** research specific needs. Sorry, just to narrow things down.

A. Okay. So, I am aware that over the past five years there have been some research projects led by the deep south initiative that have looked at some of the issues that you're talking about, as that is a project that was funded by MBIE. I can't speak to the specifics, but I do know that the broad topic areas are in the area of what you have been talking about. I would also point to the work that we've funded in the joint work programme with Pou Take Āhuarangi, to support climate change risk assessments at place with iwi, hapū as part of the ongoing evidence and informing and provision of research.

Q. So, when did that risk assessment at place project availability come online?

A. So, the joint work programme that I am talking about, and I think is covered more fulsomely in the evidence of Anne Haira and Gina Rangi was in development over the last few years, two years perhaps.

Q. So if a group like, for instance Rongopopoia hapū or Te Ūpokorehe wanted to develop a risk assessment at place at Rongopopoia marae site.

How do they go about that? Is that practically possible on the current settings?

A. So, the way that the joint programme has operated technicians for Pou Take Āhuarangi have been undertaking these risk assessments specifically at place. I can't speak to the process by which they've communicated with various iwi, hapū to determine that I do know quite a large number have been completed.

Q. And where's the space for Māori groups to conduct their own risk assessments? Where's the funding for that?

A. You mean other than that particular funding?

Q. Yes, so this seems that it's been done in conjunction with Māori rather than by Māori for Māori.

A. Well, the Ministry hasn't been involved in those risk assessments. We've provided funding to Pou Take Āhuarangi to support those risk assessments to be done at place with iwi and hapū.

Q. So, are you aware of any funding streams through the Ministry at present which would allow for the type of Māori led or group at place led risk assessment research, those sorts of activities.

A. I'm not aware of any other funding streams other than what I've already elaborated.

Q. Do you accept that there's a real gap there if there doesn't appear to be an independent funding stream to allow for independent research mapping the whānau hapū marae stories.

A. I think when it comes to questions of funding there's always a finite pool and there's a range of choices that have to be made about where that funding will be spent. My understanding is the way in which that work programme is being carried out, it does do quite a bit of what you're talking about.

Q. I think – if do you have a copy of the proposed approach for New Zealand's adaptation framework, the Independent Reference Group available?

A. Not in front of me but perhaps you could put it up.

Q. I think we might be able to have this conversation without bringing it up given that I'm looking at one paragraph to get to an idea but for the record

the page I'm looking at is marked in the bottom right hand corner with FME – sorry, MFE.008.0012 which is page 6 of the report. But really what I wanted to get out was this idea that it's difficult to have conversations about the possible ability of retreating from an area until an event leaves no alternative. So the report says that and there's no clear or straightforward existing pathway to retreat from an area that faces unacceptable risk. I think that's the status quo. Is it, do you think even possible for there to be a clear or straightforward pathway to retreat from an area for Māori which might be their tūrangawaewae, where they have their marae, where their tupuna are buried?

A. I think the report says and our advice that's captured in the other papers in my evidence are quite clear that this is a particularly difficult challenge for Māori and that it is not clear or straightforward.

Q. And isn't it incumbent then on the Crown to be going to Māori at place and having those difficult conversations now rather than producing another report waiting for another election starting another workstream?

A. I think these are difficult questions that no doubt will require ongoing dialogue over an extended period of time. Some of these conversations have begun. We've had some conversations, the engagement approach that I referred to earlier may provide further opportunities for it in the work that we have the government has committed us to continue to undertake does identify that specific approaches will be needed for whenua Māori and that that will be a focus of conversations that we will need to have. with iwi Māori at place, as you say.

Q. And the elephant in the room on all of this, which isn't mentioned in this report, is who pays for Māori, they're not private land owners, they have their tūrangawaewae, you know, they are the land, and the land is them. What thinking's going on there for Māori if they're forced to move? I mean, obviously the kinds of existential damage and harm that will be done and having to move can't be paid for. But what thinking is even taking place within government about compensation for those that are forced to move? Where do they go in the areas where the bulk of their whenua was confiscated, taken through sales which breach that Tiriti o Waitangi? I mean there's a broad questions, but shouldn't those

types of difficult conversations be happening now on the ground and again where's the ambition in the urgency there?

A. I think those are all very important questions that do need to be considered in the policy work. and are questions that will need to be informed significantly by the views of Māori in terms of determining what potential pathways are to move forward given the risks that are being faced on different pieces of whenua around the country.

Q. I think I'll leave it there.

MR LYALL:

So, your Honour, I'll pass it back to you at this point.

JUDGE MILROY:

Thank you Mr Lyall. And it's now time for the Tribunal questions. So, I'll start at the end here.

(09:39) PROFESSOR DAVID WILLIAMS TO KATHERINE WILSON:

Q. Tēnā koe, Ms Wilson, David Williams asking you a couple of questions. Just firstly in your summary in paragraph 27, you refer to the needs of rural urban and Māori communities which seems to be to coverage but everyone. I'm just wondering whether you're responding to the submissions from Māori that are referred to in paragraph 23, concerns were raised about risk of deprioritising small rural and remote hāpori. Is that what you are referring to, because rural, urban and Māori covers the whole five million, doesn't it?

A. Yes, that's right. It is in response to that feedback that we heard that there were concerns that the needs of urban communities are not the same as rural communities and that they may be overlooked if this was not specifically called out that there were different characteristics.

Q. Right, so just a personal observation, is that we've all lived through quite a large number of storm events over the last few years. And one of the most striking things to me is that when floods happen and roads are blocked and all the rest, marae are the places where a lots of people turn up and not just Māori, old communities are fed and bedded in marae

facilities. Just looking at the National Adaptation Plan, thus far. There is reference to Māori vulnerabilities, but I can't see any reference to Māori strengths. The strength of Māori communities in marae, especially rural ones, especially Tai Tokerau, Tai Rāwhiti, Wairoa, various other places. And as we are going to have to attend to more and more of these events as the years go by, I would've thought the adaptation should explicitly be talking about the strengths of Māori communities and how resilience can be built into the future of those marae facilities because I mean they are, physically, we mean not when I say marae I'm talking about the buildings rather than marae ātea, strictly speaking, is the space outside of course. But the marae facilities up and down the country, some good state of repair and others not. So, when I look at the National Adaptation Plan at page 39 as your footnote and on page 24 of your evidence is a table from that National Adaptation Plan. So for homes, buildings and places, homes and buildings are climate resilient and so on. Māori connections to whenua gets a mention but that's not what I'm talking about. I'm talking about the actual facilities. What funding streams, what plans are there to play to the strengths of marae communities of the country?

A. What I am aware of in that regard is the work that's being led by NEMA, to strengthen the emergency management system. So, they have a legislative reforms in place, but they also have a 10-year investment and implementation road map that they are taking forward, and I am aware that they are working quite closely to look at how to strengthen and build the resilience of marae within the emergency management system.

Q. Right. Because the experience that we've observed if the communications go down of if the rest, is that those outside emergency services don't get there or they don’t know how to get there, whereas the marae are already there. So, to answer my question, where in your process would that sort of fact be put in?

A. So, where it comes in the process is there is an existing action sitting within the current National Adaptation Plan, which talks about strengthening the emergency management system. So the current work that NEMA is leading is already one of the actions that's in the National Adaptation Plan. What I would anticipate is that that would continue into

the Second National Adaptation Plan and take your point around the opportunities for the Second National Adaptation Plan to have a stronger lens around building on strength and strengthening resilience. The first one definitely has a risk lens and as the adaptation cycle matures we would hope to see increasing focus on opportunities strengthening resilience. So in that cycle, I would anticipate it will come through this Second National Adaptation Plan which will start that work on that will start quite soon.

Q. Right, well, thank you for that. I mean, I think you could understand from the questions you are getting from claimant counsel, that there's a sense of urgency about these things and it's not all together clear that you'll bring out another written document as satisfactory.

A. Yes. I think the only kind of point I would add on that is the written document of the National Adaptation Plan, if you like, collects up a lot of work across government and as I say, the work that NEMA is leading on the emergency management system is in flight at the moment, is a work programme that continues publishing the National Adaptation Plan itself isn't a block to being able to progress any of this specific policy initiatives and the meantime, but it does help just surface and gather together what the whole of government work programme looks like.

Q. Right. Yes, because there needs to be a whole of government work, but NEMA is the lead.

A. On that particular one, that’s right.

Q. Good, thank you. That’s my major question.

A. Thank you.

JUDGE MILROY:

Matua Kevin, do you have any questions for Ms Wilson? Matua Kevin, can you hear me?

QUESTIONS FROM KEVIN PRIME – NIL

(09:46) JUDGE MILROY TO KATHERINE WILSON:

Q. I do have a few questions, and they may jump around a bit as things have occurred to me as listening to you. Can we just pick up something of the point that Professor Williams and what Mr Lyall was talking about, that a lot of people think of adaptation as building higher stop banks and clearing out the rivers and the drains and all that sort of thing, it's very physical. There's another aspect to it which I think people find after they've dealt with a severe weather event or whatever, that there's an ongoing mental, social and cultural trauma and I'm wondering if that's part of the research work and so on that's going on. How to cope with communities that are really dismayed and distressed because we hear a lot on the news, I suppose that they are tired of being told that they're resilient and, you know, it's just not enough.

A. I am aware that some of the work that was funded in the deep south science challenges did look at some aspects of mental health and climate change resilience. There are also some actions that sit within the current National Adaptation Plan that are the responsibility of NEMA as the agency that is on the front line, particularly in extreme whether events looking at those mental health wellbeing and resilience impacts of communities, the Social Dynamics and I'm also aware that the Ministry of Social Development has quite a significant role to play in the immediate aftermath of extreme weather events. I think it's something that as we experience more events as a country probably is an area for further research, to better understand how this might relate both in the context of extreme weather events but also the wider changes that climate change will bring as well.

Q. And it has occurred to me that some of what might happen with climate change in the need for managed retreat and so on will, in some ways, mirror or reflect some of the issues that arose during that period in the 1950s and so on where Māori were having to leave the land because it was no longer able to support wider communities because of the change of economic structures really, and move to urban areas and this is not just an issue for Māori, of course, but they will be particularly affected and

I'm just wondering what kind of historical research is being done to learn some lessons from some of the poor adaptation that occurred then.

A. We have heard – we have undertaken some research ourselves from an analytical perspective and we have heard frequently in our engagement concern about the potential to repeat some of those events. What you see in the way in which the policy work is framed at the moment is a shift away from what the previous work might have looked like, centering on managed retreat and one that focuses more on creating processes to consider the whole range of options given that we risk is uncertain when it will be felt at a particular point in time but also there are a range of other options available. The other kind of aspects of research in terms of the particular issues that you're talking about is there are also lessons we can learn from the experience that various Māori communities had in the wake of Cyclone Gabrielle and understand your hearing from Katrina Casey later on as well. But there are insights from that experience that we can bring to help make sure that we do not repeat the mistakes of the past as this goes forward.

Q. Thank you. The next question is really about the protection of our existing environment and for Māori. For instance we've heard in our evidence about, the need to try and improve or do something about pollution and all those kinds of issues for our various particularly vulnerable areas. Because that tends to make them more resilient to climate change effects, impacts. I am just wondering how – It's a very complex area and I'm just wondering how that part of adapting to climate change in fact improving our environment more generally, is taken account of.

A. I think there's probably two things that I would look to there. The first one is within the National Adaptation Plan, there are a series of actions that are about the natural environment and work programmes in place to try to address the impacts of climate change on the natural environment. What came through in the national climate change risk assessment from six years ago was particularly those impacts on the natural environment. There was also a lot more research needed to understand what climate change, how it might unfold in relation to a range of different impacts on the natural environment. So, there's the research part, there are some of

the work programmes that are identified in the National Adaptation Plan itself in terms of the natural environment in particular, and then probably the third piece is the work that we're currently progressing around adaptation plans and place. Although there's a lot of work to go under the bridge yet about what that will look like as a legislative and regulatory framework, the intention is that it provides for those values at place to come into the process of decision-making. So, it doesn't have to inherently prioritise some forms of response, it's not inherently about just hard engineering structures or things like that. It creates a mechanism for the values at place to come into the conversation about what should be protected over what time frames, how do we think about the risks? So that's a potential vehicle that those sorts of issues could also be further progressed, acknowledging that still yet to be taken through as legislation and as regulations.

Q. And I suppose the other aspect of that is that government has clearly signalled that – I've just had to put it as it appears in my mind – the responsibility of or for adaptation will be at the local level and there is a reform of local government going on at the moment. How much guidance is will be provided to those new structures about adaptation.

A. So the decisions that have been taken are to work through the spatial planning process under the new resource management system and those decision-making structures to determine the priority locations for adaptation plans to identify where one should be developed. There will be some guidance provided both in the form of regulatory guidance through the national instruments, but also we would expect to provide some non-statutory practice guidance to support that. Probably more significantly I think would be the actual process of developing an engagement plan which the proposals identify that responsibility as sitting with the territorial authorities and we would expect, and cabinet has taken decisions that there will be regulations to provide guidance as to how to go about doing that. We also know regulatory guidance alone is unlikely to be sufficient. What we've heard, in particular, is that there is an appetite in demand for further support, particularly around engagement processes

and that's definitely an area that we will be looking at quite carefully and providing advice on options to support councils with that function.

Q. We've been advised by the Crown that The Ministry of Justice is seeking to in terms of the various different forms of legislation, to standardise the Treaty – reference to the Treaty causes. And at the moment we have a range of different Treaty causes. I suppose my concern is that, as they're going to be enough strength and guidance given we've got a going to a standardised system is there going to be enough strength and guidance not only to engage with iwi and Māori but also to provide outcomes actually – that actually assists because I suppose my concern would be that it turns into a tick box exercise, well, we've considered it or we've taken into account – I forget the exact wording now. And that's where it ends.

A. The things that I can speak to in relation to adaptation policy and those proposals. The areas that I've just been talking about are where specific provisions have been made to ensure that in the legislation and the regulations where that there are small specific guidance that is provided in relation to adaptation planning. We obviously still have a policy process to go through, but we have a direction that those led the legislation, and regulations should provide some guidance for how to consider the particular needs of urban rural and Māori communities, including engagement processes with that so that will be work that continues as far as I'm aware.

Q. Yes, I suppose my – what I'm think is that a lot of people may well consider that standardisation process has weakened the requirement to comply with the Treaty principles. So, it's good to hear that more work is going on to provide better guidance to local government. I'm just check whether there's anything else that I wanted to ask you about. Yes. The manager retreat. I understand that in terms of providing buy outs, that there is now a going to be a limit on when the government will provide buy outs for those who are affected by storm damage or whatever. So are you able to tell us more about that?

A. So, the decision that cabinet took was that the end state, so the direction of travel, where they wish to end up over time is that buy outs are not the

primary policy lever that is used to provide support to people in those situations. It was – that talks about a time period so it's not an overnight shift and still recognises that may well be an appropriate thing to do in certain circumstances, particularly as we transition through to whatever that end state is. We don't have a specific time period of what that looks like in the advice that was provided to ministers, the notional time period that was suggested by the independent reference group was something in the order of 20 years. So, it was intended to be a significant period of transition, and that government support would be particularly focused around addressing hardship, targeting towards vulnerability, those who do not have the ability to manage their own risks. Some of the context around that was a sense that the full value buy outs of people's property didn't necessarily – wasn't necessarily the best use of government funding in terms of some people who really needed it got it, but also there were other people who arguably you might say didn't need quite as much assistance. So those are some of the areas of ongoing work. They're very difficult questions and all we have at the moment is signals of intent and directions of travel rather than hard and fast policy directives in place.

Q. And I wondered how that played into the managed considerations around managed retreat, particularly in relation to Māori, not only in terms of marae but papakāinga, wāhi tapu and so on.

A. So, the relationship between that and what the period of transitioners for is the process of adaptation planning is intended to provide for future focused place development. So, looking at developing a medium to long term plan at place for where should we move to, what protections are possible, what are the levels of investment in our either flood protection infrastructure or our other infrastructure that supports communities, so that all of those things are taken together in one assessment to also provide encouragement to look at, is there a wider range of specific property resilience measures that could be taken such as house lifting or other types of things which can be done more effectively when you're not in the aftermath of an extreme weather event, but could be part of a more proactive planned investment in building resilience for communities. And that the things that are most appropriate for the particular communities

are what would come forward in that conversations. So, it's not about prioritising or preferencing one particular policy response over another.

JUDGE MILROY:

Thank you very much for that. I think those are all my questions. Thank you very much for your evidence. I'll hand back to Crown. Mr Fong.

QUESTIONS OF RE-EXAMINATION FROM MR FONG – NIL

MR FONG:

But will simply note that the Crown will be calling witnesses from NEMA who'll be appearing in the next hearing week who might be assist a bit further on some of the questions at the panel have raised.

JUDGE MILROY:

Thank you, thank you. Thank you very much Ms Wilson for your evidence yesterday and today. It's been very helpful indeed for the panel. So, thank you again. And we'll take a microbreak now even though we're only half an hour before morning tea.

MR MAHUIKA ADDRESSES JUDGE MILROY – LEAVE TO ATTEND ENVIRONMENT COMMITTEE (10:08:45 – 10:08:50)

JUDGE MILROY:

All right. So, our microbreak and that will – and then we can look at Ms Rangi and Ms Haira getting ready for their turn.

HEARING ADJOURNS: 10.09 AM

HEARING RESUMES: 10.13 AM

MS SYKES:

Ma'am, I thought these witnesses were going to be *viva voce*, why are they online?

JUDGE MILROY:

I thought that too and which is why we're waiting. Mr Prebble?

MR PREBBLE:

Thank you, your Honour. We understood that we actually had the option – these two, I understand are not in Wellington, so we're going to appear online for that reason. Apologies, if that wasn't communicated clearly, there was no other reason, and my friend Ms Seeley will introduce them but that was behind why those two at least online.

JUDGE MILROY:

All right. Are any other of the Crown witnesses –

MR PREBBLE:

This week, I don't believe so.

JUDGE MILROY:

All right, thank you. No, that – we didn't understand that was the case so –

MS SYKES ADDRESSES JUDGE MILROY – OBJECTION (10:17:02)

MS SYKES:

Can I record my objection as a matter of tikanga? They are the only Māori witnesses this week. We would've expected a-kanohi opportunity. Some of us are very busy in our lives, have come down to give them that respect. This is really an ambush from me. I was unaware, like your Honour. And I reorganise my life to be here this week to listen to these do witnesses. So, it's not enough I think to say they live out of Wellington, so do all of us.

JUDGE MILROY ADDRESSES MS SYKES – OBJECTION NOTED (10:17:31)

JUDGE MILROY:

Yes, we will need better communication about what witnesses maybe appearing on it. You've said they're not in Wellington today.

MR PREBBLE:

That's my understanding, your Honour.

JUDGE MILROY:

Yes. All right. We will continue then but I do note Ms Syke's objection is fair.

MR PREBBLE:

Yes, your Honour.

JUDGE MILROY:

All right. Ms Seeley.

MS SEELEY ADDRESSES WITNESSES ONLINE – AUDIO CLEAR (10:18:31)

(10:18) MS SEELEY CALLS

GINA RANGI AND ANNE HAIRA (SWORN)

Q. Can you both state your full names for the record.

A. [Anne Haira] My name is Anne Haira.

[Gina Rangi] Tēnā tātou, my name is Gina Rangi.

Q. Thank you and confirming that you both have your joint brief of evidence before you dated 30 September 2025. For the Tribunal, that's appellation number #A118.

A. [Anne Haira] Yes.

[Gina Rangi] Yes, I do.

Q. And confirming that you have prepared a summary of that evidence dated 9 March 2026 and that's appellation number #A118(b). Thank you. Can you please proceed with your evidence.

(10:19) ANNE HAIRA: (#A118-(b))

Thank you counsel. My name is Anne Haira. I am the Deputy Secretary of the Partnership Investments and Enablement Business Group at the Ministry for the Environment.

(10:19) GINA RANGI: (#A118-(b))

Tēnā tātou. My name is Gina Rangi. I'm the Deputy Secretary of the Tūmatakōkiri (Māori Strategy and Performance Business Group) at Ministry for the Environment.

ANNE HAIRA: (READS #A118(b))

Targeted engagement with Māori at local, regional and national levels. as well as bespoke research commissioned by MfE or produce by others has informed the Crown's understanding of the specific impacts of climate change on Māori.

Māori are vulnerable to the effects of climate change due to several fact, including geographical location and socio-economic vulnerabilities. MfE strives to engage and work with Māori and developing their government's response to climate change to address these and other issues.

Engaging with Māori on climate change, national groups.

MfE has worked hard to build trusted relationships with national Māori groups, such as Pou Take Āhuarangi (the Climate Pou of the National Iwi Chairs Forum) and Te Tai Kaha (a collective of prominent Māori organisations).

These groups meet with the Minister of Climate Change and the Secretary for the Environment/Chief Executive of MfE, to discuss strategic plans and working together.

Officials meet regularly with these groups to operationalise agreed plans of working together.

General engagement.

MfE has an established practice of reaching out to Māori at community, hapū and iwi levels to set feedback on its work programmes. Engagement approaches vary depending on the issue and can include holding hui and workshops throughout the regions and online to engage on specific work programmes. In the past these events have been run by MfE officials, or we

have provided funding for representatives from Māori organisations and all representatives from marae, hapū or iwi to hold hui.

We have formal relationship instruments in place with some groups, such as Post-Settlement Governance Entities, who we meet with regularly. We also have a bespoke newsletter and other targeted documents for Māori that we circulate to over 1,000 groups and individuals, including PSGEs and yet-to-settle groups, hapū, marae, and other Māori organisations. MfE also works with Te Puni Kōkiri which has strong regional networks.

Early engagement with the National Iwi Cheers Forum.
MfE is the lead Crown agency for both Pou Taiao (the Environment Pou) and Pou Take Āhuarangi (the Climate Pou) of the NICF.

Pou Take Āhuarangi was established by the NICF at a quarterly hui in Ōtaki on 6th of August 2020. The intent of Pou Take Āhuarangi is to identify and address the risks, impacts, mitigation and actions of climate change that will increasingly impact upon the work of all NICF Pou, rūnanga, iwi, hapū and whānau.

There is a formal engagement framework agreed between NICF and the Crown that sets out how and why the parties should work together. This is called the NICF-Crown Statement of Engagement.

2021 MfE/Pou Take Āhuarangi Joint Work Programme
In March 2021, Pou Take Āhuarangi and the Minister of Climate Change agreed to three joint priorities: emissions reduction, climate adaptation, and data. A joint work programme focussed on those priorities was then agreed.

In May 2021, MfE commissioned Ihirangi (the then operational arm of Pou Take Āhuarangi) to explore and outline the scope for an Indigenous Worldview Framework that could be reflected in national climate change planning documents.

In June 2021, Ihirangi developed the Rauora framework which sets out a series of cohesive cultural values and principles from which to approach climate action.

The Rauora framework supports and promotes transformative approaches, resilience building and supporting measures. It elevates the contributions indigenous values and mātauranga Māori can bring to climate action.

Climate Change Response Act 2002.

The Climate Change Response Act 2002 (CCRA) is the key piece of climate change legislation in Aotearoa New Zealand. This legislation is covered in more detail in the evidence of Hemi Smiler and Rebecca Prebble and Katherine Wilson so we will not expand on that here.

First Emissions Reduction Plan.

The CCRA requires the government to produce Emissions Reduction Plans. The first Emissions Reduction Plan was released in May 2022. Its development, including Māori engagement and how Māori interests were reflected, are covered in detail in Hemi Smiler's evidence.

In response to engagement and feedback, the government developed ERP1 around a series of guiding principles. One of these principles was 'Empowering Māori' and focused on building Crown-Māori relationships and capability to work together as equal partners on climate response.

MfE officials also worked closely with Ihirangi on the Empowering Māori chapter in ERP1. The key action from this chapter was the establishment of a platform for Māori climate action with three focus areas:

- Embed partnership and representation;
- Support Māori-led strategy and alignment; and
- Activate kaupapa Māori, tangata Māori solutions.

National Climate Change Risk Assessments.

The CCRA requires the Climate Change Commission to prepare a National Climate Change Risk Assessment at least once every six years. The NCCRA is a tool to assist the government to prioritise action on climate change.

New Zealand's first NCCRA identified 43 priority risks across five 'value domains' (natural environment, human, economy, built environment and governance).

National Adaptation Plan and Managed Retreat.

The CCRA requires the Minister of Climate Change to prepare a National Adaptation Plan, in response to each NCCRA.

Each NAP must set out the government's objectives, strategies, policies, proposals and timeframes in relation to climate change.

Under section 5ZS of the CCRA (which requires the Minister of Climate Change to prepare a NAP): "the Minister must, in preparing a plan, take into account the economic, social, health, environmental, ecological, and cultural effects of climate change on iwi and Māori".

In June 2021, Cabinet agreed that consultation on managed retreat, as an adaptation option, would occur in February/March 2022 alongside the draft NAP consultation.

Managed retreat is an approach to reduce or eliminate exposure to intolerable risk. It enables people to relocate assets, activities and sites of cultural significance (to Māori and non-Māori), away from areas at risk.

Public consultation on the first NAP took place from April to mid-May 2022. During this period, Ihirangi held five workshops with Māori on the NAP, resourced through the joint work programme.

A managed retreat workshop session held during the consultation period was well attended with representatives from whānau, hapū and iwi.

Of the 294 submissions received on the draft NAP, 49 submitters (which was 16.6 percent) identified as Māori. A key theme arising from these submissions was that the NAP should reflect a commitment to Tiriti partnerships, which would include Māori being involved in designing and implementing adaptation actions.

New Zealand's first NAP was published in August 2022 and comprised a long-term adaptation strategy and an action plan focused on addressing the 43 risks identified in the NCCRA. NAP1 highlights that Māori play a unique role in adaptation – as Tiriti partners, as tangata whenua and as kaitiaki.

The Rauora framework was also published alongside NAP1. NAP1 provided that precisely how the Rauora framework would inform next steps would be established in partnership with Māori through the Platform (the establishment of which is a key action in both ERP1 and NAP1).

Under NAP1, the stated intent of the Platform was to build Tiriti partnership and greater recognition of Māori rights and interests, including Treaty settlement commitments, into the climate response.

NAP1 re-affirmed the platform would be built on three focus areas and explained it would be set up in two phases.

In phase one, the government would establish an interim ministerial advisory committee to:

- support immediate strategic advice and expertise across climate response policy and work programmes that impact Māori; and
- advise on a more enduring representative platform to help advance an equitable transition for Māori.

In phase two, the platform would be transitioned to a more enduring form, developed with Māori, to provide a governance presence and strategic advice in emissions reduction plans and NAPs over the longer term.

Climate data.

MfE's work programme included work to transform New Zealand's climate data system to support more effective adaptation and mitigation decisions. This is known as the climate data initiative.

The joint work programme also included a data priority which was Ihirangi-led. MfE officials began engaging with Ihirangi to understand the nature of Māori climate data needs. Through successive joint work programmes, Ihirangi received resourcing to support engagement and progress work on the data priority.

Engagement with Māori in mid-2022 focussed on mapping datasets for climate and engaging with data experts to test and prioritise data sets. Ihirangi convened hui with Māori climate and data experts and mandated tribal participants to share information about local climate projections and identify preferred data sets.

JUDGE MILROY:

Ms Haira, I think I'll stop you there because we're just in coming up to morning tea time and the next section of your evidence is quite long. So, we'll take our morning tea break now and return at 11.

HEARING ADJOURNS: 10.32 AM

HEARING RESUMES: 11.01 AM

JUDGE MILROY:

Welcome back, can I just – before we resume, can I just ask counsel if there's any documents that you wish to screenshare and that you are wanting our staff here to put up on the screen. Could you send, please send them in advance,

it helps with the flow of things if they're not trying to find the documents in the huge bundles we've got?

MR PREBBLE:

Your Honour. May I just briefly interrupt, because I have conferred with counsel and our witnesses over the break, and I did want to correct something that I said. So, in terms of these two witnesses, 10 days ago we RSVP and said all our witnesses would be in person other than these two. I apologise for not – we did let the register of the Tribunal in response to your request, but we didn't let the parties claimants know, and I apologise for that. In terms of advising these witnesses, our position had been that attendance wasn't mandatory in the nature of this inquiry today. And so, if there were commitments that meant they needed to be out of town, we weren't pushing them to say you had to be here. We had seen as kind of not an all or nothing thing when we asked for attendance for the witnesses to appear in-person here, that was for those that could make it in Wellington.

In terms of Anne and Gina, my understanding is that Gina Rangi is in Rotorua, and Anne, our understanding had been she may be overseas at the time we RSVP in Singapore, but she is actually in Wellington. So, I wanted to correct that as well just because that wasn't correct when I said she was out of town today. So, obviously where apologise or I apologise for perhaps not being upfront enough with the parties as to their attendance. And certainly we have heard from the Tribunal that we need to be more clear in the next hearing week and they can answer any questions, I guess, as to their attendance themselves, but that is just to put the record straight as to where things are at on that front. Thank you, your Honour.

JUDGE MILROY:

Ms Haira, I'm just wondering if you are able to come to the Tribunal at some point this morning because it would – we would be very happy to have you here and I think, as Ms Sykes had indicated, I wasn't aware, and the register has told me that she wasn't aware of the fact that you wouldn't be here today. So, we

would – if you are in Wellington, we would be very happy to have you here. So is there any possibility that you could join us in person?.

MS HAIRA:

Firstly, can I apologise for the unintended perception that this might've created, that we weren't prioritising this appropriately. We did check with counsel on Friday where we needed to be on Friday, on Monday – Sorry, Tuesday. So it certainly wasn't a deliberate act. Our vehicle at home – sorry to get into personal things – is out until the lunchtime. My partner is on course, so I can come in at lunchtime and be there for the afternoon. But I can't be immediately. But I do understand it's different Gina.

JUDGE MILROY:

Yes, yes, that would be very helpful if you could and perhaps even if the vehicle is not available, perhaps a taxi. I'm sure we could give you a taxi chit or however they do it these days, to allow you to attend at the lunch hour. Thank you very much. So I believe we're now at paragraph 40 of your evidence of the summary of evidence.

(11:05) ANNE HAIRA: (CONTINUES READING #A118(b) FROM PARA 40)

Māori Climate Platform.

Funding for the Platform comes from the *Supporting Equitable Transitions and Climate Resilience for Māori* multi-year appropriation, established in 2022. The appropriation scope is limited to contributing to equitable transitions for communities through New Zealand’s climate response.

In 2022, Cabinet agreed that phase one of the Platform would involve the establishment of an interim Ministerial advisory committee to provide advice to the Minister of Climate Change and the Climate Response Ministerial Group on the priorities for the approach to an equitable transition for Māori.

The Minister of Climate Change worked with Pou Take Āhuarangi to establish a nominating panel to identify suitable candidates for the interim Committee.

He accepted the nominating panel's recommendations on the interim Committee.

The interim Committee was to work with iwi, hapū, Māori representatives, and central and local government to co-design proposals for the Platform. In January 2023, the interim Committee delivered its workplan for the phase one design of the Platform.

In August 2023, the interim Committee informed the Minister of Climate Change that it had concluded its work developing recommendations for phase two and shared a copy of the interim Committee's recommendation report.

The report advised that an independent Trust, Oho Mauri Trust, had been established with the current interim Committee members as trustees. It also recommended that the Trust be designated as the entity to operationalise the Platform.

In October 2023, Cabinet agreed in-principle to the Trust being the independent governance entity for the Platform, subject to a report-back in August 2024 that described the Trust's engagement with iwi, hapū, and Māori.

MfE subsequently entered into funding agreements with the Trust to support its operations and pilot Māori climate initiatives. These agreements included milestone-based deliverables and reporting requirements.

Several key deliverables were not met. MfE and the Minister of Climate Change had concerns that failure to meet milestones may impact on the delivery of the Platform.

On 14 March 2024, the Minister of Climate Change wrote to the Trust advising them of his concerns about the progress of the Platform. He asked the Trust to halt any work until he could meet with them to discuss these concerns.

On 10 April 2024, the Minister of Climate Change and the Minister for Māori Crown Relations met with one of the co-chairs of the Trust, Mike Smith, to discuss Platform delivery. At that meeting, the Minister of Climate Change explained his intention to work with Pou Take Āhuarangi (rather than the Trust) on climate matters, including the Platform. The Minister outlined his interest in discussing the future of the Platform which would involve a relationship reset.

In July 2024, MfE formally gave notice to the Trust that funding was to be terminated, and delivery of the Platform was to be carried out by MfE. It was later confirmed that MfE would work with Pou Take Āhuarangi on the Platform.

In September 2024, the Minister of Climate Change directed that the Platform would be reset and delivered in two stages:

- Stage 1: Climate Resilience Pilot Projects (Sept 2025 – June 2025); and
- Stage 2: Resourcing Māori Climate Action (July 2025 – June 2026.

Stage 1 would focus on delivering action-focused climate resilience pilot projects, intended to deliver on-the-ground results and test funding allocation models and criteria for longer-term Māori climate action in Stage 2.

Stage 2 would focus on implementing a funding allocation model and funding criteria, informed by Stage 1, and allocate the remaining non-departmental funding available to the Platform for more climate resilience projects.

Now going to pass to Gina to continue.

(11:06) GINA RANGI: (CONTINUES READING #A118(b) FROM PARA 55)

Tēnā koutou. I was responsible for the reset. I am at paragraph 55 of our shared brief, our summary. A key aspect of the reset was to engage with Pou Take Āhuarangi on the Platform and work together on its future direction.

In July 2024, MfE and Pou Take Āhuarangi agreed to a joint work programme for 2024/25 year. Parties agreed to include Pou Take Āhuarangi scoping 4 to 5 climate resilience pilot projects as a deliverable.

MfE officials began due diligence of the pilot projects and sought approval from the Minister of Climate Change to fund the first recommended pilot project, the 'Mitimiti Community Water Storage Scheme'.

This pilot project is focused on upgrading the reticulation system for a water treatment plant owned by Mātihetihe Marae in Mitimiti. The system will provide 45 properties, including the marae, local school, and public toilets, with safe, reliable drinking water. The Minister of Climate Change approved the first project and announced this at Mātihetihe Marae on 5 February 2025.

In May 2025, the Minister of Climate Change approved an additional four pilot projects to proceed to contract negotiations. These are:

- Te Karaka Microgrid Solar Farm;
- Matakana Island Coastal Protection Structure;
- Te Tauihu Solar Power and Water Storage; and
- Taranaki Indigenous Biodiversity and Afforestation.

On 14 August 2025, at Te Karaka, the Minister of Climate Change announced that these additional pilot projects were being funded by the Platform.

Stage 2 of the reset has been focused on implementing a funding allocation model and funding criteria, informed by Stage 1.

In July 2025, the Minister of Climate Change was presented with proposals for the Stage 2 fund design. Options were developed with Ihi Research, an independent Māori research company, and Pou Take Āhuarangi.

In May 2024, the Minister of Climate Change and Pou Take Āhuarangi re-confirmed three mutual priorities: climate adaptation, emissions reduction, and data. A joint work programme was subsequently developed and announced at the National Iwi Chairs Forum quarterly hui in August 2024.

The joint work programme addressed the three priorities, with a focus on enhancing marae resilience to climate change impacts.

Pou Take Āhuarangi met all deliverables under the joint work programme for the 24/25 year.

Te Tai Kaha.

Te Tai Kaha is a collective of prominent Māori organisations that engages with the government on a range of issues, including climate change policy, Māori rights and interests in freshwater and resource management reform.

MfE and Te Tai Kaha leadership meet quarterly, while MfE policy teams meet with Te Tai Kaha technicians on a more regular basis.

MfE and Te Tai Kaha agree to mutual priorities, which MfE funds Te Tai Kaha to provide advice on.

Over the 2024/25 financial year, MfE met with Te Tai Kaha to seek advice on the Ministry's climate change work programme, including the Platform, National Adaptation Framework, CCRA Efficiency Review, Industrial Allocations, ETS, biodiversity credits, carbon capture utilisation and stock storage, removals framework and forestry administration changes.

Conclusion.

Māori have been and will likely continue to be disproportionately affected by climate change. MfE's understanding of these effects have primarily been informed through targeted research (including in the development of the NCCRA, ERP1, and the NAP) and ongoing engagement.

MfE has engaged with Māori in a range of ways as different aspects of its climate change response have been developed. This engagement has often been extensive, resulting in feedback from groups at the hapū, iwi, and national level that has been realised in climate policies.

We will now explain relevant updates since our brief of evidence that was filed with the Tribunal in September 2025.

Ma'am, I understand that we are to read the balance of the summaries – the supplementary as well as the summary, is that correct?

JUDGE MILROY:
Yes, thank you.

GINA RANGI: (CONTINUES READING #A118 FROM PARA 73)
As noted in our brief of evidence, the Minister of Climate Change directed that the Platform would be reset and delivered in two stages. Stage 1 is described in our evidence. The Platform's Stage 2 Fund was a closed contestable fund with approximately $9million available for allocation. The Stage 2 Fund opened for applications from invited groups from 28 July to 31 August 2025. During the application period, 90 groups were invited to apply for funding (these groups included PSGEs and other Māori entities (such as Māori trusts and Māori business groups) who responded to a call for expressions of interest facilitated through National Iwi Chairs Forum by Pou Take Āhuarangi). Over this period 112 applications were received, 196 email queries were responded to, and one webinar was held.

There were 112 applications were assessed by MfE to determine eligibility and affiliation with an invited group, and then assessed against four criteria: strategic alignment, need/benefit, deliverability, and financial sustainability. This assessment resulted in 29 applications being considered investment-ready, which were then submitted to an external moderation panel for further review using the same assessment criteria.

The panel members were from: Te Puni Kōkiri, Ministry of Business, Innovation & Employment, DIA, EECA, Pou Take Āhuarangi and an Independent Environmental Expert.

The panel reached consensus on its recommendations. Of the 29 projects reviewed, 16 were recommended for funding and 3 were waitlisted.

MfE also met with Pou Take Āhuarangi before and after the panel to discuss the recommendations. Pou Take Āhuarangi were represented on the panel and generally supported the recommended projects. Their feedback aligned with other panel members, emphasising:

- A focus on climate adaptation, resilience or energy efficiency, rather than emergency response centre upgrades; and
- The need for better scoping of solar projects, which were often overbuilt and could benefit from cost saving

In September 2025, the 16 recommended projects were approved by the Minister of Climate Change. Together, the projects will benefit 51 marae across 11 regions. The 16 approved projects total just over $7 million in funding. The projects include updating water infrastructure, strengthening flood resilience, providing solar energy and relocating a marae to higher ground.

In October 2025, MfE commissioned AIKO consultants to deliver a kaupapa Māori evaluation of the Stage 2 Fund, to assess how the fund was being implemented and how it was supporting marae and hāpori to improve climate resilience, with a focus on local solutions incorporating mātauranga Māori and environmental stewardship. A final report is due in August 2026.

Officials met with Pou Take Āhuarangi on 8 December 2025 to discuss allocating funding to additional projects that had been short-listed by the panel. MfE then provided advice to the Minister of Climate Change on allocating the remaining funding in the appropriation.

Projects were reviewed to identify those with:

- Greatest potential impact and contribution to the outcomes of the Platform – projects with the highest ranking as determined through assessment, review, and moderation processes already completed;

- Geographic spread – projects that enable a geographic spread of the Stage 2 Fund across the country; and
- Deliverability – projects that can still be delivered in the timeframe, being fully complete before 30 June 2026 and which are achievable in the available budget.

The Minister of Climate Change approved two further Stage 2 projects on 24 January 2026. Negotiations are currently underway with those applicants and deeds of funding are expected to be executed by the end of March 2026.

The Minister also asked officials for advice on allocating funding to projects that focused on supporting marae in regions affected by severe weather events in early 2026.

MfE worked with Pou Take Āhuarangi to develop these options. On 6 March 2026 the Minister approved four projects that were mutually agreed with Pou Take Āhuarangi and totalled over $1.3 million.

Funding announcements for the first 16 Stage 2 projects, totalling approximately $7 million, were made by the Minister of Climate Change on 3 February 2026. The projects are outlined in the press release submitted with this evidence and on MfE's website.

Project delivery for Stage 2 projects is underway and projects are expected to be completed by 30 June 2026.

MfE and Pou Take Āhuarangi have agreed a joint work programme for 2025/26 based on two mutual priorities (climate adaptation and emissions reduction). These mutual priority areas were previously agreed on by the Chair of Pou Take Āhuarangi and the Minister of Climate Change.

Adaptation deliverables under this year's joint work programme include up to 80 marae climate risk assessments, climate risk assessment workshops,

adaptation wānanga, ongoing support for the Platform work, technical advice on key climate policies, and the development of NICF materials and reporting.

Emissions deliverables include regional hui, advisory clinics and technical workshops with iwi/Māori on the ETS and ERP. The deliverables also include the development of an ETS toolkit for Māori, technical advice on key climate policies, and the development of NICF materials and reporting.

A key focus of the joint work programme this year is to enhance marae resilience to climate change impacts. It integrates Te Ao Māori (Māori community-facing deliverables) and Te Ao Hurihuri (New Zealand Government climate policies and initiatives) to create outcomes that benefit both Māori communities and the Government.

In September 2025, Pou Take Āhuarangi reported on progress made on Q1 deliverables. Pou Take Āhuarangi conducted risk assessments for 30 marae, held four climate resilience workshops (in Auckland, Tauranga, Putāruru and the Chatham Islands), and continued to support the Platform. This support included ongoing engagement with pilot project sites and contributing to the Stage 2 design, application process and panel.

December 2025, Pou Take Āhuarangi reported on progress made on Q2 deliverables. Adaptation deliverables included 15 marae climate risk assessments, two climate adaptation wānanga, preparation for and attendance at COP30, Platform support, and technical policy advice on the NAF and CCRA Amendment Bill. Emissions reduction deliverables included planning towards regional ETS hui and advisory clinics, the development of a toolkit to support Māori to have a better understanding of the ETS, and the development of policy guidance documents and advocacy tools.

In their 16 December 2025 progress report, Pou Take Āhuarangi reported a positive working relationship with MfE.

In September 2025, Te Tai Kaha signed a variation to their Deed of Funding which included milestones to provide expert technical and strategic advice related to climate matters (as well as freshwater and resource management reform), including in relation to the development of policy and legislation and other ministerial priorities.

Since then, MfE officials have been meeting with Te Tai Kaha to engage on climate policy. This has included the NAF (including the National Flood Map), the ETS, Cost Sharing, Sustainable Finance and Voluntary Carbon Markets.

MfE has also been working with Te Tai Kaha to agree a climate focussed joint work programme. While the joint work programme has not yet been finalised, some deliverables have been agreed and are being progressed including Te Tai Kaha providing advice on the National Flood Map, Investment and Cost-sharing, and Voluntary Carbon Markets.

It is worth closing by noting that broader engagement with Māori – as described in our brief of evidence – has also continued. Iwi-Crown Accords and MfE Relationship Agreements, for example, provide for annual hui with PSGEs where climate matters can be discussed, and MfE updates PSGEs and other Māori groups on climate policy.

MfE also engages with PSGEs on climate matters by providing updates and inviting them to contribute to policy development and other statutory processes. Tēnā koe.

JUDGE MILROY:

Thank you, Mrs Rangi and also Ms Haira for your evidence. We are now looking at beginning examination and we have Tūkau Law as the first questioners.

(11:24) MRS TEREI-TIPENE TO ANNE HAIRA, GINA RANGI:

Q. Tēnā koe Ma'am. Just want to check that you can hear me.

A. [Gina Rangi] Yes, we can.

[Anne Haira] Yes.

Q. Ms Haira?

A. Yes, I can hear you.

Q. Ka pai. Ka pai. My name's Ms Terei-Tipene and I'm assisted by Dr Downs. We represent Hapū groupings up in Te Tai Tokerau, Ngāti Hine and Te Kapotai as well as the Ngāti Hine Forestry Trust. So, just a little bit of a hapū landscape from where my questions are going to come to. I was hoping to be able to do this in person it's a little bit difficult with cross examination and so many, many documents. But we'll do the best that we can traversing your guys brief. I should actually possibly be thinking you because I knew to motherhood, and this is the probably one of the first times I've had some time away from my baby and I've been able to eat with two hands, so I should be thinking you. So I appreciate your time today as well as the opportunity to be able to really just have a discussion about some of the things that we're seeing in relation to climate change impacts on Māori. And can I please just start by getting you to go to page two. I think my first lot of questions will be aimed at you, Ms Haira, so the front part of the brief.

WITNESS REFERRED TO #A118(B), PAGE 2, FROM PARA 11

And I can see from paragraph 11 you're talking about the impacts to Māori from climate change on page two. And at paragraph 12 you say that climate change has the potential to effect all aspects of Māori life. And if we look at paragraph 13 where you list some of the ways that Māori are disproportionately affected by climate change, we can see that climate change is literally really does affect all aspects of Māori life, doesn't it? Tūrangawaewae, marae, urupā, all of the things that are listed there. And so, based on this list, has – the list has come from essentially targeted engagement with Māori over a number of years? Is that correct?

A. A combination of targeted engagement as well as research.

Q. Yes, yes, sorry, yes, at your paragraph 11, I can see that it says bespoke research as well. And so, just going back to your paragraph 12, midway through there, you're talking about Māori being especially vulnerable to the effects of climate change and that Māori interests values, practices and wellbeing may all be disproportionately affected. I guess the

language that's stood out to me there is vulnerable, disproportionate, followed by your examples at paragraph 13. Would it be fair to say that climate change is a significant issue for Māori and that Māori have an interest in the response to it?

A. Yes.

Q. And you would agree that for some Māori communities the impacts of climate change is severe.

A. Yes.

Q. And in such instances, the response is urgent.

A. **(inaudible 11:27:49)** –

Q. Not all instances but in some instances or for example we might have a weather event and in those instances, the response may be urgent.

A. Yes, for example what comes to mind for me is Tai Rāwhiti, at that present. I think their circumstances and exposure to climate risks is materially different to perhaps other communities across the country and I base that principally on the severe events that occur this year.

Q. Yes, kia ora.

WITNESS REFERRED TO #A118(b), PAGE 2, PARA 14

And so coming down to your paragraph 14, you're talking about engaging with Māori on climate change. And what I'm interested in is when the government is thinking about in developing policy on how to address this disproportionality and this severity, who is it engaging with? Your evidence suggest that it's predominantly through iwi chairs. It is that correct?

A. I tend to see it into two phase. So, we do engage very closely with the national Māori groups referenced in our evidence. The intention there is to ensure the proposals that are subsequently taken out to Māori as part of potential consultation that they're in good shape and that we aren't using consultation processes to essentially learn what their nature of Māori interests are and what options we might have. So, that early involvement in the development phase is intended to ensure we show up when we consult with a product that is reflective of Māori interests and options and has their perspective considered. So we aren't asking essentially Māori communities, iwi, PSGE, hapū to do that heavy lifting

for us and my experience has been that is worked very well across a number of different areas such as fresh water, climate, RM.

Q. In relation to that process working very well, is that from those groups that you are engaging with, that feedback, that the process works quite well?

A. I can't speak for them. What I can say is we have found their advice and input invaluable.

Q. Right, and so once you have the product or do that initial ground work so that essentially you're using your time and potentially resources to get the best possible outcome, what happens in the next stage when you take that product out like who are you engaging with at that next stage?

A. So we have – and I'd be happy to provide this to the Tribunal if it would help. We have a framework that we call our relationship management framework which provides guidance as to how we do this. So, it recognises that there are different groups generally, so not just in in the Māori Treaty space, that there are particular groups across New Zealand who have very strong interests in the work that we do. Then within that there will be what we call segments. So within our Māori space we work very closely with national groups in the policy development phase and then when we go into broader engagement we engage more broadly and that's probably more comprehensive includes all of the PSGEs that we have commitments with, Māori businesses, Māori land entities. So that part of a lot more comprehensive words in that early development stage it is more targeted.

Q. Thank you. In the second phase we're engaging with a larger audience. Is there the opportunity in this phase to influence outcomes? Like are you taking the product, and you are like this is the proposed policy and it's probably most likely that this is going to be the outcome also, or is there the opportunity to influence making in this second phase as well for those groups that you're engaging with in this next phase?

A. The short answer is yes, it varies, but consultation – the principles of consultation would make we would go up with an open mind that is willing to change and there are examples that we can provide to demonstrate how proposals may have been amended or adjusted following a consultation and engagement area.

Q. What's the time frame for that kind of engagement?

A. Again it varies and often there's a political dimension here, sometimes we had to move at the pace at which ministers want us to and that can be challenging. Sometimes there is substantive time allowed for that engagement. So it varies but I do acknowledge that often it is not – we hear a consistent message and feedback that people would want more time.

Q. Thank you.

MS TEREI-TIPENE ADDRESSES JUDGE MILROY – MICROBREAK – WILL CARRY ON (11:33:55 – 11:34:10)

MS TEREI-TIPENE TO ANNE HAIRA AND GINA RANGI: (CONTINUES)

Q. Can I please get you to go to your paragraph 26 and I'm going to move quite quickly through this section.

WITNESS REFERRED TO #A118(b), PAGE 4, PARA 26

Essentially here you're providing a legislative overview and so far as it relates to the Crown's obligations and respect of Te Tiriti and its principles and the requirements for the Crown to recognise and respect its responsibilities. That's kind of what you've got here from 26 onwards.

A. Yes.

Q. And we can see the climate change response in 2002, the Moderated Emissions Trading Amendment Act in 2009 and then in 2019, the Zero Carbon Act. Are these legislative directors for the Crown and it's work to prepare for and adapt to the effects of climate change?

A. Sorry, can you say that one more time, the question part?

Q. Sorry, are the legislative directives for the Crown, when it’s preparing its work for an adaptation to the effects of climate change?

A. I think I understand what you're asking, I'm just not familiar with the legislative direction, directive phrase. What the legislation provides is what particular actions to be undertaken, one of which or two of which the completion of a national climate change risk assessment and who should do that and what time frames, and it requires under statue to produce a

national plan no one is the National Adaptation Plan. So if that's what you're asking around legislative directive then I would point you to those.

Q. Yes, yes, and I can see from paragraph 43 you start to talk about the one work programme with iwi chairs and more specifically excuse me Pou Take Āhuarangi and Ihirangi. And we arrive at paragraph seven and that there kind of says: "That the work programme was focused on the Crown's policy and legislative commitments at that time." Is that correct?

A. Yes.

Q. And one of those commitments was the first emissions reduction scheme, I think I see that from your paragraph

A. Yes.

Q. Yes? Okay. And at your paragraph 59, you say: "That a key action from the first ERP was the establishment of a platform for the Māori for Māori climate action."

A. Correct.

Q. And there at paragraph 59.1, 2 and 3, you set up three focus areas. In the first one which I describe, which I discussed with your colleague Ms Prebble yesterday is embedding partnership and representation. And the, I guess, explanation of that focus area is to uphold Te Tiriti and principles, processes and mechanisms will be resourced and design alongside Māori to help tangata whenua to actively participate in climate response. So, is it correct to say that as at the time of this, that it was published, upholding Te Tiriti was a focus area for the Māori climate platform?

A. Yes.

Q. And so if we – sorry, I do know that this is a lot of flicking through pages but at page 20 at paragraph 90.

WITNESS REFERRED TO #A118(b), PAGE 20, PARA 90

That's where you actually talk about the Māori climate platform. So, if you could just flick over there.

A. Yes, I'm here.

Q. You say there that the platform was intended to build Tiriti partnerships and operationalise the climate change commissions, recommendations, that's correct isn't it?

A. Yes.

Q. And at – sorry – 92.2, which is on page 21.

WITNESS REFERRED TO #A118(b), PAGE 21, PARA 92.2

The Cabinet economic development committee agree in principle to establish a platform with three work streams to support Māori climate action and a Te Tiriti led approach to an equitable transition for Māori and the Māori economy. So we have upholding Te Tiriti principles, building Tiriti partnerships and a Tiriti led approach, so it's fair to say that there's quite a bit of emphasis there in relation to the platform on Te Tiriti.

A. Yes.

Q. And so, then there's a shift once we've got - sorry, I know that the vast majority of your brief at the top and is talking about the interim committee and setting up the platform, trying to stand it up. But essentially once we get to the platform there's a two stage approach and your evidence walks through the committee, the work programme for phase one, and then the start of phase two, which brings us to your paragraph 144, and that's in October 2023. That coincide – like the start of stage two coincides with the establishment of the current coalition government, doesn't it?

A. Can you remind me of the dates.

Q. If you go to your paragraph 144, it says in October 2023.

A. Yes, yes.

Q. That's the start of phase two and that's kind of coinciding with an election and a new government coming in, is that correct?

A. Yes, that’s correct.

Q. And so what we see kind of shortly after is a general kind of falling apart of phase two in terms of the trust, not meeting milestones, is that correct?

A. I probably won’t use those words.

Q. What words would you use in relation to what happened in that period of time?

A. It set out in our evidence pretty clearly, I think, that there were deliverables had a view that they hadn't been met.

Q. Ka pai, thank you.

JUDGE MILROY:

The panels just uncertain because you referred to in your question to October 2023, the start of phase two, as coinciding with the coalition governments. Yes, and our we think that's actually a month later that the coalition government because there would've been negotiations and so on.

MS TEREI-TIPENE:

Yes, so the government didn't come in until November, but what I'm asking is as cos it's a sliding landscape, as they're talking about implementing stage two, we're also in an election and a new government coming in and so what we see is that the work programme is moving and the government's a new government coming in at the same time was the only point that I was trying – I wasn't trying to be specific about October, what was happening in October, what was happening in November, sorry to not think that.

JUDGE MILROY:

Thank you, thank you. Sorry to interrupt that but we did need some clarification.

MS TEREI-TIPENE:

Ka pai.

MS TEREI-TIPENE TO ANNE HAIRA AND GINA RANGI: (CONTINUES)

Q. So do you agree that once we do have a new government and a new minister, we see the trajectory of the platform change from what it was.

A. Again, it's slighting more nuance, it wasn't government changes, direction changes. At the time that the government changed there were – I think at that time, I'll need to check, concerns around where the deliverables were on track and that overlapped with the change of government, as we tried to resolve that.

Q. Right.

A. But it wasn't an immediate shift as I think might be what you're getting towards.

Q. Yes, well that was what I was seeking clarification of. Like, was it something that a minister came in and was like, 'I'd like to change things

up', or was it something that was happening like on a sliding scale as policy development and implementation goes.

A. I wouldn't use sliding scale. I would say there was live activity in this space that the new minister came into, and it was required to make some calls that to whether or not to continue, but that couldn't happen at the immediate change of government period.

Q. Ka pai, thank you. And so, we come to the decision by the Minister of Climate Change to reset the Māori climate platform, that's at your paragraph 171, and he indicates which is, sorry, a little bit further down at 174, that the forward plan for the platform should include and it's got a list there at 174: "Investment into tangible outcomes that should ensure optimum use of available funds, alignment with the government's climate strategy and key policy programmes and testing direction and approaches to the platform with Pou Take Āhuarangi." There's no mention of Te Tiriti in this board plan for the platform, is there?

A. I'm going to – I've seen Gina's taken her mic off, so I might pass to Gina to pick up.

[Gina Rangi] Not in the summary and set up in our brief evidence.

Q. Thank you. So, the forward plan comes from a briefing paper that stated in September 2024. So, can I please get that brought up? Hopefully. The registrar is going to bring it up so you can have a look.'

MS TEREI-TIPENE ADDRESSES REGISTRAR – DOCUMENT ON SCREEN (11:45:35 – 11:45:50)

MS TEREI-TIPENE TO ANNE HAIRA AND GINA RANGI: (CONTINUES)

Q. So, at paragraph 33, It says: "The platforms key focus areas will continue to align with the ERP1 actions of partnership and representation strategy and alignment and community activation." And then there's a heading, partnership in representation, and their at paragraph 34 to 36, it explains what partnership and representation now means and I'll just give you a moment to read that. If you could just let me know when you're ready for the question.

A. I'm ready.

Q. Ka pai. This is a different explanation of what is meant by partnership and representation from the one I discussed with Ms Haira earlier, isn't it?

A. I'm sure you're right, I just haven't got anything.

Q. It is at the paragraph 59.1.

A. Yes, that's correct.

Q. And we see that there's no mention of Te Tiriti anymore, that's correct.

A. That's right.

Q. And so can I take you back to page 20 paragraph 90.

WITNESS REFERRED TO #A118(B), PAGE 20, PARA 90

We are talking about the rationale behind the platform.

A. Yes.

Q. You say that the platform was intended to build Te Tiriti relationships but that's not really the focus of it anymore, is it, according to that briefing paper?

A. I think the term Tiriti partnership is a really broad one and it encompasses all aspects of the Te Tiriti partnership, and I don't think that the Māori climate platform in itself is the only kind of mechanism for upholding the Tiriti Partnership. I understand the point you're making, but like I said, it's quite a broad principal and trying to bring it into the specifics of what the climate platform was or is.

Q. Yes.

A. [Anne Haira] Can I just build on Gina's comment. My recollection of when we did this work was, it was intentional not to explicitly prescribe or define what the platform was because it's intention was for Māori to do that. So, the language used is deliberately broad to help enable or give space for that clarity to come from Māori, which at the time I remember speaking in different forums and saying this is quite different to how often government will turn up with the Māori strategy that government has developed and the attention here was to help enable and support Māori to develop a Māori strategy for climate. And so that's why the language is broad. You can interpret it in many ways. It's quite intention.

JUDGE MILROY:

We will take that micro microbreak now. So, a couple of minutes for a microbreak.

HEARING ADJOURNS: 11.50 AM

HEARING RESUMES: 11.52 AM

JUDGE MILROY:

Discussions have been ongoing with the Registrar and the Crown as to bringing Ms Haira here in person. So what I've decided is that at the completion of your cross-examination, we will take an early lunch break for the same amount of time which we have allowed 60 minutes for lunch. That will allow Ms Haira time to get here for the rest of the cross-examination. So back with you, Ms Terei-Tipene.

(11:53) MRS TEREI-TIPENE TO ANNE HAIRA, GINA RANGI: (CONTINUES):

Q. Thank you, Ma'am. Sometimes could be come back on that last point that you made, Ms Haira, in relation to the intention for the platform to be defined by Māori. Has that happened, a process for that to happen, or is that like the underlying foundation of all it is, is that it's a continuing discussion and the continuing process?

A. Through a Ministerial Advisory Committee to provide advice on that.

Q. Sorry, can you just repeat yourself, you just kind of came in a little bit at the halfway through your answer?

A. My apologies, I hope that's clear now. The intention was for advice on that to come from the interim Ministerial Advisory Committee that was appointed.

Q. And so what's in place now that the interim committee is no longer operating?

A. Our evidence does speak to this. So the advice in short that we received was to transfer the funds to the Oho mauri Trust and then subsequently various decisions which are detailed in the evidence, we're taken to move that work back into MfE and we have subsequently worked in

collaboration with Pou Take Āhuarangi as to how we might take that work forward.

Q. Right, thank you. That's helpful.

A. I probably, if I can add, in the interests of building understanding. I heard one of the counsel in his examiner cross-examination of Katherine Wilson, stressed the importance of urgency and that is something that is definitely shaping our approach. Previously when the ERP was developed, it's almost a luxury, I think, to have had the time to develop a strategy and then a planned implemented et cetera. The impacts of climate change have been felt now. We need to move to action now alongside developing a strategic approach. You can see that in the funding of pilot projects and the other projects in the Māori climate action fund, that rather than weight for a strategy to be agreed and developed and published, we are moving to action because of the urgency, and we absolutely recognise the need for that.

Q. Yes, thank you and actually that's a good landing point to come into my next line of questioning, which is my last. And it might be more kind of position towards you Ms Rangi, but it's about the reset and if I can take you to your paragraph 176.

WITNESS REFERRED TO #A118(b), PARAGRAPH 176

And there, talking about the reset in relation to stage one, and you say that MfE officials developed a series of criteria for assessing projects across Māori communities to identify pilot projects. What informed the development of the criteria there?

A. [Gina Rangi] That’s the work with Pou Take Āhuarangi. So it was developed in discussion with those technicians.

Q. And did any groups outside of that of Pou Take Āhuarangi have any input in developing that this particular criteria?

A. I don’t recall that.

Q. So moving on in the chronology, we have five pilot projects, and it's intended that the learnings from this stage one process will inform stage two which is focused on implementing a funding allocation model and funding criteria, is that right?

A. Yes.

Q. And at paragraph 189,

WITNESS REFERRED TO #A118(b), PARAGRAPH 189 AND 189.1

You set out the fun design which includes the five items listed there.

A. Yes.

Q. And 189.1 says: "Focus on marae based climate adapt adaptation." Does this mean that funding for the platform is limited to marae based projects?

A. Yes, but the benefits not limited to marae. So, for example, in Mitimiti would a reticulation benefits the entire community, but the infrastructure is already owned by – we upgraded in the structure owned by the marae. So their marae led, often supported by iwi or hapū groups as well. But have broad application to Māori communities –

Q. Yes, I did see that.

A. – would benefit.

Q. But it is the case that marae base projects essentially it is the focus point that there has to be a marae there and then the project is wrapped around that.

A. Yes, it doesn't need to be geographically centred on a marae, but the initiative or the project is generally led by a marae community. So, for example the Taranaki diversity project, that was not at a marae that was associated with the maunga. But it was led by and supported by marae.

Q. All right, thank you. And paragraph 189.3.

WITNESS REFERRED TO #A118(b), PARAGRAPH 189.3

It says: "That the funding design will take a targeted contestable allocation approach with application sort via invitation to specific groups." Does this mean that groups have to be invited to apply.

A. It did and it was primarily through the National Iwi Chairs Forum and in addition we sent correspondence to all of the PSGEs, some 78 plus PSGE groups that we engage with, we can provide a full list of the groups that we invited to that.

[Anne Haira] Can I add to that? The rationale for that, included the fact that there was $9 million, which doesn't go far. It was also not assumed that this would be it. So, adaptation is an ongoing activity, and our expectation is that there will be a range of different activities that probably differ to this that the Crown may considering fund in the future. This is

going to my earlier point is moving to action and I heard Professor Williams speak earlier around the positioning of marae within communities and the role they can play within the emergency response period after it have severe weather event. So, that has shaped and influenced we would focus investment, but the targeted approach was a reflection of the amount of pūtea and essentially not wanting groups to wait time if we can only stretch it so far and you need to have a – for it to be materially useful, you need to have a certain amount. So, you know we can't give everyone a small amount for example like $20,000, isn't going to do much. There is a certain amount that I think you start to see a material change and the development of resilience.

Q. Notwithstanding that though that leave certain groups up, doesn't it that approach in relation to invite only, especially if you've got groups that are not on the radar or not associated to iwi leaders or not PSGE groups, like our clients.

A. [Gina Rangi] Yes, that's right.

Q. And so in terms of funding for the platform and you've already touched on it there. But essentially – I can take you to the documents, but I prefer to just – hopefully it's familiar to you, but we started off with quite a significant amount, we start with 35.5 million at one point and then it kind of starts to drop a little bit as time goes on, but I can see that at May 2025, there's approximately 14.92 million available for stage two and that's subject to further government savings and then in July 2025, there is now only 9 million, the amount that Ms Haira just mentioned available for stage two.

A. No.

Q. Yes, well –

A. Finish the question and I can clarify.

Q. I guess my question is at the beginning of my discussion with you we were talking about disproportionality, we're talking about affecting all facets of Māori life and it being severe and in many cases urgent and then we look at this and now it's invitation only, cutting the budget. There's a bit of a disjunct there between those two things, isn't there?

A. The original allocation was 18 million for – so there's distinction between departmental and non-departmental funding and non-departmental

funding which is the funding to be available for Māori projects was 18 million, which included, I think $10 million out here funding. So, how that has been distributed was 3.6 million to the first five pilot projects, 7.3 for stage two, 1.4 million stage three, which followed the January severe weather events. We still have some other funding, some of which has been used to support the joint work programme with Pou Take Āhuarangi and in particular, a lot of their work has been in Māori communities so the extensive number of resilience workshops that they have houses, hapū and iwi and marae. They have completed through that funding, a stocktake of over a thousand marae and urupā, climate risk assessments with 180 marae. So, that has all been funded through the non-departmental funding as well and we've currently got about 250,000 of the scoping of an urupā project at the moment.

Q. Thank you and typically I'm not contesting what the funding that is currently allocated to the platform and the work that it is doing the projects and reading about them and the evidence, certainly look like they are making a meaningful contribution to those communities. My question is that we start with a large appropriation, it has been significantly cut, looking at the document that where it goes from 14.92 million – this is in the briefing documents, which I'm happy to take you. But it says that approximately 14.92 million is available for stage two, that's in May 2025. And then two months later it's cut to 9 million. And if you look at the reference there, it says: “After the government decided to downscale funding allocated for the Māori climate platform by approximately 33 percent. My question isn't there a disjunct there? We talked about disproportionality, we talked about in many cases urgency and severity and then now we're talking about invite only and cutting the budget. There's a disjunct there. Is that acknowledged?

A. I think the severity, the widespread impacts of climate change for Māori and for the country are visible. In terms of the budget allocations there was a recollection as it was a $5 million reduction from the total which was a decision made in Budget **(inaudible 12:07:30)** in the context of across the board budget cuts for the government. So, it was not an isolated decision targeted particularly and in fact, I was really pleased we

were able to hold on funding that we did have. It was one of the few areas of funding the external groups or non-government agencies that was retained and which reflected the importance of Māori climate action. But I don't dispute your core point which is the size and the scale with the challenge and the fund and competitive funding available for.

Q. Kia ora.

JUDGE MILROY:

Ms Terei-Tipene, your time is actually up.

MS TEREI-TIPENE:

I was actually just about to mihi to Ms Rangi and Ms Haira and thank them for their time this morning and I appreciate the opportunity to just get some further clarification on these issues. Ngā mihi.

JUDGE MILROY:

Thank you, thank you both. We're now going to our lunch break and hopefully Ms Haira, you'll be able to be here. We'll come back at one o'clock.

HEARING ADJOURNS: 12.10 PM

HEARING RESUMES: 12.59 PM

JUDGE MILROY:

First of all, can I welcome you Ms Haira here to the Tribunal and thank you very much for using your best efforts to attend in person, we are very pleased about that. Secondly, I have a confession to make on behalf of the registrar. She has found the document which indicated that Ms Haira and Ms Rangi would not be attending in person, but online so we are going to make sure that next time around we are all fully okay with who is coming and who's not. So, that's the apology from the Tribunal. We're now at – oh we're a couple of minutes early but I think we'll just begin anyway and Mr Bennion, over to you.

(13:01) MR BENNION TO ANNE HAIRA, GINA RANGI:

Q. Ms Haira, Ms Rangi, tēnā kōrua. My name's Tom Bennion. Ms Rangi, you can see me.

A. [Gina Rangi] Not at the moment.

Q. Ms Haira, you can see me. We've taken the lectern. I've got about 30 minutes of questions, I think, something like that. Thank you for both for being here. I know you busy and time is valuable. So, I represent sort of three – we represent three claimant groups but one of them is Toitū Taranaki. You familiar with Toitū Taranaki? This is Emily Tuhi-Ao Bailey. No, okay. I just notice you've got a Torohanga a Tāne biodiversity restoration project in Taranaki. So I was interested in that, but we might come back to that. But I note that you're both lawyers. Āe, I think that's right.

A. I trained as a lawyer but I no longer have a practicing certificate.

Q. Okay, yes. I see that – Kensington Swan, I see background there, for Ms Haira, and Ms Rangi I see you've got RMA expertise with Te Arawa and I see also you're involved with the legendary Tūaropaki project, which is which I know, going through the Central North Island it's something you see all the time and reflect on. So thank you for appearing. Now, I just want to start with definitions, because I think it's important to understand what perhaps define what adaptation is because maybe there's a risk here that everything becomes adaptation, and we lose sight of what we're trying to achieve. Now, what I'm going to do, we've got some documents to show you we'll bring them up on the screen because I've got Ms Kudrat who has got them available here and we'll throw up on a share screen as we go. But one thing I noted in your materials which I think you recently provided is that you provided minutes of wānanga that you've held about adaptation, and you've been talking to people about the PARA framework P-A-R-A framework. Yes? Should I direct questions first? What I'll do is I think if I direct questions first to Ms Haira and then Ms Rangi, if you come in, you know, as you see fit. Is that a good way to do this? Āe? So can I just bring up the PARA framework. This is from an MfE document. So this says, it's Protect, so stay in place, build defences, Avoid, stay away from areas, Retreat and then Accommodate, improve resilience. So, I

just want to be clear that, well, a couple of things. One is that framework was discussed with in wānanga with people. Were alternative frameworks discussed?

A. [Anne Haira] I wasn't in attendance so I can't confirm or deny.

Q. I mean just – just a quick question on this. So, has there – we've noted the Rauora Framework which people refer to, it doesn't have an adaptation framework specifically, it's a broader document. But has there been any idea of going to people, to Māori communities and saying, there are different frameworks for adaptation, what is your framework?

A. No, no, I don't think we've had an intention to do that.

Q. All right. Yes, it doesn't look like that's occur. I just want to be clear about that. Just and then on this PARA or PARA framework. also to be clear and I think this is the key point. This framework talks about a situation where not about repairing structures which have been destroyed. That's not adaptation, it's about taking structures and saying how can we respond to the changes that are coming with the climate. Is that fair way to put it?

A. How can you – the way I'd frame it is, how can you strengthen your resilience to the impacts of climate change.

Q. Yes, because is it fair to say that we should be very cautious that we don't label repair after a storm or adverse event. The repair back to where we were before the destruction, we shouldn't call that adaptation. That's just repair. The adaptation comes from, now that we're back with the building that has been destroyed, we now think about the power framework. Is that a fair way put it?

A. Yes, yes.

Q. All right. If we head down the track of labelling repair, all the repair that we're doing after extreme events, adaptation, we run a risk, don't we, that we're not really adapting. We don't realise we're not adapting, we're just being reactive and responding to events, is that fair?

A. That's correct.

Q. All right.

A. That's correct. I would typically call that activity recovery.

Q. Recovery. Thank you. So I wanted then to come to paragraph 128 of your primary evidence, so that's the #A118.

WITNESS REFERRED TO #A118, PARA 128

Q. And you see there you have a comment that says the significant weather events of early 2023 required a temporary reprioritisation of deliverables in the Interim Committee's work programme, a recovery task force was created, Ihirangi was involved in the immediate response. So is that an example of a recovery effort actually interfering with an adaptation effort?

A. I think they coincided and as resources are limited in most places it did divert attention I think away from the broader long-term work of adaptation, instead energies, time and resource was focused on, firstly, the immediate response and then the recovery efforts that followed.

Q. Okay, and if I – well, two points, yes, two. So if I come to 35.9 of your evidence, #A118, you've also got this comment, one of the risks here is: "Risk to the ability of democratic institutions to follow due democratic decision-making processes under pressure from an increasing frequency and scale of compounding cascading climate change impacts." That reprioritisation that we just talked about, while it's not a democratic decision-making process, it's an example, isn't it, of pressure from increasing frequency and scale of compounding and cascading events, diverting efforts away from the government and governance trying to deal with that – trying to produce an adaptation policy. Is that a fair way to put it?

A. Yes, yes.

Q. Okay.

A. I think that the essence of 35.9 is that when you are in the response and recovery phase, you've got people who are likely out of home, roads are blocked, and so the standard typical processes by which decisions are made by governance arms are sometimes – there simply isn't time if we are to prioritise the restoration and recovery of communities who may be out of home.

Q. Right. And if we see the separate phase of recovery as different from adaptation, when we come to budgets and sums of money, we should be careful about what sums are there for recovery from what sums are there

for adaptation. Those are two things we should keep in mind because otherwise we run the risk of what we call an adaptation fund simply becoming a recovery fund.

A. In theory, I've not seen that occur.

Q. Okay. Can I give you – just go to one example from a bundle of documents we handed up, it's just a short example, but are you familiar with the Waioeka Gorge Road? Āe, and I hope I've got this right, I think it's Aitanga-a-Māhaki at the eastern end and Whakatōhea at the west if I put it in broad terms without getting into trouble. So that road was washed out, was washed out, well, it had problems from Cyclone Gabrielle, and then more recently it's also had major slips, āe. Can I just bring up the article briefly? We just got a brief – this is just, I think it's an RNZ article about it.

WITNESS REFERRED TO RNZ ARTICLE

Q. So, can we just go to the top of the article? Well let me just put this to you. The article says NZTA picks a cheaper but less effective option to fix State Highway 2 in the Waioeka Gorge. So this is the Transport Agency picking a cheaper but less effective option. So it's chosen an option not to fully recover the road but to partially recover it to a lower standard. So this is not adaptation, is it? This wouldn't be adaptation work for example, this is actually just recovery to a poorer standard than before.

A. It could be both. I think where you're headed is the importance of integrating climate resilience into recovery work. So if you are rebuilding a road, you're rebuilding it in a place that has less exposure to climate risks. That sounds good in theory. There are very few places that don't have exposure to climate risk, however. But I think that's what I think you might be heading towards but I'll leave you to ask your question.

Q. Yes, I just think in the case of the Waioeka Gorge if we, I think we've got – there's a business case recommended option which would cut closures by 53% while a full fix would cut them by 70 and they've chosen the 53%. That doesn't sound like we're getting much resilience, does it? It's a – we're running out of money to properly fix the road, aren't we? We're not getting to resilience.

A. I can't comment on that.

Q. Okay. In terms of events like this, I'm just looking now at the, towards the bottom of it, but there's a comment from NZTA about – just go to the bottom here – about the iwi. That iwi, that the importance to iwi was a factor in decisions about the road. You see eight key risks were led off by three high ones, those that costs would rise, the quake hazard from the Koranga Fault and how sensitive the area was to local iwi and hapū. So in terms of this risk assessment and those sorts of matters, that's not something your unit was involved in or was asked about?

A. No.. So the Ministry's role within this work is the broader system stewardship of adaptation. Within that, within for example, the National Adaptation Plan, there's over 30 government agencies involved with this implementation, including NZTA. So beyond the ground operational work is led by a range of different agencies. Where Ministry for the Environment's role comes in is not just the architecture but the broader strategic direction of adaptation efforts. I heard Katherine Wilson speaking this morning on that. She's probably the authority in this space rather than me.

Q. Okay. Yes, she did seem to have that overview approach.

A. She referred to spatial planning –

Q. Yes.

A. – which is built into the reform of the Resource Management Act. And for those not familiar, it is a long term plan as to where you might locate infrastructure investment and the intention is to build climate resilience into those plans. There are some regions around the country who have spatial plans at present, the intention is that would be a very useful mechanism to help transition the country into a more resilient state.

Q. Alright, and we've gotta be a bit cautious about talking about current legislation or current bills –

A. Yes, my apologies.

Q. – because the Tribunal's got that problem but I understand the point you're making. I've got some – would have some comments about those bills but I won't go there, including their Treaty clauses or not. But anyway, let's just move on. So, all right, thank you for that. Now, I just

wanna come to – my next question is around in terms of adaptation, a broad question, you'd accept that what you're adapting to, that is the future you think is coming and the speed at which you need to move to that future are going to influence the effort and funding required for adaptation?

A. Sorry, could you repeat that?

Q. Well, I'll put it simply. So if you think it's a two metre sea level rise or a three metre sea level rise that is the future, is going to affect the funding that you need to put in, is it gonna be a two metre sea wall or a three metre sea wall, and how fast do you need to get that sea wall in place?

A. Okay.

Q. That's important to have an idea about what the future scenario is and the speed at which that scenario arrives in adaptation plan –

A. It is important. It is also never fixed, and it is also built on assumptions.

Q. All right.

A. Because you can only forecast and anticipate what the science might tell you based on certain assumptions around the level of mitigation efforts that might be achieve globally. New Zealand is not in charge of that. We are a net receiver. So, the practice or the framework that is typically used in adaptation is something known as dynamic adaptive pathways –

Q. Yes.

A. – in which you might develop a plan with certain assumptions, but if, you know, X changes then you go down this path. So you're always anticipating needing to change, and this is really important because if communities devise plans with the belief that they will be resilient to climate change impacts and then those subsequently aren't, then they'll obviously have really strong concerns and frustrations. But that is generally how the practice works.

Q. Yes. So, well firstly on that, do you have working examples because I haven't – and I may be missing them in the papers – do you have working examples of how dynamic adaptive pathways apply for example to decisions about marae and/or a Māori community and relocation options or resilience options?

A. We could certainly look for existing examples. It would be referring back to how I characterise the Ministry's role in the system at that stewardship level. We wouldn't typically be involved on the ground with that type of activity. I would imagine local authorities would be doing that sort of work if they have applied dynamic adaptive pathways.

Q. So in terms of, okay, so you may have answered my next question which is I just noted that the first National Adaptation Plan of 2022 requires in coastal planning that councils and others look at quite high emissions scenarios. They screen test what they're doing at the highest emissions scenarios, you know, SSP8-5, but then also but they're more immediately more close grain, they slightly lower emissions scenarios. You're saying you wouldn't be talking about that in your adaptation frameworks, you'd just be, you'd be deferring to local communities to sort that out using those sorts of tools?

A. Yes, yes.

Q. Okay, all right. Yes, in the National Adaptation Plan when that was developed, I'm looking at the 2022 one, do you know – in terms of coastal planning sea level rise, was there engagement with iwi about those broad settings or was that just too broad a level for there to be close engagement?

A. We could come back to you on that. I mean there was the evidence talks about the engagement that occurred broadly on the development of the National Adaptation Plan of which that forms part. Whether there were specific conversations we'd probably need to look at minutes.

Q. All right, thank you. Now just moving on to something else which is I think a little related to sort of retreat and yes coastal and what's happening on the ground. So I'm looking at the Rauora Framework – and maybe bring this page up, it might be useful – this is a fascinating document, I'm kind of fascinated by the idea that one Mike Smith was giving workshops to officials at one stage. So very much I would've thought quite a very inactive approach that may be changed now.

WITNESS REFERRED TO RAUORA FRAMEWORK, PARA 33

Q. But if I look at paragraph 33 here in the framework it says on the 3rd of June, Climate chairs Mike Smith and Lisa Tumahai posted an

urgent meeting with National Iwi Chairs to discuss two significant planning programmes, set direction and change. Now that's the 3rd of June, the Rauora document is dated the 5th of June, so it's two days before it actually gets completed. Do you – are you able to provide any minutes of that or shall I just leave that for someone to follow up potentially?

A. Yes, yes.

Q. Okay. The next was just see the number 35 –

A. [Gina Rangi] That was a separate – if I can answer the question.

Q. Yes.

A. That was a separate meeting, that was not a MfE meeting.

Q. Sorry, that was a?

A. That was a meeting of the Iwi Chairs with Pou Take Āhuarangi which is the pou within Iwi Chairs.

Q. Āe.

A. Not an MfE convened meeting.

Q. Do you know why it was urgent?

A. No, that was their meeting.

Q. All right. So are you saying we potentially won't get the minutes, we need to look somewhere else for them outside of the Ministry?

A. It's not an MfE meeting, it was a meeting of the Iwi Chairs and it's recorded in the Rauora summary.

Q. Okay, thank you. I'm looking at 35 and it says the NAP, including **(inaudible 13:23:41)** of an estimated 250,000 members of coastal communities in coming decades, any idea about where that number comes from?

A. [Anne Haira] Gina? It's not our document.
[Gina Rangi] No, just…

Q. Okay, all right.

A. I mean, we could see if we could find something but just reiterating this was not an MfE meeting. This was convened by Pou Take Āhuarangi for the Iwi Chairs.

Q. All right, thank you. Okay, and just the next question off the back of that, that 250,000 which is an interesting number but it sounds like a pretty

round number. Can I just come to Auckland and you're aware that almost a quarter of Māori live in Auckland, some 203,000+ people?

A. Not familiar with the numbers.

[Anne Haira] I'm not familiar with the exact numbers, but we'll take your word for it.

Q. Okay. I mean, yes, let's not get into stats, but it seems like a quite – it may be one of the largest Māori concentration after, I think, someone in Queensland or Sydney. Have you done any adaptation work on Auckland, like, and I'm thinking here of maps of where the Māori population is living in relation to flood hazard areas all those, and those sorts of matters?

A. Firstly, I think what we're talking about here is the distinction possibly with urban Māori and their exposure to climate change versus perhaps those in Māori communities where they would form under or fall under the structures of a hapū and the iwi and therefore the PSGE type. The engagement group. Sorry, I'm going off track, I know.

Q. Okay.

A. But the question around have we done any work? It's a good example to use to explain the difference of roles between central and local government within adaptation activity. I would anticipate that Auckland Council will have a map as you describe and will be well across the differences that Māori communities within Auckland are or the risks that they are facing that's particular to them. So I can't speak for them, but that would be where I'd anticipate that work to be undertaken.

Q. Yeah, I mean I'm kind of –

A. [Gina Rangi] I can add to that. Sorry.

Q. Sorry, go.

A. If I can add to that, there are iwi, mana whenua iwi within urban areas as well. So there are impacts for iwi who have had cities built up around their traditional lands. There are also Māori who are connected to their iwi and whakapapa, who are living outside of their traditional rohe so who will have two impacts, the impacts on their wā kāinga and the impacts that they face in the communities that they live in, and then there were also those who are disconnected from their traditional whakapapa and

who face all of those impacts as well. So we work with Pou Take Āhuarangi SGEs who represent a range of those interests. But also we – that is one of the reasons why we're second to work with Tai Kaha because they do include a number of urban Māori communities and advocate those interest as well.

Q. Now I guess I'm trying to draw a point of concern here that we've talked about, I think $9 million we got to and some solar panels at various marae, all very worthy projects. We've got over 200,000 Māori in an urban area. And in a National Adaptation framework for Māori, I can't see them. Can I just put this to you? Are you aware of the buy-out of storm damaged houses that's occurring in Auckland at the moment under the Auckland Council's fully structured plan for buying out storm damaged houses?

A. [Anne Haira] I'm familiar. I'm assuming this flows out of the 2023 severe weather events **(inaudible 13:28:36)**?

Q. Yes, it flows out of the Auckland Anniversary floods and Cyclone Gabrielle and land slide and flooding risk where there's an intolerable risk to life. So for example, you wouldn't know and no one's at the moment as far as I can see looking at who's in those storm damaged houses, whether they're Māori owned or not, or the tenants of those houses might be Māori. No one's – I haven't seen any information on it and that's not information that you're looking at, at your level either, is it?

A. No, I'm unsure – I think it's an interesting point you're making as to where that type of information might be gathered. You know, I am a Māori individual who is a property owner. Am I recorded as such is what you're saying?

Q. Well that's an interesting question itself, I agree.

A. Yes. That could be something we come back to. My mind goes to Stats NZ as possibly having that type of data.

Q. Yes. I mean the thing, you know, we talk about the issue of the adaptation and equity and not new inequities being created. I mean, isn't there a potential that right now in Auckland there's a $3.9 billion buy-out scheme happening. Who knows what the Māori component of that is or what the inequities are because we're here arguing about $9 million.

A. I don’t know if we’re arguing about $9 million. I think, what I hear from your comments is the challenge of what do you prioritise first when there are so many different impacts affecting different parts of our Māori community in different ways, and I made the point this morning around the importance of moving to action alongside developing a strategy, and it's always that dilemma of not letting perfection be the enemy of good. We do need to start. There is an urgency as one of the counsel said. It's not to the exclusion, I think that's a really important point. It's not to the exclusion or to suggest that this is the response of the Crown. It is a start.

Q. And just a couple more things. So the $6 billion Climate Resilience Fund that I think the previous government set up and was disestablished. You're aware generally that there was that fund and it's gone. Was there any, is there any paperwork or discussion with you about that? Were Māori consulted at all about what that fund might do and then what might replace it when it was disestablished?

A. I was not involved. I think those were largely political decisions and I don't know whether Māori were engaged on them.

Q. All right. And then just one of the groups we represent – this is the last question – one of the groups we represent is Toitū Taranaki, they’re the Climate Justice Taranaki. And in 2019, the government, the previous government funded a something called Road Map 250 for Taranaki for a transition away from fossil fuels. You are vaguely familiar with that?

A. Yes, vaguely familiar, yes.

Q. So this was central government and some local government money as well funding a community to come up with a plan for the future. Toitū Taranaki's actual reaction to that, they went out and did their own consultation with their own money. But do you think those sorts of efforts where funding is given to a community to hold a series of their own workshops and come up with their own plans for their community is a model that's worth exploring in terms of adaptation? Instead of, for example, applying to a central government fund saying can I have can I have some money for solar panels?

A. I think those conversations are the absolute critical conversations that need to occur. I think there's a range of ways that they could be supported

and enabled. Local government I know support some of those conversations to occur. Whether the dollar can stretch to – for central government to fund every community, I don't know. But I think I agree with your sentiment that this is largely a social process and communities need to be taken on that journey and they need to feel like the decisions that have been made they are shaping and influencing, and that requires a lot of conversations.

Q. All right, thank you, those are my questions and thank you for those helpful answers.

MS SYKES ADDRESSES JUDGE MILROY – CLARIFYING QUESTIONS RE QUANTUM, TIME PENDING/QUESTIONS IN WRITING (13:33:46)

(13:34) MR SHARP TO ANNE HAIRA, GINA RANGI:

Q. Tēnā kōrua, Ms Rangi, Ms Haira. My name's Michael Sharp. I'm representing Totaranui Nama Ono Trust which is a trust on the East Cape in these proceedings, so kia ora to both of you. Now, what I just specifically want to ask you about is my client has filed a brief evidence from James Shaw who was the Climate Change Minister previously as you know and that brief of evidence is #A115. So can I just ask you, have either of you read that brief of evidence?

A. [Anne Haira] I've read parts of James Shaw's evidence.
[Gina Rangi] So did I. I read it briefly but it was a little while ago now.

Q. Right, yes, it's quite a short brief. Basically he goes through the process of, among other things, setting up the Māori Climate Platform. And look, it's basically in line with what you're saying in your evidence as to the process they went through, through ERP1 and through then setting up the Oho Mauri Trust. Of course, that stops at this stage when he's no longer Climate Change Minister in November 2023. Now one thing that Mr Shaw does say in his evidence at paragraph 24 is that from what he understands to be the Māori Climate Platform reset, it is very different from the Māori Climate Platform which is detailed in ERP1 and established in the Oho Mauri Trust which was intended to be an independent entity for Māori to input on climate action and funding

allocated for projects, and now the reset is that the funds that were allocated were administrated by MfE. So in terms of that very different concept, would you agree with that?

A. [Anne Haira] Yes.

Q. Yes. Now –

A. [Gina Rangi] The initial – the Cabinet decision that he would've been party to was for the establishment of the Oho Mauri Trust was subject to report back in August of 2024, and I think that was one of the reasons why it was important to have the milestones achieved by the Oho Mauri Trust in order to set up that further work that was required.

Q. Can I get that in a moment? Okay. And so, one thing he does note, Mr Shaw does note that given that change, change in the nature of the platform should've been noted in the updated ERP. So in that regard I note that in the December 2024 update, there's no change noted. Are you aware of that?

A. If I can just break the first part of the question down? Are you framing the Oho Mauri Trust as the platform as opposed to all of the work that came under that?

Q. No. I'm framing the concept of the Māori Climate Platform, ERP1, how it's changed and the reset, should be noted in the update to ERP1 in December 2024. Have you got a comment on that?

A. What I can say, so in ERP2 which came out shortly afterwards it talks about the ongoing relationship with Pou Take Āhuarangi and the ongoing work and partnership with the **(inaudible 13:39:03)** –

Q. Can I get to that in a moment please.

A. I think you're correct though in terms of ERP1, the particular amendment, there was no amendment in that regard.

Q. Yes, okay. So if I get to ERP2 which applies from this year, I think it just says the government is continuing in Māori Climate Platform as a place to foster partnership and support for Māori with climate action. So it's not noting any change, it's just noting it as a continuation, that's correct?

A. That's what it says, yes.

Q. Yes, thanks. So I'm just interested in that what seems a little strange is that in the reset the government hasn't so much reset what was intended

to be the Māori Climate Platform, it's abolished it, and then the funding that was allocated to it that is gonna go through MfE, it's now calling that funding a platform. That seems a little convoluted logic do you think?

A. I think Ms Haira has already talked about that Māori Climate Platform as it was originally conceived was not defined and it wasn't defined in particular in that specific way. So I think the way in which you put the question I couldn't agree with that in particular.

Q. Well, what you mean –

A. And it's certainly not an abolishment of Māori Climate **(inaudible 13:40:43)** –

Q. Sorry, can you say it wasn't defined in ERP1?

A. The way in which you are defining it, I don't think it's accurate to how it was intended to be established.

Q. So I –

A. I think that what you're framing is that the Oho Mauri Trust is the Māori Climate Platform and I don't agree with that.

Q. I'm not doing – no, you're misconstruing my question again. It's what is defined as the Māori Climate Platform in ERP1, it's clearly defined as a separate entity for Māori, correct?

A. Can you show me the section **(inaudible 13:41:24)** that you're referring to?

Q. It's in your evidence at 35.

A. So, about 53 onwards is ERP1.

Q. There's, at paragraph 35, you've got what it says in ERP1, okay, so I thought you'd be aware of that, but this is what it says: First stage, support strategic advice and expertise across climate response and work programmes that impact Māori and advise on a more enduring representative platform to help advance equitable transition for Māori. Phase two, platform would be transitioned to a more enduring form, developed with Māori, to provide a governance presence and a strategic advice in emissions reduction plans and NAPs over the longer term. Do you recall that now?

A. So that's the summary of our evidence in full just from paragraph 53.

Q. Yes, that's what it says in ERP1.

A. Yes but it – yes. Could you put your question again? I don't think I understand the question.

Q. Well, can I put it again like this. ERP1 envisaged that there'll be a separate independent Māori entity for Māori governance and for advice, is that correct?

A. As it says in the summary, the government would establish an interim ministerial advisory committee and it says what the purposes are there.

Q. That's not the question, Ms Rangi. Can you just try to focus on the question? So the ERP1 in the summary you've got there, it envisages a separate independent Māori entity. Correct?

A. [Anne Haira] It doesn't use the word entity.

Q. Governance presence, enduring form. So you don't think it envisages an entity at all?

A. As I said in my evidence earlier, we were quite deliberate in not prescribing or being explicit about what it would look like.

Q. Well, in the end it looked like the Oho Mauri Trust which was a separate entity, correct?

A. The Oho Mauri Trust, yes, it is –

[Gina Rangi] It is a separate – independent trust, yes.

Q. Yes, correct, right. Now if I can also just, perhaps If I just – you might recall more if I just refer to the Cabinet paper which set up – Mr Shaw's got a paragraph 17 of his evidence, he says: "In a subsequent Cabinet paper dated 8 December 2023, I saw Cabinet and principal agreement to the trust as the independent governance entity for phase two. This would establish and operate as a mechanism for Māori representation and partnership in the climate response, and a funder of Māori climate action over the longer term." Do you recall that?

A. Yes, I accept that's his evidence, yes that's right.

Q. So that's what the government had a mine, wasn't it, a separate independent governance entity, correct?

A. I think again I'll take us back to the terms of what was decided that it was agreed to establish a Māori Climate Platform and as part of that, that the Oho Mauri Trust was agreed to be the governance entity at that stage and we were directed to do work to enable that to be established because

at that stage the Oho Mauri Trust didn't technically exist. It was established subsequent to that decision.

Q. Yes. Can you answer the question about whether government envisaged that the Māori Climate Platform would be an independent governance entity?

A. What it envisaged, that the Oho Mauri Trust would engage with Māori and provide advice on the further. So I think probably there would've been a view that that was likely to be an outcome but it's not actually prescribed. So I'm trying to answer the question. I feel like I'm being unhelpful but…

Q. Yes you are being quite unhelpful but –

A. Well, I'm answering the question as it's being put to me.

Q. Thank you.

A. And so, if I may finish my answer.

Q. Sure.

A. I have no doubt that there were individuals who did anticipate that that's where it would land. It's not an explicit direction to the Ministry that it must happen in this particular sequence.

Q. Well, isn't it in the Cabinet minute I just read out to you that this will be a separate independent governance entity? It's a quite straightforward question.

A. Were you reading from the minute or from Mr Shaw's evidence?

Q. From Mr Shaw's evidence as to what the Cabinet paper decided. If that's correct, did the government envisage an independent governance entity to be the Māori Climate Platform. That's the form of it. Is that how they envisaged it?

A. I feel I have answered the question.

Q. Thank you.

A. I don't know if I can go further.

[Anne Haira] I think if I can answer too. They interpreted I think what ERP provided for in that way. Thinking Cabinet **(inaudible 13:46:55)**.

Q. Isn't it perfectly consistent with what ERP1 says? What the Cabinet decision –

A. I think ERP1 can be interpreted in many ways of which that was one.

Q. Right. So you're saying that ERP1 can be interpreted. That when we talk about enduring represented platform, it doesn't have to be a separate entity, is that what you're saying?

A. Yes.

Q. Okay, thank you. Now, I just want to just look at the reasons why they have the reset. So in your evidence at paragraph 50 you're saying that the Minister, 24 April 2004 meeting, the trust said it'd rather work with Pou Take Āhuarangi than the trust on the Māori Climate Platform. Now, what I just want to –

A. Sorry.

Q. Sorry?

A. [Gina Rangi] Could you repeat that?

Q. Paragraph 50 –

A. The summary, sorry, I was looking at my brief but it's the summary.

Q. That's the summary.

A. That's okay.

Q. So rather work with Pou Take Āhuarangi rather than the trust. Now they're essentially the same people aren't they from the Iwi Chairs Forum? **(inaudible 13:48:23)**

A. No. The Minister explained his intention rather than – it's slightly different wording but his intention was to work with Pou Take Āhuarangi. Pou Take Āhuarangi are appointed by the Iwi Chairs and at one point Mr Smith and Lisa Tumahai were co-chairs appointed as Pou Take Āhuarangi together. At this stage, the pou was Ms Tumahai who had retired. She was no longer in Iwi Chair, and the Iwi Chairs had replaced her with Mārama Royal who was not part of the Oho Mauri Trust.

Q. Yes. But they're all from the Iwi Leaders Forum. Same, same **(inaudible 13:49:16)**.

A. At various times, but no, at this point it was Ms Royal. Mr Smith was – my recollection is that he was a technician working but he wasn't actually the pou which is particularly wrong.

Q. Now, if the Minister was unhappy with the trustees, I guess the obvious question is why he just didn't set up another entity or arrange for another entity to be set up, to represent Māori as per ERP1. Do you know that?

So Māori are represented already. The Crown doesn't necessarily need to enable the establish of a new organisation. Pou Take Āhuarangi have been a primary group that we have worked with but we also are working with PSGE's and also importantly Te Tai Kaha which I think that is an important relationship because they represent interests that are not necessarily explicitly included in the National Iwi Chairs Forum.

Q. That's right, yes. So do you know why the minister didn't direct that another entity or trust entity be set up if he wasn't happy with the trustees on the trust that was appointed?

A. It was not a question of he wasn't happy with the trustees. I haven't said that.

Q. Right. **(inaudible 13:50:49)**.

A. Secondly, if I may finish the question, secondly, he didn't disestablish the trust. The deed of funding was cancelled. However, the Oho Mauri Trust is an independent organisation that continues to exist.

Q. You're correct on that. Okay, if he wanted to terminate the arrangement with the trust, why didn't he just enter an arrangement with another independent entity representing Māori as per ERP –

A. He does have a – there is a relationship with an independent organisation, that is the National Iwi Chairs Forum, Pou Take Āhuarangi.

Q. No, the independent entity to act in accordance with ERP1 and allocating funding representing Māori. Do you know why he moved away from that model?

A. There's sort of two matters which I think are in play at this point. The first was the urgency of distributing. We were in – you will recall at that time we were in a time of constrained budgets, so the process to continue down a path of establishing a new entity would have delayed further the actual distribution of monies to Māori communities, and this was sort of a year/18-months after Cyclone Gabrielle. So we knew it was significant and urgency and need amongst Māori communities. So the priority was on working with the partnerships that we had already in place including Pou Take Āhuarangi in order to distribute the money.

Q. Well, that's the immediate, but this is well over two years later. Why hasn't there been any moves to appoint an alternative independent entity to represent Māori as per ERP1?

A. Well, I don't think it's for the Crown to appoint representatives of Māori in the way that is being framed. We are working with Pou Take Āhuarangi and Te Tai Kaha and also PSGEs. We are enabling Māori communities themselves through the funding that we're providing to Pou Take Āhuarangi to do climate resilience workshops et cetera. That is happening at hapū and iwi level. So there's more of a focus on work at place rather than necessarily kind of collectivising a single voice that we – that we'd only work with that one voice.

Q. Right. So I take it you don't –

JUDGE MILROY ADDRESSES MR SHARP – TIME (13:53:36)

MR LYALL TO JUDGE MILROY – TIME TO MR SHARP (13:53:37)

MR SHARP TO ANNE HAIRA, GINA RANGI: (CONTINUES)

Q. So, Ms Rangi, so once again I just find it difficult to understand your answers, but you don't know why – don't know a reason why a similar arrangement as had been entered into the Oho Mauri Trust wasn't entered into or looked at being entered into with another entity, you don't know why that...

A. [Gina Rangi] That's not what I said. That's not what I said.

Q. No, no, I'm just asking you if you know why that wasn't explored.

A. Because there is a relationship with an independent Māori voice which is Pou Take Āhuarangi, is well supported by iwi groups across the country. It is not an exclusive voice and so we do also seek engagement with Te Tai Kaha. What we are not doing, I do feel I have been clear about this, is that the Crown is not proposing to itself establish another body.

Q. Okay, if we just take – compare Pou Take Āhuarangi with the Oho Mauri Trust, how that works, so the previous trust worked as the independent entity allocating funding. Pou Take Āhuarangi as I understand it is engaged with on a consultative basis to discuss funding for adaptation

which is eventually decided on by MfE. So that's very different roles, isn't it?

A. As set out in our evidence, there's a range of assessment gateways which, so Pou Take Āhuarangi worked with us to develop the criteria, they promoted the fund and encouraged people to apply. They're involved in helping to recommend the projects to the minister to decide on and they agreed with the **(inaudible 13:55:49)** sent up. So we haven't been in a situation where there has been disagreement on the projects et cetera. I agree that it's not a, it's not a unilateral independent decision of Pou Take Āhuarangi but I do think there is a high degree of working together to try and find something that has integrity and is effective for what the fund is trying to achieve.

Q. Yes. Once again, a simple question, very different roles, isn't it, from what Oho Mauri Trust was doing, independently allocating funding?

A. I do think that I have answered that question.

Q. Right, okay. That's all my questions. Thank you for your evidence.

HEARING ADJOURNS: 1.56 PM

HEARING RESUMES: 1.59 PM

JUDGE MILROY:

We're now at the point where Phoenix Law have some questions, so Ms Boatwright.

(13:59) MS BOATWRIGHT TO ANNE HAIRA, GINA RANGI:

Q. Tēnā koe e te Kaiwhakawā, otirā tēnā kōrua. Ko Ms Boatwright tōku ingoa. Kei konei a Mr Kuddus, taku rōia matua. For the purposes of today for you both, I will be conducting some of the cross-examination **(inaudible 14:00:16)** either of you and then my learned senior Mr Kuddus will ask you some questions after I am finished. To provide a bit of context we represent quite a large grouping of claimants within this inquiry, so I won't traverse into who they are but they are situated predominantly in Te Tai Tokerau, however we have claimants all over Te Ika a Māui, so a

little bit generalised but we will also narrow it down as well. I will be firstly focusing on your guys joint brief of evidence that was filed towards the end of last year and then I have some questions that had arisen out of previous cross' – my learned friends' cross-examination and your guys' summary. Moving forward, I just want to take you to paragraph 22 of your brief or evidence where either you refer to a letter, a newsletter called *Te Kōmiromiro*, which is distributed to over a thousand Māori groups and individuals, is that correct?

A. [Anne Haira] Yes, that's correct.

Q. Āe, and once a person or a rōpū receives this newsletter and wishes to provide any feedback or communication based on the contents of it, how were they able to do this? Is there a mechanism provided for them to give that kōrero and that whakaaro?

A. My understanding, there is. I'm very happy and would prefer to come back with a more detailed answer setting out how we do that, if that's okay?

Q. Yes, that's okay, I can put that in writing to you. And moving on to paragraph 27, you state that the CCRA has been amended to recognise the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi or the Treaty, and one of these examples is the requirement to consult with iwi and Māori when developing certain secondary legislation under the Act, is that correct?

A. I don't know the answer to that.

Q. I'm more than happy to put that one in writing as well if that's helpful.

A. I want to say I think so, but that's not accurate.

Q. Of course. And moving on to paragraph 28.2, there is the inclusion of a Treaty clause within the Emissions Trading Scheme legislation that requires consultation with iwi and Māori in developing certain secondary legislation under this scheme, is that also correct?

A. Yes.

[Gina Rangi] Yes.

Q. And would you both agree that this reflects recognition, the recognition that the ETS can have direct implications for whenua Māori and forestry interests of iwi?

A. [Anne Haira] Yes.
[Gina Rangi] Yes.

Q. Okay. I just want to take you both to paragraph 61 of your evidence, and this is in turn too about the development of the Emissions Reduction Plan. Māori emphasise the need for funding and resources to support kaupapa Māori climate solutions, is that correct? Through this engagement that highlighted the need for partnership.

A. [Anne Haira] So you've got two points there. The first one is that they've highlighted the need for funding and resources?

Q. Yes.

A. Yes, and then your second point around through partnership, are you referencing a specific point there?

Q. No points, no specific point is referenced, so it's just more of a quite general overview.

A. Yes, I'd agree with that.

Q. Okay. And in paragraphs – we're going to do a little bit of a big jump. In paragraph 204 of the evidence, you both acknowledge that more can be done to ensure Māori values and interests are reflected in the Crown's climate response, and I notice that that statement can be interpreted that there are certain gaps in current engagement processes that can be interpreted. What does that statement refer to as more can be done?

A. I'm guessing where you're going with is there is recognition that we could understand in more detail how different parts of Māoridom, if you will, are being affected by climate change and what their perspectives and views et cetera might be on how we respond to that. There's always more that you could know and do, especially when climate change changes.

Q. Of course. And I think this next pātai is directed more towards you, Ms Rangi. It's in relation to paragraph 92 of the summary. We discussed the emissions reductions deliverables which include a planning regional ETS hui and advisory clinics. Is there an anticipated timeframe on the rollout of these taking place?

A. [Gina Rangi] This is the work programme for the current financial year that we're in. So all of these deliverables will need to be completed by

the end of June this year. We need to agree what the priorities and deliverables might be for next year.

Q. Thank you. And the next pātai arises out of the line of questioning from my learned friend Ms Terei-Tipene and she discusses urgency and invitation only – sorry – invitations being provided to iwi groupings to apply for certain funding, which will obviously leave our marae, hapū, whānau, iwi that are not associated to PSGEs or that type of groups. Is there anything being done by the Crown to open and expand the accessibility of funding climate changes to these iwi groups or marae that are not associated with PSGEs or have not entered into Treaty settlement negotiations with the Crown?

A. [Anne Haira] Yes.

[Gina Rangi] **(inaudible 14:08:18)** –

[Anne Haira] No, you go, Gina, Ms Rangi. All yours. I've actually forgotten what I was going to say.

[Gina Rangi] For the purposes of current funding in this financial year, no, there isn't. The focus has really been on marae led projects and that has left a gap in terms of both there are groups that have been not able to apply or notified, and also there are, yes, just the range of impacts that Māori are affected by across the country is, you know, far exceeded the amount of money that was available in this current round.

Q. And is there –

A. I would say there is funding available through a range of other government agencies for different purposes associated with climate change, so NEMA provides some funding. I think Ms Haira may have already reflected this but NEMA provides some funding provide some funding, EECA provides some funding, Taumata Arowai. So there are a range of other places but in terms of the particular pūtea that we're administering is MfE.

Q. So thank you for that, for your answer. And lastly before I hand to my learned senior, there was some discussion with Mr Bennion around the use of dynamic adaptive pathways and local government. Arising from that, do you think that local government are equipped to use these adapt – sorry, dynamic adaptive pathways in their own decision-making

processes independently without Crown – I guess you could see without the Crown encouraging them to?

A. [Anne Haira] There's two parts to what you've just asked me, one was equipped and then the other part was do they need encouragement. Slightly different questions there. Whether I think they're equipped, absolutely, they take – they do this sort of work every day. Do they need encouragement? My comment on that would be adaptation work and planning can be incredibly contentious on the ground because what it reveals is often properties that have a high exposure which can impact on their values. And so, I don't think there's any shortage of willingness within local authorities to do the work but it is a complex space for them to navigate.

Q. Tēnā kōrua for your time. I have no further questions so I'll pass that rākau to my learned senior Mr Kuddus.

(14:11) MR KUDDUS TO ANNE HAIRA, GINA RANGI:

Q. Thank you very much. Can you hear me alright?

A. [Anne Haira] Yes.

Q. Thank you very much. I'd like to ask you some questions about the Crown's description of partnership with Māori and the current policy context as set out in your brief of evidence if that's alright. In your evidence you refer to initiatives intended to strengthen Māori participation in climate decision-making including the establishment of the Māori Climate Platform, correct?

A. Yes.

Q. The Platform is presented in your evidence as one of the mechanisms through which Crown seeks to engage with Māori on climate policy matters, correct?

A. Where are you – can you –

[Gina Rangi] I think our evidence –

[Anne Haira] Which paragraph is that – sorry, Gina.

[Gina Rangi] While you find the paragraph reference, I think our evidence should be seen within the context of all of MfE's evidence. We're not the only ones talking to the involvement and engagement with Māori and

particularly in policy. That has been covered by other witnesses. But certainly in terms of the Māori Climate Platform, yes it is one of the important mechanisms.

Q. Thank you for that. I'll just get the reference, one moment please. Initially, paragraph 89 onwards in your brief of evidence and then going into paragraph 90 where you talk about by the rationale behind the Platform. Essentially, my question there is – well, I'll cut straight to the point. Are you aware to what extent Māori were involved in designing the governance arrangements of the climate platform including its structure and membership?

A. [Anne Haira] I can speak to this one. It's quite a broad I think statement to the extent to which Māori were involved, but I'll try and provide some clarity. The process we followed which is set out in the evidence was to establish the Interim Ministerial Advisory Committee. We also detail the process by which we appointed members to the Interim Ministerial Advisory Committee and we used a nominating committee which was chaired by Lisa Tumahai who was the pou chair for Pou Take Āhuarangi. So the model I suppose to answer your question was an expert type model where the different perspectives being brought into the committee to advise on the approach came through its members who had a distribution of representation across New Zealand and also a lot of expertise in different dimensions of climate change issues affecting Māori.

Q. Thank you. Now, just going through my question, it seems majority have been asked by learned colleagues beforehand. I guess there's only one other aspect that I'd like to explore. Your evidence emphasises that the Crown seeks support partnership with Māori in climate change – climate policy processes. Can you confirm whether the Māori Climate Platform has any form of decision-making authority in relation to climate policy in New Zealand?

A. [Gina Rangi] Māori Climate Platform is an umbrella of a work programme, it's not an entity. If you're talking about the Oho Mauri Trust, no it did not. It was a vehicle for representing the – collectivising and representing the

interests of Māori but it was not a determinative body in the way that you've asked that question.

Q. So would it be fast to say that the primary role was **(inaudible 14:16:36)** to officials and ministers?

A. I don't think they would've thought that was their primary role. I think that would've been one of the roles, I think there would also have been a strong Māori facing role which is about working with, collectivising, raising awareness, supporting Māori to determine their own climate risk assessments and resilience planning. So I think it's probably Māori facing and Crown facing.

Q. So whilst it's Māori facing and Crown facing, from your evidence, or could you provide us with an answer as to whether it carries an advisory role or whether it has a shared decision-making role?

A. No, yes, I've already said it was not a decision-making entity in terms of Crown policy. The original intention would've been for it to have administered the funding and that was certainly why the work, the initial deliverables were very targeted at setting it up **(inaudible 14:17:50)** procurement process, conflicts of interest **(inaudible 14:17:53)**, quite important administrative things to ensure that it was able to take on that decision-making role. So that's in terms of the funding distribution, which is separate from – you asked about whether it had a decision-making role in terms of Crown policy.

Q. Yes.

A. In terms of Crown policy.

Q. But your evidence is that it had some Māori facing role in terms of advisory of Crown policy, yes?

A. Yes.

Q. Lovely. Thank you very much. I've got no further questions.

JUDGE MILROY:

Thank you, Mr Kuddus. I've noted that the indications for cross-examination actually well outstrip the time we have with Ms Rangi and Ms Haira, so unfortunately I'm going to have to trim five minutes except for you Ms Rongo who only asked for five minutes, but I'm going to trim five minutes off everyone

else in order to give some time for the panel to have some questions. So in order to get on with it, Ms Rongo over to you.

(14:19) MS RONGO TO ANNE HAIRA, GINA RANGI:

Q. Tēnā kōrua. Ko Eve Rongo ahau. I have the pleasure of representing Ngāti Kōata who as you might already know is an iwi in Te Tauihu at the top of the South Island. My questions are super specific. So I'll just get straight into them. At paragraph 13 you list some of the ways that Māori may be disproportionately affected by climate change. You talk about significant sites being affected, the forced relocation of iwi and the impact of that relocation on cultural impacts, kaitiaki responsibilities et cetera. What I want to explore with you is an added impact which is on their identity. Ngāti Kōata are kaitiaki of Takapourewa Island which contains about 90% of the tuatara in the world. The problem is that the sex of tuatara is determined by the temperature of the soil. So climate change has a huge impact on them. They have been kaitiaki of the tuatara for generations and they see that as a massive part of who they are. Their identity. So you would accept that their identity would be impacted by climate change, wouldn't you?

A. [Anne Haira] In the way you've described, yes.

[Gina Rangi] Yes.

Q. Ngāti Kōata say that as the climate policy stands, they're quite confident that we're now on track for an extinction of the tuatara. That is a very scary concept for Ngāti Kōata to look at. They say that they would never recover from that and that it would be a shame that they would carry as kaitiaki, having that obligation, responsibility that the tuatara, their taonga species were lost under their watch. You would agree that it's hard not to feel that mamae, correct?

A. [Anne Haira] I can – yes, I do, I acknowledge the seriousness of what you're saying.

Q. Ngāti Kōata describe Takapourewa island as the jewel in their Crown and that the loss of the tuatara would carry huge impacts, that they speak, they share kōrero tuku iho about the tuatara, how their stories started with how the tuatara were actually their kaitiaki and through the process of

colonisation it's turned around and now it is Ngāti Kōata who are the kaitiaki of the tuatara. You'd agree that the extinction of the tuatara would also impact on their kōrero tuku iho, you'd agree?

A. [Anne Haira and Gina Rangi] Yes.

Q. Now, Ngāti Kōata weren't part of the interim committee, were they?

A. [Anne Haira] I don't know.

Q. I think we have Ngāi Tahu iwi members listed, but we'd agree that Ngāi Tahu had their own priorities that they were advancing and that perhaps –

A. No comment…

Q. – and that perhaps Ngāti Kōata's priority issues weren't front of mind with them.

A. Again, I can't comment sorry.

Q. Okay. Ngāti Kōata are a settled iwi and their chair regularly attends the Iwi Leaders Forum. I did want to talk to you about those larger groups and you wouldn't be surprised that Ngāti Kōata priorities wouldn't necessarily equate to the majority iwi priorities and sometimes their voice can be swallowed up in the larger group, would you agree with that?

A. I think it's sometimes hard to say so categorically. The impacts you've been describing in terms of taonga species and the impact on identity, I imagine there are other iwi including potentially large iwi who have that as well. But I understand your sentiment around how sometimes the larger voices can dominate.

Q. So with that in mind it's really important isn't it that Ngāti Kōata are engaged with directly by the Crown, you'd agree?

A. Yes.

Q. Yes. I have a copy of their iwi management plan but I've only got five minutes with you so Ma'am, I'll put those questions in writing if that's alright. I took a look at the Climate Resilience Pilot projects and Ngāti Kōata are one of six iwi who share Whakatū marae and they'll be one of the recipients of the solar panels and the water tanks as part of that pilot project. But just comparing that project to what will be needed to protect the tuatara, you would agree that the protection of the tuatara would involve not local or community based projects but that would be

reliant on Ngāti Kōata working with national bodies that make decisions at a national level, you'll agree?

A. Can you reframe that one for me again?

Q. Yes, so with the tuatara being directly impacted by the rising temperature of the soil on Takapourewa Island, more localised community projects would have little impact on protecting the tuatara, that's right?

A. I don't feel equipped to have a view on that.

Q. Okay. That's my five minutes.

A. [Gina Rangi] Can I just add to that. What I would say is I don't think that the funding criteria of the Māori Climate Platform in the last few rounds captured or would've been targeted to the type of project that would be necessary for taonga species in that way. I'm not sure if that's where you were heading with that question but I accept that the criteria would not have that project – a project addressing those issues would not have fit with the Māori Climate Platform funding as we administered it this year.

Q. Okay. That's really helpful actually. Thank you.

JUDGE MILROY:

Thank you Ms Rongo. We're now up to questions from Mr Te Whenua.

(14:26) MS TE WHENUA TO ANNE HAIRA, GINA RANGI:

Q. Tēnā koe, tēnā kōrua. Ko Te Whenua taku ingoa. Kei konei ahau hei rōia mō Te Urunga o Kea, Te Arawa, rātou ko Ngāti Uepōhatu, te rohe o Ruatōrea, Waiapu anō hoki. I'm here today to ask questions specifically on behalf of my two claimant groups. I'll start with their concerns, the general concerns which have been provided in affidavits. If I can ask the registrar again to bring up the affidavit of Dale Takitimu, #A101, and have ready at hand also the affidavit of Lani Kereopa, #A058. And this question is for, first for Ms Haira. In answering questions of my colleague or friend Ms Terei-Tipene, you spoke about in acknowledging the fact that there needs to be a priority of responses that the Ministry and the Crown can achieve, you spoke about the urgency in Te Tai Rāwhiti as one example. Well, you'll be aware that Ruatōrea and the Waiapu are within the Tai Rāwhiti region and so on behalf of that claimant group I wonder what

expressly is the Ministry and specifically through the Māori Platforms doing to support their climate response in urgency?

A. [Anne Haira] That's probably one I prefer to come back on in detail if that's okay. We are working very closely with different groups in that region at the moment as part of the recovery efforts from the January and February severe weather events. There is a lot of activity. But I would want to check as to whether we are engaging specifically with those groups you represent.

Q. Yes, sure, thank you for that, and I mean I'll also point out that with reference to the specific funding now being rediverted from the Māori Climate Platform I could only see one of the 16 projects are being targeted within the Tai Rāwhiti region, is that correct?

A. I'd need to check.

Q. Kei te pai. Turning now to the brief of Dale Takitimu, I'm looking at her paragraph 51 and addressing the general tenet of your evidence that agreed outcomes weren't met within an agreed timeline. At paragraph 51, Ms Takitimu makes the point that if the frame was wrong from the outset that they could not retrofit Māoridom and Mātauranga and inherent Māori rights and political rights and the integrity of the taiao into the frame that they were being required to work within. Do you have any comment on that?

A. She's – I think it's probably useful to refer to the paragraph above that for context which she is making a suggestion that the national plans that were being developed would be – would form the boiler plate for future plans. And then her point in para 51 says if they got that wrong it would have arguably – I'm putting my own words here – it would set the direction for the future. My comment would be – I do acknowledge that that perception was likely very real and that there had been examples of that in the past. One example I would note is that the approach and the size of the Emissions Reduction Plan 1 and 2 are quite different. The second is only 100 pages and the first is I think well over three, they're structured slightly differently, although they are similar. So I think the point and the concern that was held at that time that it may set a precedent and a boiler plate for the future. While I can understand that perspective, that hasn't been

how it's borne out, and unsurprisingly with a change in government different governments will take different decisions and want to do things differently and that's been what's occurred here. So my comment is I understand and appreciate that perspective. It didn't actually play out that way though. I also think Gina and I both have –

Q. Thank you.

A. Sorry, Ms Rangi and I both have Dale's evidence with us if that makes the registrar's life easier.

Q. Ka pai. That's helpful. Thank you. With respect to the point that you made around different governments wanting to do different things and at risk of jumping around I'm going to apologise in advance for this, but it's a nice opportunity to introduce a proposition put by Ms Kereopa in her brief of evidence. Do you have that in front of you?

A. Gina does.

WITNESS REFERRED TO #A058, BOE OF LANI KEREOPA

Q. So that one is #A058 and I will go to the paragraph and read it to you for ease also. Excuse me while I find it. So from paragraph 49, Ms Kereopa makes the observation that 30 million was initially tagged for the Māori Climate Platform. However, in her opinion as a member of the Interim Māori Climate Entity panel, unreasonable timelines set by the Ministry for the work of that advisory committee deliberately obstructed the establishment of the Māori Climate Platform prior to the election. Do you have any comment to make on that?

A. I don't agree that there was any deliberate effort to obstruct the establishment.

Q. Ms Kereopa goes on to say that what could've taken two months to achieve was actively stalled by the Ministry. **(inaudible 14:34:03)**

A. [Gina Rangi] I've seen no evidence of that.

Q. Sorry?

A. I've seen no evidence of that. All of the kaimahi that I have worked with passionately believe in the importance of Māori climate action.

Q. How do you explain or what's your view on these observations then by Ms Kereopa who was part of the panel?

A. I accept that that was her belief and view as someone not working inside the Ministry, but I don't accept that that is how kaimahi were working within Ministry.

Q. Was the impact nonetheless at the end of the day as she sets it out at paragraph 50 that as a result, no money was able to within the timeframe prior to the General Election 2023 be transferred (for want of a better term) or realised into Māori communities for immediate and urgent response action?

A. Mr Sharp canvassed with me the time frames around – I think it was Mr Sharp – timeframes around the Cabinet decision-making, that was in October 2023. So that's when the decision was made to draw down $18 million for Māori climate action and the agreement for the Oho Mauri Trust to be established as the governance entity is October 2023.

Q. So effectively there was –

A. The intention and the belief, the discussion around the need for a new platform for Māori climate action had been discussed for some two years prior to that but the actual decision-making around the money and the format and how that would happen was not until the end of 2023. So I know that that feels very slow probably for the committee but there were a number of actions that were taken over 2021, 22, 23, all of which built towards that decision around the money.

Q. So you accept that that is slow, that took two to three years in total from 2020 to 2023 in a climate where we've declared a climate emergency or the Crown has declared a climate emergency and, as you've acknowledged already, Māori are being urgently and inequitably impacted by –

A. The work on ERP1 began in 2020. It wasn't – I don't think it was published until mid-2022. So as I said, there were a lot of actions that needed to build towards the government taking those important decisions.

Q. If we turn to your paragraph 91 now of your full brief. Have you got it in front of you?

A. Yes.

WITNESS REFERRED TO #A118, PARA 91

Q. Thanks. So I'm just noting here that the objects as you set out at paragraph 91, would be achieved by firstly establishing the Interim Ministerial Advisory Committee and that they were to support immediate strategic advice across climate response policy transition to a more enduring platform and then again develop further advice on emissions reduction plans and the National Adaptation Plan over the long term. Do you feel that we're getting a sense of paralysis in terms of urgent action on the ground by analysis? There's advice followed by more advice followed by more advice, is that a fair comment?

A. [Anne Haira] I can see how you get that characterisation. And this is the tension that I've mentioned a few times today around the need for action and also the need for a robust strategy, and there'll be a desire for comprehensive engagement input and that takes time. So this is the ongoing tension that we are I think constantly battling to try and make progress while also ensuring that the strategy is inclusive and reflects the realities of on the ground challenges.

Q. Yes. It's an ongoing tension which has resulted in very little of the initial 30 plus million dollars being affected on the ground in actual response action, wouldn't you agree?

A. I would agree –

[Gina Rangi] That's not correct. You go, Anne.

[Anne Haira] Yes, I think Ms Rangi said earlier that the $30 million figure comprises a number of different areas, is what we refer to as departmental and some is non-departmental. So I take your point, I take counsel's point but just to correct that $30 million figure.

Q. Right, correct it to exactly what amount?

A. Gina did a really good explanation if I could pass to her as to how it breaks down.

[Gina Rangi] I think it might be helpful if we provide it in writing the original decisions and then when the decisions – because there has been some funding that has been returned. So I wonder if it'll be helpful we provide that in writing but essentially of the 18 million that was set aside for Māori community action, 5 million was returned.

Q. Ka pai, thank you. If you could provide that in writing that would be much appreciated. It's my final line of questions –

JUDGE MILROY ADDRESSES MS TE WHENUA – TIME IS UP, QUESTIONS IN WRITING (14:40:51)

(14:41) MR LYALL TO ANNE HAIRA, GINA RANGI:

Q. Tēnā kōrua. My name is Lyall, I represent some of the claimant parties. I don't think it's germaine to my questions their precise details so in the interest of time I'll just ask the questions. So paragraph 140.4 of your evidence, you note the interim committee in 2023 I believe recommended development of a rangatahi inclusion strategy, and what I'm interested in is whether there's any work now being undertaken towards a rangatahi inclusion strategy as part of the reset?

A. [Gina Rangi] Pou Take Āhuarangi have held a number of events to bring together rangatahi, including taking a group of rangatahi to COP last year, and then supporting them to – they've met with the minister a couple of times, they have I think, I think they may have presented at the National Iwi Chairs to share some of the things that they've been learning. So through Pou Take Āhuarangi there has been a focus on, I guess getting rangatahi involved in climate initiatives and also the Iwi Chairs machinery.

Q. Now, I'm less interested in the rangatahi delegation to COP or engagement, I'm more interested in a concrete framework which allows local or action rather than the types of hui that you're describing. Are you aware of any actual strategy that's being developed that would stand the test of time?

A. You mean a written document?

Q. Yes.

A. I'm not myself aware of whether there is a written document but I do see that there is quite a deliberate series of actions building on each other to include and support rangatahi to be involved, to understand the issues and to build their experience.

Q. From the limited information that we have on that engagement strategy, really it's a one subparagraph and then a mention in the supporting

documents but do you think that what was planned is a more concrete or robust strategy than the types of activities that you're describing now? And is it a missed opportunity that that seems to have fallen away?

A. Potentially. That was one of the aspects of the deliverables for the Oho Mauri Trust in terms of the deed of funding was consideration around that and so it was intended to be a part of the initial deliverables.

Q. And it's not now a part of any deliverables?

A. I've already said that there has been work to engage and include and promote the voice of concerns of rangatahi and to build their capability.

Q. It’s quite different though isn’t it having a strategy which will be able to be put in place, understood by rangatahi applied across the motu versus what seems to be ad hoc in rights or opportunities to engage –

A. I wouldn’t characterise it as ad hoc, it's been quite a deliberate – I accept that it's not a document. I don't necessarily think that should therefore discredit the work that has been done. I think building capability networks, building their involvement in climate issues is vitally important.

Q. You're Honour, I think that's the time that I'll use today. Thank you for the indulgence there.

JUDGE MILROY:

Thank you and thank you for the brevity of your questions today Mr Lyall. Our next questions are from Woodward Law.

(14:45) MS DORN TO ANNE HAIRA, GINA RANGI:

Q. Tēnā koe, your Honour. Tēnā kōrua, Ms Haira and Ms Rangi. My name is Darshini Dorn. I represent four claims in this inquiry including claimants for the New Zealand Māori Council. I just have a few questions. Firstly I wanted to revisit a question I put to your colleague Ms Wilson yesterday who suggested that you might have further information to provide. So my question to her concern the final comments in her evidence where she acknowledge that more can be done to involve Māori voices in decision-making and stated that MfE is committed to strengthening its engagement practices, and I had asked if she could point to specific measures MfE has put in place. And I also note at paragraph 25 of your

brief you say that MfE is always looking for ways to improve its engagement with Māori and you often seek feedback on this. So putting that together, can you provide any concrete examples of steps that MfE has taken to strengthen engagement with Māori based upon feedback you have received?

A. [Anne Haira] Yes, and I'll try not to speak at length but I do want to acknowledge the themes that come through in Ms Takitimu's evidence around very apparent frustration with the experience she had with officials in what I'd call the early days. So we have, I think, matured and evolved quite significantly as an agency in how we undertake engagement with Māori. Those early days in 2020, probably through to 2022 I think we were still finding our way. And that's regrettable but that was the reality at that time. We've had a very focused effort and investment in not only building our capability and capacity but having a very clear structured approach to how we undertake, not just engagement but what we characterise as relationship management. And the feedback we've heard from Māori particularly in the climate space has shaped and set the direction for how we engage generally with everybody. And there were three significant shifts that we sought to make following feedback we'd been receiving regularly. The first was to move away from a transactional approach where we turn up when we want something, to investing in relationships for the long-term through regular relationship meetings and having dedicated personnel to care for those relationships. The second area was to stop being so fragmented and taking a one organisation approach. And the third area was to try and make it easier to work together, and not having dedicated people and having different people from across the Ministry approaching Treaty partners was really frustrating. So we I think have learnt a substantial amount over the years and I think are very well equipped today to care for the relationships we have with a diverse range of our Treaty partners from tangata whenua to PSGEs to the groups we've been talking about today at the national level through to Māori more broadly. We can always get better but I do think we have significantly improved in that regard.

Q. Thank you, thank you for your answer. My next question is essentially your evidence canvases various engagement that MfE has carried out with Māori. But would it be fair to say that for the most part these types of engagement are largely reliant on consultation or information sharing approaches rather than co-design or collaboration?

A. It is a bit more nuanced than that. There will be some parts of Māori communities who are only engaged at that consultation period and then there'll be some who are right in the thick of the shaping of proposals that are going to ministers. So there's a bit of a continuum there and the challenge is you're often juggling the pragmatism of trying to incorporate the perspective of different Māori interests within Wellington.

Q. Okay, thank you. And I just wanted to refer you to a document that your counsel filed in the supplementary bundle on Friday and that's the meeting brief with Te Tai Kaha on the 13th of February, the number is MFE0170063 if the registrar was able to bring that up or I can share on my screen.

WITNESS REFERRED TO SUPPLEMENTARY BUNDLE, MFE0170063

Q. Are you able to see that? I can just zoom in a little bit. So this is page 88t and just under the heading Māori Climate Platform, the two bullet points, TTK have been wanting to co-design the ongoing development of the MCP and they express disappointment in not being consulted on the Stage Two design. The pace at which the Stage Two process needed to go live impacted our engagement. TTK should've been provided with the information on the proposed Stage Two design and given opportunity to offer advice but this did not happen. So given that you've said MfE is always looking for ways to improve engagement and then also during your answers to questions by my learned friend Mr Sharp you say that TTK is an important relationship and it represents other interests that are not represented by Pou Take Āhuarangi, is it not the case that engagement with TTK should've been a priority? Do you have a response?

A. Yes, it should've been a priority for the reasons that you've just explained. They present interests that are not necessarily captured within

Pou Take Āhuarangi. There is over that but there are also some interests that are different and they should've been included.

Q. Thank you, thank you for your answer.

MS DORN ADDRESSES JUDGE MILROY – REMAINING QUESTIONS IN WRITING (14:53:14)

(14:53) MS SYKES TO ANNE HAIRA, GINA RANGI:

Q. Tēnā kōrua, kei te mihi ki a kōrua ngā wāhine toa o te Kāwanatanga. Kāre e nui ngā wāhine i tae atu i te teitei o ō kōrua nei tūranga, e whai whakaaro ana i runga i taua tūāhuatanga kei te mihi atu ki a kōrua. E mōhio ana au ko kōrua hoki mai i te waka o Te Arawa, i runga i taua tūāhuatanga kei te mihi, aku whanaunga, mō tō taenga mai ā-kanohi, ā-tinana ki te kaupapa. I have about five questions and I will try and keep them brief. I would like yes or no answers if we can but I'm not trying to direct you. I'd like to start with the brief of evidence of Dale Takitimu and I'm going to the appendix of that evidence which is document number #A101(a), and I'm looking at the letter from Honourable Simon Watts dated the 14th of March 2024. Could that be put up on the screen please?

WITNESS REFERRED TO #A101(a)

Q. And if you go to the letter, my first question is, you would agree that the middle line that's bolded is that it suggests that the minister is writing to the Oho Mauri Charitable Trust, would you agree to that?

A. [Anne Haira] Yes, I think that's where it's intended to go, yes.

Q. Yes and if you look at the email, the recipients of those people, I've heard in various descriptors today, they were either technicians or they were either iwi leader appointments, but were they also trustees on the Oho Mauri Charitable Trust?

A. Yes, I believe so.

Q. And was that trust established in March 2024 or to be established? And I'm only saying that because if you read Ms Takitimu's evidence she talks about the difficulties of setting up the Charitable Trust which caused delays. So are you able to tell me when this letter was written, whether the trust had been established at that point?

A. It was one of the first milestones – Milestone One included finalising the trust deed, so by this stage it should have been established, yes.

Q. So if you go to the second paragraph of the letter, he sets out in bullet point form three concerns. And my question is this, are they treaty principle concerns or procurement concerns?

A. I think as they're set out there they are concerns about the progress and whether he was going to be able to report back in August and I think that that first sentence in that paragraph is important, that Cabinet will consider whether to continue with the project, and he wanted to show that progress had been made. So the failure to deliver those milestones on time was seriously impacting on the confidence that he could do that. So I think those three bullets themselves don't reflect the, you know, the significance and breadth and importance of te Tiriti principles but I think the intention – within the context of wanting to preserve the funding and continue the work, I think his intention should be seen in that light. So it's not just about well you failed so we're getting rid of you, it was – there was a real reason why we needed to demonstrate progress.

Q. Well I want to be the devil's advocate and say I think it's actually procurement concerns, not te Tiriti concerns and the tenor of the leader is trying to sustain relationships. Would you care to comment?

A. Sorry, I think I missed part of the question that the letter is trying to preserve relationships?

Q. I said it's written nicely. It's not written as a cancellation document, but I think the concerns specified in those three bullet points are procurement concerns in a contract where certain identified outputs have not been met.

A. Yes, but in the context of he's saying it's because it's going to affect his ability to report back to the Cabinet. So yes, they were deliverable procurement in that sense yes I agree with that within that context of why it was important.

Q. And then we've heard all today there's different viewpoints on that from yourselves and Ms Takitimu, I don't want to go down that but I do want to take you to a document which was provided by your counsel on Friday or to me yesterday but I understand it was made available to others on Friday, which is in your supplementary bundle of documents and it's the

– it ends in 004. And I'm going to the middle of the page of that document and I'm sorry my computer's having problems bringing it up at the moment. But the document is in the list of documents it goes a briefing – sorry – document for Stage Two, 0052 is the first document.

A. What's the date please of that document?

Q. It's a chart and at the bottom it doesn't actually give a date on it. There's not a date in the index, it's just got a number.

MS SYKES:

That's why, Ma'am, it's been very difficult for us to traverse some of these matters. They were served late and not in a form that's easily accessible.

CROWN COUNSEL ADDRESSES MS SYKES – MFE.017.0052, MFE.017.0004 (15:00:18)

(15:01) MS SYKES TO ANNE HAIRA, GINA RANGI: (CONTINUES)

Q. And this isn't a trick question, we might do it in writing but I just wanted to illustrate it. I'm struggling with what the funding was when the engagement letter or the letter of concern was made to Ms Takitimu and her trustees and I'm trying to work out the funding amounts that are actually been missed – you know, looked at, and where we end up now and what I thought might've been the proposition that Ms Takitimu was concerned about. That's what I'm exploring.

JUDGE MILROY:

Ms Sykes, I'm sorry to say that we've run out of time and I'm not clear about the funding.

MS SYKES:

If we could do it in writing Ma'am but it's not going to be easy because the problem is the documents are not easy to – from a cross-examination position, it's really, really difficult, so I don't know how to do this other than to, you know, it's gonna be like 10 questions.

JUDGE MILROY:

All right, well, if you can do that in writing that would be very helpful. Thank you. So we will pass on to the panel questions.

(15:02) PRUE KAPUA TO ANNE HAIRA, GINA RANGI:

Q. Kia ora, ngā mihi ki a kōrua, and acknowledging that Ms Rangi we have in the past worked together so I just acknowledge that publicly. I just had a couple of questions and I guess I share the same confusion that's been expressed by some counsel. I just want to clarify, Te Tai Kaha is FOMA, New Zealand Māori Council and Kāhui Wai Māori, is that correct?

A. [Anne Haira] I'll leave that one for Gina.

[Gina Rangi] Yes, there are a number of groups that sit underneath those. I don't have an up to date list so there may be others as well but certainly those groups are **(inaudible 15:03:15)** TTK.

Q. Right, thank you. And on their website they refer to concerns about Resource Management Act and reforms which seems to be their priority rather than climate change, would that be your understanding?

A. Can you hear me?

Q. Yes you've slightly frozen but I can hear you. You're now entirely frozen.

A. [Anne Haira] I'll try and answer while we wait for Ms Rangi. I wouldn't take a view on what is their core priorities but I know that our work over the years has ranged initially from freshwater through to resource management reform and has had arguably a lesser focus on climate relative to those two things. There's a lot of activity to be able to get to.

[Gina Rangi] I'll add to that that FOMA in particular have been very active on climate matters. Our work programme was focused on RMA matters. But I think in the last year we've extended that explicitly to climate. But TTK have always made submissions and been engaged on climate issues.

Q. And just on the matter of the letter that was raised by Ms Sykes, the part of that letter directed to halt all work. So while you expressed I guess a concern that the minister was worried he couldn't report back, you accept that that letter was essentially putting everything that they were doing on hold? You're on mute I think.

A. Yes, however, I think by that stage at least two of the milestone dates had passed, potentially three.

Q. And just in terms of your involvement, Ms Rangi when you came in and took over the role of resetting, that was after, this exchange had already happened with the minister?

A. Yes, that's right.

Q. Okay. The issues around the political. We've had a few discussions with witnesses to date about the political influence. And I notice Ms Haira you made a comment just recently saying in the early days you were finding your way and somehow or rather it's improved in more recent times. Some of the evidence we've heard would say otherwise that in fact there was a little bit more involvement with Māori prior to 2023 and coalition agreements and so on. And so, I just wonder whether in your view you accept that political influences through coalition agreements for example on issues like climate change affected the actions that the Ministry took in relation to interaction with Māori and investment and looking at the effects on Māori in relation to climate change?

A. [Anne Haira] There's probably three things in there. The first point is the finding our way reference was in the context of the Ministry's engagement performance. I accept and agree that there was a different era as well in terms of the government's approach to climate policy between the Ardern-led government and the current government.

[Gina Rangi] If I may add to that, I accept completely that Māori will continue to have concerns about the way in which we engage, the scope, timeframe, resourcing etcetera. I would say that our understanding of capability has significantly improved, but I do also accept what you made that – there are political decisions that are made around the way in which or the timing for which we are given to carry out engagement and that impacts on our ability to deliver with Māori.

Q. In paragraph 82 of your evidence you talk about transitioning to a more enduring form. And then there's the discussion about moving from the trust going back to the Pou Take Āhuarangi. In the movement back to the new chair of the Pou Take Āhuarangi, was there any discussion about establishing, I think it's along the lines of the questions Mr Sharp was

asking, was there any discussion about establishing a separate entity in the same form that had been spoken about previously in terms of enduring form and so on?

A. No, one of the intentions for the first set of milestones was to get further advice on what that – whether that was needed, what that might look like, the shape of it, and we didn't separately engage a piece of work around asking Māori whether there should be a separate entity, what that should look like, accountabilities et cetera.

Q. So I take it from that you almost kind of brought the decision-making back into MfE in relation to that kind of advice or the entity. Just a little confused about the fact of saying you didn't feel you could dictate what the Māori Climate Platform would look like because that was for Māori not for the Ministry to determine, and yet what took over then was an advisory body where the decision-making and determination was brought back into MfE. Is that a fair interpretation or have I missed something?

A. I think all the – the priority at the time that those decisions were made was to get the funding out, so it didn't make sense to then first set up another process around what should the decision-making process be. So the priority was on ensuring that we were funding Māori climate projects. To mitigate that we worked with Pou Take Āhuarangi but I agree that it certainly is not the same as an independent organisation making those decisions according to their own strategy and priorities. It was a mitigation of the situation we were in rather than what I would see is necessarily a long-term solution.

Q. Right, and would it be your view that to a degree by choosing the particular groups that you worked with and acknowledging that you've gone through Te Tai Kaha, Pou Take Āhuarangi and other groups involved with that, that there is the danger that exists that others do miss out?

A. Yes. And I think that's also –

[Anne Haira] Are you meaning in the context of funding?

[Gina Rangi] And I think that's also the design – that was also the design in terms of the criteria was narrow as well – was targeted as well. So it

wasn't intended to capture or address all types of impacts on Māori communities.

Q. Sorry, did you…

A. [Anne Haira] The phrase others miss out I think was what was curious to me in the sense of are they missing out on the investment funds, and you said you were using it more broadly, which I'm assuming you mean in the sense of how if we're working through national groups to shape proposals that they're missing out in that regard because they're not in necessarily the room when we're doing that work.

Q. Well, I mean there is an element of that but there are obviously other groups that we hear from in terms of the evidence who don't feel that they've been involved in the consultation or any of the parts to do with the work that you're working through in this area.

A. Okay, I mean our hope with the pre-consultation period is that their perspective will have been in the mix and taken into consideration and then the consultation period I would hope would be comprehensive. I think that's why I – when you said missing out, because it is designed to try and reach everybody in some way, shape or form.

Q. And just in terms of the matter that was the memorandum that was filed by counsel on Monday morning, the proposal with the Treaty review that affects obviously the legislation that we're concerned with here, that the Treaty clause and in terms of the Cabinet decision that's been made to move from giving effect to take account, does that concern you in terms of your ongoing involve it with Māori?

A. [Gina Rangi] Ms Prebble I think set out in her evidence the advice that the Ministry gave on whether that should occur.

Q. So does it concern you that it could have an effect on the relationship that you and your roles have with Māori?

A. I think I would just point to the advice we gave which was – we didn’t consider that it was a necessary amendment.

Q. Thank you. I have no further questions.

(15:16) PROFESSOR DAVID WILLIAMS TO ANNE HAIRA, GINA RANGI:

Q. Tēnā kōrua. A couple of questions and thank you for being available all day for this exercise but it's an important one. Firstly I looked up the MfE website and I see that the Rauora framework is still there as a publication, although it now incorrectly says that it was developed by Ihirangi as the operational arm of Te Pou Take Āhuarangi. So my question is, that's still there on your website, but there has been a reset and in the course of that reset has there in fact been a rejection of Te Rauora as a framework?

A. [Anne Haira] No, no. And yes I'm surprised I can see that there's a linkage being drawn between the reset and I think the work that we have done in the past with Pou Take Āhuarangi and certainly my view would be a lot of that work was incredibly valuable and continues to be incredibly valuable including the Rauora framework which is one of a number of different frameworks that helps to provide clarity to those working within the climate change space and government on Māori perspectives and the Māori worldview.

Q. Okay, good, that's the answer I wanted. Thank you. Secondly, 5 February 2025 last year, Ministers rock up to Mitimiti a day before Waitangi Day. Mitimiti's quite a long way to go. You've got to avoid a few horses alongside of the road to get there. I had the best horse ride of my life galloping along the beach from Whangapē to Mitimiti, it's just a wonderful place. Don't go there because it's paradise. But these people did go there for the Mitimiti community water storage. And so my question about that is that it's defined as a climate resilience pilot project and it's the first one you implemented. Now the Mātihetihe marae and the beautiful Hāhi Katorika church next to it are right at the sea level. They're right at sea level. The 45 houses and the school are a little bit up the hill. But to me it just looks like a shovel ready community development project which has been redefined as a climate resilience pilot project. Any comment?

A. My comment would be that's not what occurred. And I think if there's a perception that given their location we would be talking about retreat because of coastal erosion and exposure, those sorts of conversations are ones where we would take groups lead from as to whether that's

something we could support. The nature, and Ms Rangi will be able to provide more detail, the type of activities that we have funded recently under the Māori Climate Action work have been defined by Māori groups as being priorities for their climate resilience. So they've clearly elected that presumably drought is one of the climate risks that they're very concerned about and want to provide away which they can mitigate that.

Q. So there's a draft did you say?

A. Yes.

Q. So it's the water for the houses is the climate issue.

A. Could be. I know Ms Rangi is much more across this than I am. [Gina Rangi] It's an isolated community and during the, I believe it was the Cyclone Gabrielle storms, roads were impassable. So clean drinking water is a critical issue for the community to continue to live on their traditional lands. The water supply is slightly, it is significantly elevated above the marae, it's not on the marae grounds. So for that community it's a critical piece of infrastructure to ensure that they're able to continue to live in a relatively isolated area with very limited alternative access ways into that community if they're cut off again.

Q. Just accepting that, but just my point is that the marae buildings and the church are right at sea level, there's nothing in this about climate resilience.

A. They are very aware of, you know, I sort of talked to people on that site visit about what their thoughts were and they're very aware of that. Proposals to move marae and urupā are really challenging and in my opinion should absolutely be led by Māori communities. They're not simple projects. They're not just sort of lift a building and put it on another bit of land, they're really culturally challenging for a lot of communities. So yes, the Crown does have a responsibility to provide support and resourcing, but the timing and the readiness of the community is really sensitive.

Q. I can see why they would embrace the idea of getting that water. I mean the urupā there are actually on top of two hills, but not down on the flat or on the beach but there we are. So it's – I'm just trying to communicate a sense of some doubt as to whether these climate resilient pilot projects

are anything more than finding some good projects that can happen because we've now got this pot of funding which we didn't have before.

A. I can see how it could be characterised in that way. I think for those marae communities they would probably characterise it as resilience and enabling them to stay connected with their whenua. But yes I can also understand how that could also be seen in that way.

Q. Thank you both of you for your time. Kia ora kōrua.

(15:23) JUDGE MILROY TIO ANNER HAIRA, GINA RANGI:

Q. Āku mihi ki a kōrua. My concern was about the funding because I can't quite follow what's happened and I'm hoping that Ms Sykes' questions and your answers to them will sort that all out so I won't ask you again to try and explain. Can I just say thank you very much for your time today. It's been a long day for you and for us. We need to have a little bit of a break now. But yes, thank you very much and especially Ms Haira for the trouble to come in and speak to us.

A. [Anne Haira] Thank you very much.

Q. And thank you, Ms Rangi. I should mention it was a long, long time ago that you were a student of mine.

A. I was also one of your students.

Q. Apologies.

A. Not as high profile as Ms Rangi.

Q. We all grow up and change. All right. Well thank you. We will take a break. We will come back at 3.30 because the next session is also very heavily subscribed.

MS SEELEY ADDRESSES JUDGE MILROY – RE-EXAMINATION (15:24:11)

(15:24) MS SEELEY TO ANNE HAIRA, GINA RANGI:

Q. So in examination my friend Mr Sharp took you to the emissions, the first Emissions Reduction Plan and suggested there was a disconnect between what the action items said, so that's action item 2.1 and what actually or eventually occurred. So my question is in relation to the

wording of that action, can you please explain in your view how this item has been and is being given effect?

A. [Anne Haira] At this stage and sort of recognising that this is not – we're not at the end of the, you know, of a tick box exercise where we just sort of – we've done that. But at this stage, establish an interim committee to support immediate strategic advice and expertise across climate response, well, it's not so much the form of committee, but it's the – are we resourcing and obtaining strategic advice and expertise across climate response policy and work programmes that impact Māori? Yes we are, primarily through Pou Take Āhuarangi, and the intention is to solidify that with Te Tai Kaha as well. Revising on a more enduring representative platform to help advance an equitable transition for Māori, I think I would say that we are not doing anything actively on that at the moment. I'd also say that that hasn't also been something that has been requested from either the Iwi Chairs or Te Tai Kaha to my knowledge or that we can recollect. I think I'm not saying that there isn't a place for an enduring representative platform, but I do think that the way in which that is established needs to be accountable to Māori, transparent in its processes, and that that needs to be done with Māori, not something that the Crown should be directing as to what occurs except that what we have at the moment is not solving that question. But I do think that we are getting robust advice and expertise about climate work policy and work programmes that impact on Māori.

Q. Kia ora. That's all for me, except just to acknowledge you both. Thank you both very much for your evidence today. He mihi atu ki a kōrua.

HEARING ADJOURNS: 3.27 PM

HEARING RESUMES: 3.36 PM

JUDGE MILROY:

Thank you. We'll resume. Welcome to our new witnesses Mr Bryan Smith, you're Mr Smith, and obviously you must be Mr Mandal-Johnson. Welcome. Mr Fong, yes.

(15:36) MR FONG CALLS

SIMON DAVID ROWLAND MANDAL-JOHNSON AND BRYAN SMITH (SWORN)

Q. Tēnā kōrua, gentlemen. I just wanna begin with some formalities and turning to you first Mr Smith, can you confirm for the Tribunal that your full name is Bryan James Smith?

A. [Bryan Smith] It is.

Q. And turning to you, Mr Mandal-Johnson that your full name is Simon David Rowland Mandal-Johnson?

A. [Simon Mandal-Johnson] Correct.

Q. And can I ask both of you to confirm that you've prepared a join brief of evidence dated 30 October 2025?

A. Correct.

Q. For the benefit of the Tribunal, the appellation number is #A140. My understanding is that you have also prepared a summary of the evidence to assist the Tribunal?

A. Yes.

Q. Can I invite both of you to present that summary in the way that you have prepared?

(15:37) SIMON MANDAL-JOHNSON: (#A140)

Tēnā koutou katoa. Ko Simon Mandal-Johnson tōku ingoa. It's a pleasure to be here and I'm looking forward to taking us through some of the evidence around the Emissions Trading Scheme and related matters.

By way of introductory comment, I thought it might just help just to clarify a little bit about our particular areas of expertise, areas of particular knowledge. I joined the Ministry for the Environment in 2023 and took over responsibility for ETS policy in 2024. My colleague Mr Smith here was involved much earlier in the process around the origination of the scheme and then stepped away from the scheme in approximately 2012 did we conclude? 2010. So there is a period of the time clearly between 2010 and 2023 where neither of us can speak to it with first-hand expertise. We clearly have prepared the evidence you see

before you and are happy to take questions and have conversation about what's here. But clearly we can't speak to that period with first-hand expertise.

I would also just say we see the ETS very much alongside our colleagues in the Ministry for Primary Industries. I believe you're going to be hearing from my colleague Ms Collins in the next hearing block. MPI in particular is responsible for much of the administration of forestry inside the scheme and they have obviously lead responsibility for forestry policy.

Many of the topics that we'll traverse today cover a joint responsibility of both ministries. We'll talk to them as best we are able to and as much as it sits inside our scheme of knowledge, but clearly it might sit inside – there may be questions which are better posed to her when you see her in week 8.

I should say as well, I'm recovering from COVID and I am no longer infectious. But my voice hasn't fully recovered. So if you can't hear me please ask me to speak a little bit louder.

So turning now to our summary.

REFERS TO SUMMARY OF EVIDENCE #A140(b)

The Tribunal by now will be familiar with how the ETS works and I don't propose to repeat the mechanics of it at this point. I'm obviously very happy to take questions on that or go into any of the details there that people wish.

But I did just want to stress the key concept which underpins both the ETS and the underpinning logic of emissions pricing is one that people and businesses who generate emissions are themselves the best place to identify and act on opportunities to reduce them. The ETS shifts the costs of meeting New Zealand's targets to participants with the expectation that this will result in making reductions at lower overall cost than if the Government attempted to do it itself. This is known in our jargon as the 'polluter pays' principle. Conversely, the ETS rewards people who are able to contribute towards emissions removals, principally afforestation, which have the opposite effect.

As we understand it and having read many of the claimant briefs of evidence, there are several common themes. So rather than going through each case one by one, I just wanted to offer a couple of opening comments about some of the themes that we have seen. As the historical development shows, the issues by the claimants are not new. They've been well traversed since the very genesis of the scheme and questions around the role of pre-89 – -90 forests were integral to the design of the scheme back in its origination days and remains so now. They're subject to long-standing debates, advocacy by competing interest groups which have been conscientiously traversed by the Crown, with Māori interests and perspectives deliberately considered through the process.

By way of summary, we would note that:

1. On exotic and native forests: The intent of the ETS is to use a price mechanism to incentivise a reduction in New Zealand's emissions while minimising the cost to the economy. The ETS is underpinned by the science of carbon storage, where the amount of NZUs earned by a forest is directly reflective of the tonnes of CO2 that the forest is able to sequester. Therefore, the ETS does not have a policy preference between sources of removals, such as indigenous or exotics. As a result, and because of the cheaper economics typically of exotic forestry, the exotic afforestation makes up a much higher proportion of ETS registered forests. The design features of the ETS really importantly do not remove options for the development of policies outside the ETS such as biodiversity credits or the voluntary carbon market which could support the regeneration of native forests.
2. Secondly, around choice of land use: In recognition of the high cost of land use change under the ETS rules, and in particular for pre-1990 forests, New Zealand chose deliberately to include Māori representatives at international climate meetings through the early design of the scheme, successfully advocating for international arrangements to allow the principle of offsetting. The ETS creates price

incentives that tend to favour the conversion of hill country farmland to forest land, particularly exotic forests. The cumulative effect has had impacts on rural communities, more recently the Government has moved to address some of those concerns through additional policies. I can talk more about that in the Whole Farm Conversions to Forestry as an example.

3. In the third theme we just called out is on the impacts on Māori: While acknowledging the claimants' evidence of the negative impacts that the ETS has had on Māori, the ETS has also benefitted Māori who are a key stakeholder in the forestry. Māori have been able to register forests in the ETS at significant scale, which have earned forest owners significant volumes of NZUs which are tradeable on the secondary market.
4. Finally, by way of general theme, we'd comment on that through engagement with Māori: The Crown has taken deliberate and conscientious steps to make space for and listen to the voices of Māori (both iwi and Pacific groups) through the initial development and subsequent reviews of ETS policy. Our evidence sets out many of that in some detail going through the historical amendments. Some of these engagements have resulted in material significant changes to the design of ETS policy, including in particular the provision for offsetting for pre-'90 forest liabilities.

(15:40) BRYAN SMITH: (#A140)

Thanks, Simon. I'll take over now. Kia ora tātou. So the history of the ETS spans almost 20 years. And our evidence will focus on five key developments in that history. We've chosen them because they are particularly relevant to this inquiry and material to the policy development of the ETS:

1. The first of those is the Climate Change Response (Emissions Trading) Act. That was the initial Act that introduced the ETS.
2. Then the Climate Change Response (Moderated Emission Trading) Amendment Act 2009. That happened pretty close after, or the process

started pretty close after the first Act was passed with an incoming National-led government.

3. Then the Climate Change Response (Emissions Trading and Other Matters) Act. That was required because what to do after 2012 was a burning issue and it was a required review at that point but we also had a lot of uncertainty at that time about how the international framework was going to pan out.
4. Simon will talk about the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 and the Climate Change Response (Emissions Trading Reform) Amendment Act 2020.

So in 2007, the government introduced the ETS policy. The ETS was enacted into law through the Climate Change Response (Emissions Trading) Amendment Act, which amended the Climate Change Response Act.

Leading up to the 2008 Amendment, the Government engaged with Māori on establishing the ETS through:

1. The establishment of a climate change leadership forum that included business community, NGO iwi academics and government agencies.
2. It was also a Māori reference group that provided advice and assistance with Māori engagement; and
3. The consultation included 12 regional hui, a national hui for Māori and a national Māori forestry hui.

The Māori reference groups synthesised the themes raised by Māori in these hui into three sort of core proposals:

1. One was that the allocation of NZUs, New Zealand units which I'm sure you're familiar with now, aligned with Crown Forestry lands (CFL lands) should be allocated to an approved Māori body for immediate use on the condition that the value of the equivalent NZUs would be made available to claimants when they settle CFL lands.

2. The second proposal from that reference group was to include pre-1990 indigenous forests in the NZ ETS and to increase the allocation of NZUs for pre-1990 indigenous forests. So it would be the same level as what had been proposed for pre-1990 exotic forests. It was 21 million tons was the first allocation for pre-1990 exotic forests.
3. The third proposal was to recognise those forest owners that could not change land use or prepare for deforestation requirements from 2002 by allocating two thirds of the total NZUs that were set aside for compensation to pre-1990 exotic forests pro rata, so all owners get it equally; and then allocating one third of that to NZUs specifically to those owners who, as at 2002, could not change their land use and prepare for deforestation requirements. And those deforestation, the potential for deforestation obligations was initially announced by the government in October of 2002.

On the advice from officials, Ministers agreed to investigate the feasibility of the three proposals and recommended the following:

1. The allocation of NZUs to CFL estates – officials recommended maintaining the government's initial proposal, which was to provide "a notional allocation of NZUs for CFL land and leave the successful claimants with the choice over whether to take some of those NZUs as part of their settlement quantum".
2. The inclusion of pre-1990 indigenous forests – where officials recommended against including pre-1990 regenerating scrubland forest partly driven by concerns that this would limit afforestation. That is when you include something as pre-1990 forest you can't then afforest it if you want to gain credits from it in the future.
3. Then, on the allocation packages for pre-1990 forest – officials revised their recommendation to increase free allocation to the pre-2002 forest landowners and that there be free allocation of NZUs to iwi who acquired CFL land in the future. That was the major change that was discussed, negotiated if I might use that word, during the transition of the bill, the development of the bill.

These recommendations were incorporated into the enacted legislation. A further request by some submitters to include a Treaty of Waitangi clause in the bill was not progressed at this time. (But this is discussed in more detail in our brief of evidence, a Treaty of Waitangi clause was subsequently inserted to the CCRA as part of the 2009 amendments).

The ETS introduced obligations on "participants" to monitor and report emissions, and surrender emission units, for all emissions made in each reporting period. The six main sectors (including forestry and agriculture) were to enter the scheme through a staged process. The first sector to enter the ETS was forestry, where landowners assumed NZU obligations for eligible deforestation emissions and had the opportunity to earn NZU credits for eligible afforestation activity.

So if we moved now to the 2009 Moderated Emissions Trading Amendment Act.

Following a review by the Emissions Trading Scheme Review Committee, the Climate Change Response (Moderated Emissions Trading) Amendment Act introduced various amendments to the ETS as enacted. As its name suggests, the purpose of the amendments was to moderate the impact of the ETS. The legislative context is the global economic downturn brought about by the Global Financial Crisis.

One aspect of the review addresses the impacts of the ETS on: (a) iwi as the collective asset holder; and (b) Māori population interests. As such, the terms of reference for the ETS Review Committee included several overriding principles that should influence consideration of Māori interest in emissions trading. Those principles were:

1. Fairness and equity: an emissions trading scheme must not disproportionately affect Māori, either as iwi collective asset holders or as individuals and households.

2. Treaty of Waitangi: the property rights of iwi and citizenship interests of individual Māori must be protected.
3. Tangata whenua: iwi are enduring shareholders in their land based and natural resource assets in New Zealand and will take a long-term multi-generational view; and
4. Social and environmental concerns: the economic effects and benefits must be balanced against social and environmental effects and benefits.

The Committee considered the impacts of an ETS will affect Māori largely in the same way as other New Zealanders except for four significant respects:

1. first, the forestry component of Treaty settlements and their value;
2. second, the location of iwi and Māori organisations on the development continuum;
3. third, the disproportionate number of Māori individuals and households at the lower end of the socio-economic spectrum; and
4. fourth, the potential alienation of land as set out in the terms of the Te Ture Whenua Māori Act 1993.

With respect to these specific impacts on Māori, the Committee's view is set out below.

1. Forestry component of Treaty settlements – the Committee considered that negotiating efforts to achieve offsetting internationally are paramount. Companion measures should be developed to recognise the important role that indigenous forests can play. The Minister intended to push for offsetting arrangements to be introduced in the international regime (and by extension into the NZ ETS) from 2013.
2. Iwi and Māori organisations on the development continuum – the committee recommended a "targeted communication and engagement strategy to achieve maximum involvement of Māori in climate change policy, including the Emissions Trading Scheme and to ensure that they are not unduly exposed to risk". The Treaty clause was introduced into the CCRA in order to recognise and respect the Crown's responsibilities

to give effect to the principles of the Treaty of Waitangi, the Minister for Climate Change or Chief Executive is obliged to consult with Māori in respect of forestry and fishing allocations, the making of regulations and Orders in Council, and the gazetting of targets. It also provides for Māori participation in future review of the 2002 Act as a whole.

3. In respect of Māori at the lower end of socio-economic spectrum – the Committee considered that it is important a full array of assistance measures be adequately considered and targeted at the more vulnerable communities and members of the economy (whether Māori or not). The principal amendment was to introduce a transition phase for the first few years of the scheme. This included allowing participants, other than those in the forestry sector, to surrender one NZU for every two tonnes of emissions (the "one-for-two" surrender obligation – effectively halving the price effect on electricity and fuel supplies of the Emissions Trading Scheme).
4. In terms of Te Ture Whenua Māori Act 1993 – officials considered that the ETS did not affect directly the ability of owners of Māori to develop or utilise Māori land but did impose the same economic cost on owners of Māori land who deforest as will be faced by owners of any other forest land.

In addition, the 2009 Amendment Act deferred unit obligations for biological emissions from the agriculture sector from 2013 to 2015, and shifted the obligation start dates for stationary energy, industrial and transport participants to 1 July 2010. These were obviously all to differ the effect of the ETS on those sectors and the impact on the economy.

Turning to the Climate Change Response (Emissions Trading and Other Matters) Amendment Act.

The 2008 Amendment Act provided for a mandatory review of the ETS to be completed no more than 12 months before the end of the first Kyoto Protocol commitment period. That was from 2008-2012. A seven-person independent review panel was appointed by the Minister for Climate Change Issues in

December 2010. The Panel included Mr Chris Karamea Insley, who was appointed by the Minister as someone who has the appropriate knowledge, skill and experience relating to the principles of the Treaty of Waitangi and tikanga Māori. The panel delivered its final report to the Minister in June 2011. Some of the recommendations by the Panel were adopted wholesale; others in a modified form. These ultimately led to the Climate Change Response (Emissions Trading and Other Matters) Amendment Act (or the 2012 Amendment Act).

That 2012 Amendment Act brought about a number of changes, including:

1. Extending the two-for-one surrender provisions indefinitely.
2. Extending the price cap indefinitely to all participants at $25 per NZU.
3. Introducing the power to auction within a cap that applies across both auctioned and freely allocated units but does not limit free allocation. Nor did it limit – well, nor was the forestry units that may be issued included in the cap. Either should be in the summary here.
4. It included deferring unit obligations for biological emissions from agriculture indefinitely, with no change to the legislated default point of obligation at the processor level and the option to change to the farm level by Order in Council. There'd been a lot of discussion about where the appropriate level was if you were going to bring agriculture into the ETS at the process or at the individual farm scale.
5. Introducing "forest offsetting" for pre-1990 forests (which enabled landowners to avoid deforestation liabilities by planting essential an equivalent forest elsewhere).

The introduction of forestry offsetting was of particular interest to Māori who were represented at the international climate change negotiations as New Zealand actively advocated to introduce land-use flexibility for planted production forests. I was deeply involved in those negotiations and I have to say the involvement of Māori was incredibly important in New Zealand being able to achieve that international recognition of offsetting. The government

introduced offsetting for pre-1990 forests in the ETS consistent with the Flexible Land use rule agreed at Durban. I think that was 2011.

Another issue specific to Māori concerned the interaction between the ETS, and multiple-ownership of Māori land and Te Ture Whenua Māori Act 1993. The Panel had noted that the Act places particular constraints on owners of Māori land that non-landowners do not face. To correct these anomalies, technical changes were made to allow the Māori Trustee and trustees appointed under Te Ture Whenua Māori to apply for less than 50 hectares deforestation exemptions.

(15:58) SIMON MANDAL-JOHNSON: (CONTINUES #A140 FROM PARA 24) I will pick up the narrative from this point and turn to the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016.

The Paris Agreement, ratified by New Zealand in 2016, led to amendments to the ETS, consequential to that. The Paris Agreement brought about a fundamentally different approach to the Kyoto Protocol in how we address climate change issues at an international level. This is discussed in the evidence of other Crown witnesses.

As part of the Paris Agreement, New Zealand adopted a target to reduce emissions by 30 percent below 2005 levels over the period 2021-2030. To meet the target, any emissions above the budget would need to be either reduced domestically or through purchasing international emissions reductions.

To ensure that the ETS was fit-for purpose in light of the Paris Agreement and New Zealand's 2030 target, the Government initiated two reviews of the ETS – which we refer to as Stage 1 and Stage 2 in our evidence.

Consultation on the stage 1 priority matters revolved around whether to remove the one-for-two/ two-for-one provision we discussed previously, and, if so, whether and how to manage the associated costs that would be incurred. The

consultations happened in the period of 24 November 2015 to 19 February 2016. The review was publicly promoted.

Information meetings and workshops were held with targeted stakeholders. In addition, six regional hui were co-hosted with the Climate Change Iwi Leaders Group and its advisors in January 2016. The hui were held in Kaikohe, Rotorua, Tolaga Bay, Whanganui, Christchurch and Invercargill. These hui were publicised by the Climate Change Iwi Leaders Group members, by pānui to representative Māori, iwi and hapū organisations, as well as in MfE's quarterly newsletter. It is our record that 78 people approximately attended these hui.

Key themes from the regional hui were summarised by the Climate Change Iwi Leaders Group:

1. The new Paris Agreement is seen as a positive for the Māori community in bringing together all the countries of the world to reduce global emissions, noting that the agreement in and of itself will not achieve this objective.
2. That the new international agreement recognises the rights and interests of indigenous peoples which is seen as a positive for the Māori community across all of the hui.
3. The ETS has failed to reduce emissions across the economy with the collapse of the carbon price while emitters have been allowed by the government to profit from polluting. The carbon price collapse was a very strong theme across the regional hui and its impact on iwi and Māori.
4. The ETS remains a mystery to much of the Māori community representing risk for the community in not knowing how to effectively navigate the policy, raising a call for wide and targeted education with Māori community groups and communities.
5. The government's view and program on climate change policy is far too narrow (focused on around the ETS and carbon trading) and short sighted.

6. The government needs to do much more to incentivise new afforestation within Māori communities and recognise the contribution of existing indigenous forests.
7. Agriculture that accounts for half of New Zealand's emissions needs to come into the ETS with careful consideration on how this happens with the Māori community farmers being supported through the targeted research investments onto Māori farms.
8. Support could take the form of the establishment of a green fund for Māori adaptation to enable the transition of whānau to a low emissions environment.
9. Māori households are much more vulnerable to downstream costs created by the ETS than other household.
10. Climate change and the ETS though not well understood by the Māori community across the regional hui remain a big issue and there remains a strong consistency of issues and interests in climate change impacts held by Māori regionally across the country.

Following Stage 1 of the review, the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 was enacted. This crucially phased out the one-for-two surrender obligation measures – and it did so evenly across the relevant sectors over three years from 2017.

We now turn to the 2020 Amendment Act.

Stage 2 of the review followed shortly thereafter, and concerned the broad operation, effectiveness and design of the ETS. It looked at issues including unit supply settings, access to international markets and options for managing price stability. The review found the framework of the ETS was not fit-for-purpose for the 2020s and beyond, especially in light of the new obligations being opposed by the Paris Agreement.

The review of these findings and the subsequent work led to the Climate Change Response (Emissions Trading Reform) Amendment Act 2020. Some of the most relevant changes from that include:

1. coordinate decisions on unit supply volumes to align with New Zealand's emissions reduction targets, reducing emissions over time;
2. establishing an auctioning process for emissions units;
3. introducing new penalties, should businesses fail to meet emissions requirements;
4. increasing the amount of the fixed price option from $25 a unit to $35 a unit – and then agreeing to phase it out from the year after (that crucial sentence was missing from the summary); and
5. biogenic emissions from agriculture would incur a carbon price from 2025 at the latest.

I would describe the 2020 reviews colloquially as putting the ETS into its modern **(inaudible 16:04:17)**. And whilst there's been further policy development since then, that I'll come onto in this last section, the parameters of the 2020 Act broadly speaking govern the current ETS policy that we have today.

Just touching briefly on the post-2020 reforms. Clearly, development have not stood still.

In 2023, the government consulted on a review to test whether and how the ETS should prioritise gross emissions reductions over removals in order to drive transition to a low-emissions economy. The 2023 Review recognised that Māori has a strong interest in the ETS, including in:

1. Through the viability of different land-use options through changing incentives for exotic forests, indigenous forests and pastoral farming, with ETS returns providing a unique opportunity for Māori land owners and communities. Māori have expressed differing views on the increase in returns to exotic forestry. Many were of the view that pine forests provided a financially viable pathway to permanent indigenous forests, and that long-lived exotics or continuous canopy productions were important permanent forestry options. Some Māori land owners,

however, were concerned about the high incentives for pine forestry and wanted greater direct support for indigenous afforestation and regeneration, including from the ETS. Incentives for more indigenous forestry and other nature-based solutions were explored as options that could provide opportunity for Māori to exercise kaitiakitanga and support restoration and protection of not just ngāhere but the cultural practices and mātauranga they support.

2. In addition, of course this review raised the very important issue of the cost of living impacts on whānau Māori through the ETS.
3. Lastly, a significant theme or other, rights and interests of future generations, which come into play when you consider the balance between gross and net afforestation.

Due to the significant and varied rights and interests of Māori, engagement with Māori on this review began early and in advance of full public consultation. This included input from Māori into a draft discussion document prior to its public release from three key Māori Authorities and iwi bodies (National Iwi Chairs Forum (ICF), Federation of Māori Authorities (FoMA), and Te Taumata – Māori Forestry Collective). These three groups also informed how the government could engage with a broad representation of Māori. The result of that was a range of targeted Māori engagement, MfE-supported NICF-led engagement, technical workshops with the NICF technical leaders, and direct Crown financial support to NICF, and I think to FoMA as well to support them in conducting that review.

Obviously, it goes without saying that following the 2023 election, however, the new Government took a change of course and the ETS review that we've just discussed there was cancelled.

In our evidence, we spent a little bit of time on the Second Emissions Reduction Plan which neatly I think encapsulates this government's articulated strategy for the Emissions Trading Scheme. In ERP2, the government made a commitment to support a credible ETS by providing regulatory predictability and

encouraging business confidence in long-term investments in the ETS. It committed to do so by the following actions:

1. Treating forestry NZUs the same as other units recognising that one tonne of sequestered carbon is equivalent to one tonne of emissions reductions.
2. Limiting the whole-sale conversion to exotic forestry on productive farmland. Recognising that uncontrolled afforestation may have downside implications.
3. And to explore partnership opportunities to plant native or exotic tress on Crown owned land. That's a policy we call AOCL.

That brings us to an end of our summary. I appreciate there's a lot of history, there's a lot of context and a lot of acronyms and happy to take questions and to explore the themes as we go.

JUDGE MILROY:

Thank you to you both for that succinct summary. Our questions begin with Kāhui Legal.

(16:08) MR MAHUIKA TO SIMON MANDAL-JOHNSON, BRYAN SMITH:

Q. Tēnā kōrua. Okay, we're making some progress. Tuatahi, tēnā kōrua mō te haere mai, te whakaputa atu i ngā kōrero e pā ana ki tēnei kaupapa kei mua ki te Rōpū Whakamana i te Tiriti, kei mua anō hoki i a mātou. So thank you for coming along. Mr Smith, this is not to soften you up but I should acknowledge your working relationship in the past with my late father. I imagine that you spent a lot of time in rooms with him during the development of the Emissions Trading Scheme, so...

A. [Bryan Smith] He was a great man.

Q. He thought that too actually. He's – just making sure he's not here. But I mean, I'm interested by your evidence in the sense that it talks a lot about Māori interests in relation to the Emissions Trading Scheme. So there's no doubt that the Crown understands Māori interests and the significance of them. But you'd agree though wouldn't you that it's not

about just knowing what they are, it's how you accommodate them and reflect them that really matters, doesn't it? Because otherwise you're just playing lip service.

A. Yes, yes.

Q. And so if I think about the nature of those interests, and this is probably more a matter for you, Mr Smith but what's interesting about your evidence is that there was really significant engagement with Māori in the period between 2006 and 2009 especially in the development of the ETS.

A. Very much so.

Q. Yes. So you went through basically a three year period of trying to work out how Māori interests would be accommodated within the ETS prior to its establishment.

A. Correct, within the bounds of the sort of operating envelope that we, you know, our political masters had given us to work within, yes.

Q. Yes, I understand, and as I understand it as well there were a number of options in addition to an Emission Trading Scheme that may not have been considered in detail at that time such as a carbon tax.

A. Yes, well the carbon tax was the government's preferred policy going right up until the end of 2005.

Q. Yes.

A. Went through the scars on that one and it didn't survive the political process after the 2005 election.

Q. Yes, and of course the difference between a carbon tax and a scheme such as the ETS is a carbon tax just means that the polluter pays an amount of money to the government in return for being able to pollute.

A. I'd put it a little differently, maybe.

Q. Okay.

A. In those days when we were dealing with Kyoto and we had a specific limit, the best way to reach a limit the most efficiently is you allocate out the responsibility for that level of emissions.

Q. Yes.

A. And then let the market choose the price if you like that's going to achieve that level of emissions. If on the other hand you want to put a price on

emissions and you don't really care how many emissions you actually get but you wanna put some price, then you use a tax.

Q. Yes.

A. So they can look very similar but they actually, in the context of Kyoto with a fixed limit, they actually operate slightly different.

Q. And a key difference is that a tax – I mean punishes, that's probably not the right word, but it imposes the cost on the polluter. But if you are contributing to, in a positive way, to the sequestration of carbon say through planting forests, that contribution is not recognised through a tax regime?

A. Well, we did think of formulations that might be able to do that by giving tax credits or giving direct cash benefits in relation to the same price. But it's not as direct if you like.

Q. And ultimately you landed on the ETS which is the polluter pays principle. So you – the polluter pays, on the flip side of that, those that contribute positively are rewarded for their contribution through the allocation of units and through being able to derive a benefit from those units?

A. Yes, and there were at least – there were a number of considerations. The first was that that's where the direction of the world was going.

Q. Yes.

A. And the second was once you've allocated sort of values and benefits in the private sector and individuals are investing, frankly it's harder to turn that sort of system over and to change that sort of system. So it's kind of a more embedded system that gives a more long run security than imposing a tax which can be readily changed from one government to another.

Q. Yes and importantly it was the model ultimately that Māori supported, in the end if you like through the process of engagement, the ETS with the polluter pays principle in the way that it currently operates.

A. Well, depends on who you talk to. The New Zealand Māori Party right up until 2009 were still promoting carbon tax as their preferred option.

Q. But as I took from your evidence through the process of engagement the forest owners, even post-settlement governance entities, they preferred the ETS as a model as opposed to the other alternatives.

A. Yes they did, yes.

Q. And an aspect of that isn't it, the economic opportunity that also was provided through the way that the ETS would operate through the allocation of NZUs, that was an important consideration for them, wasn't it?

A. I would think so, yes.

Q. Well, in the sense that it creates an incentive to plant forests and there are some areas where actually forests need to be planted so an incentive is a positive thing.

A. Yes.

Q. And the incentives that exist in these sorts of situations are not just economic incentives or there's an economic aspect, my understanding of the conversations is that they were also motivated by social and cultural considerations, is that fair?

A. In terms of having financial mechanisms to protect whenua and to protect why, then sure, definitely.

Q. Yes and by protecting whenua and being able to undertake economic activities on whenua, maybe in remote places, you protect communities. That's fear, isn't it? That was a motivation for them at that time?

A. I would think so. I don't recall having that explicit conversation but, you know, as you know, Māori think of the world holistically.

Q. Yes.

A. And so, the ability to earn a carbon credit was never considered in its, as far as I was aware, as a single, you know, value, it was always thinking about land and development.

Q. Maybe if, I mean, this is why where I get this from. If we go to paragraph 55 of your evidence. And there's a – well, in fact, we'll look at 54 and 55. So in 54 there is an acknowledgement, you'll see it there after footnote 36, it says that it acknowledged that many areas of Māori land are steep and regions vulnerable to storms and erosion with the onset of climate change these lands will be even more exposed and vulnerable with the predicted arrival of more frequent and severe storms and more frequent droughts in the east of New Zealand. I mean, so that's, that is

focusing not just on the economic benefit but the environmental benefit, the benefit to those communities, isn't it?

A. Yes, sure.

Q. And then similarly the quote in 55 in the second paragraph, it says: “There will be significant economic opportunities for Māori-owned forestry under the NZETS in terms of the potential to an emission units for carbon sequestration on land afforested after 1989.” And it, “…will be an attractive alternative land use for marginal hill country where the economic returns to pastoral farming can often be slender. A significant proportion of Māori land falls into this category...” So first of all, that's just for the record, that's what that paragraph says, I haven't misrepresented it.

A. Correct.

Q. And what it points to doesn’t it, is that it’s not just about economics, there's an economic aspect to it but it is about ensuring an alternative land use and supporting the sustainability of activity on Māori land. That's a fair summary of that paragraph?

A. Yes, I think Māori see, have seen or did at that stage, and I haven't been engaged with Māori on this topic for some years now but I would think they probably still see the opportunities that arise from having access to an economic incentive or an economic income stream that isn't related to having harvest, that isn't related to having to keep a piece of land in pastor which we know doesn't protect land in some places.

Q. Yes.

A. So in that respect it's a very significant economic, you know, financial, potential financial strength.

Q. Yes, but as we also know if we think about the location of some of those communities such as on the East Coast, it's more than economics because it’s supporting those communities to continue to undertake activities on their land.

A. And remain, you know, in their – yes.

Q. Yes, remain in that location rather than go somewhere else.

A. Yes.

Q. If you think about the matters that were relevant to you at the time that you were undertaking that extensive process of engagement prior to the introduction of the ETS, and I think I've mentioned a couple of those things just now. But maybe if we look at, for example, paragraph 48.8 of your evidence. Look, I'm not trying to catch you out with anything, I'm just giving you a reference to them. And there's I think a similar passage in paragraph 62. So you talk there in 48.8 about the key Treaty of Waitangi related issues that were being discussed at the time of the introduction of the ETS, that's right, isn't it?

A. Yes, correct.

Q. I'm not going to read you this one, but what it does point to is that actually front of mind during this development stage was the Treaty of Waitangi, Treaty of Waitangi obligations. This was firmly in the mind of government at the time that the ETS was being discussed.

A. Correct.

Q. And then at 62, and this is where you refer to the consultations that occur during 2007, and you list there are another set of key themes, so I think this is the second or third sentence, third sentence I think. So the key themes that emerge included rights and impacts on Treaty settlements, forestry specific issues and so on. You see that there?

A. Yes.

Q. So those issues were also very front of mind, weren't they?

A. They certainly were, yes.

Q. Yes. And you went through that extensive process leading up to the introduction of the ETS. From a Crown point of view and from a Māori point of view, those issues haven't changed, have they? They remain current, they are still things that you would expect Māori communities to be considering and be important to those communities?

A. Yes, I would say so, but there are some contextual things that have changed and changed quite a lot. You know, what was really clear was that the ability of Māori to change land use or to use their land in the way that they could make best economic use of it was, you know, unlike Pākehā land owners who might sell a block of land if they didn't want to stay in forestry and move somewhere else, it was made very clear to us

that that wasn't something that was easily or readily doable for most Māori land owners.

Q. Yes.

A. And so, staying on the whenua was very important which meant not being locked into forestry for example if they wished to change to some other land use. Took on a whole level of importance. Now, in that respect there have been, you know, significant changes, at least they're not perfect but the imposition that we were talking about at this time has been alleviated quite substantially for those land owners who wish to avail themselves, in particular offsetting.

Q. Yes. But I mean, the idea of change and changing of land use depends on the suitability of your land to change.

A. Absolutely, yes.

Q. And we know don't we that a lot of Māori land is not really suitable for anything other than having trees on it.

A. A lot isn't but some certainly is, yes.

Q. Well, and maybe it's region specific. So if you think about the Tai Rāwhiti region, that’s a place that needs more trees, not less trees.

A. Yes, and probably less plantation clear fell exotic trees.

Q. Yes, yes. We probably don't have time to get into that particular topic. But the point is fair isn't it that actually If you think about change in context, a change in context has been the increase in weather events that have exacerbated the need to be planting trees on erosion prone hillsides, doesn't it?

A. Yes.

Q. And it's fair enough debate over whether or not you planted in radiata or some other slow growing indigenous species or some sort of hard wood that is different to radiata, but the fact of the matter is that these are hilly lands that need forest cover in order to deal with the environmental impacts that we're starting to see coming through because of these weather events.

A. Yes.

Q. And perhaps I'm pushing the boat out here but actually an ETS that functions well and adequately incentivises planting is an important component potentially in ensuring that happens.

A. It's not the ETS' primary purpose. The ETS' primary purpose, and remember for every credit that's issued for a removal activity or planting as a tree grows, it effectively allows an actual emission of a fossil fuel into the atmosphere or an industrial process. So the ETS isn't designed specifically to encourage afforestation. It's designed to put the incentive out there, the correct incentives based on what's going on in the atmosphere and then allow the sort of chips to lie where they may. Now as you know it hasn't always been designed like that and I think our evidence shows that there's been a whole bunch of other considerations that over time the government has had, certainly as it operates at the moment it's creating quite strong incentives to afforest.

Q. But it is designed to reward through the allocation of NZUs and the ability to convert that into money potentially. People who do things like put trees on land because that sequesters carbon and that actually benefits New Zealand in terms of our overall climate profile.

A. Yes, it's the removal, a removal being, removing CO2 from the atmosphere, it's the removal that is rewarded.

Q. Yes, and planting trees removes CO2 from the atmosphere. I mean, that's the simple way of describing it.

A. Yes.

Q. So, and as we found from, you know, those early passages that I took you to, the economic opportunity that was presented to do things like afforest Māori land was certainly front of mind, wasn't it, to a number of the Māori parties that were engaged in that process.

A. Yes.

Q. And that was one of the things that was incentivising them as they were looking for alternative uses for marginal Māori hill country.

A. I believe so, yes.

Q. Or to bring forestry investment into an area like Te Tai Rāwhiti which needs trees planted on it.

A. Yes, so long as they're suitable for the very challenging environment you have in Tai Rāwhiti, yes.

Q. Well, I mean there's a difference there though isn't there, like you plant radiata, 25-30 years, you then clear fell it. That's gonna have an impact on the underlying land. isn't it?

A. Yes it is. I mean, I've got some thoughts on, you know, there are alternative ways to avail the benefit from sequestering carbon quickly while still establishing a long-term permanent forest cover.

Q. Yes and I think that's my point. So if you have any ETS that works well, you don't have to have a clear fell regime because actually you get other economic benefits just from leaving trees there.

A. You can, yes.

Q. And that's in fact one of the most important aspects of it is that it removes the need to fell the trees because you're able to derive a benefit from just having the trees there.

A. In the right locations, yes, that's right or in the locations that aren't suited maybe for harvesting, yes.

Q. Yes, and so if we come back to the crux of it, actually the pricing of the NZUs is important to how you might incentivise that economic activity.

A. Well the pricing of the NZUs reflects a whole lot of things going on, you know, the ETS is not designed, as I said before, and never has been designed to create an economic incentive to afforest. It's designed to allow New Zealand to meet its international obligations at the lowest overall cost.

Q. In the mind of the Crown perhaps but as we've just talked about in the mind of the Māori participants in this scheme they were driven very much by the economic opportunity and the Crown knows that.

A. Yes. Those two things aren't necessarily mutually exclusive of course.

Q. No, no, that's exactly right. And if you're the Crown thinking about climate policy and thinking about the operation of the ETS, that's something that you ought to be mindful of, isn't it? That there are these incentives and these effects that have been considered by the Māori participants.

A. Yes, I think that's true. Yes, and there are people who have invested based on a certain paradigm, a certain construct. And I think that is an

important consideration is, you know, you want a degree of durability and consistency over time.

Q. Yes, and look, I'm not disagreeing with your characterisation of it but I'm saying that actually if you're thinking about the Māori perspective on it, you can't ignore this perspective. Sorry, the nod won't –

A. Yes.

Q. Just for the transcript.

A. Yes.

Q. Okay. I mean, I'll just go through these questions. I've put this to Ms Prebble yesterday and I just think just for the record I need to mention it to you. So I think we've acknowledged the significant interest of Māori in the operation of the ETS. That's – sorry Mr Mandal-Johnson I know I'm talking to Mr Smith, I'm actually talking to both of you it's just we started off talking.

A. [Simon Mandal-Johnson] That's completely fine, but yes.

Q. Yes. And we know that Māori are large owners don't we of exotic forests. I think 30 to 40% of the exotic or radiata forest at least are in Māori ownership these days?

A. [Bryan Smith] I haven't seen the most recent statistics but that sounds about right, yes.

Q. And actually there's quite a lot of indigenous forest on Māori land too as I understand it. I don't have any percentages but that's correct too, isn't it?

A. Yes, disproportionately of the privately held indigenous forest, it's disproportionately held by Māori.

Q. And so when you say privately owned, you – so non-Crown owned like national parks and those sorts of things?

A. Correct, yes.

Q. Right, so there's a very significant Māori stake in the forestry sector generally. And on top of that there's the opportunity that exists in marginal country to further afforest.

A. Correct.

Q. I mean, so it's on the basis that, what we can say is that not only is this – there's the significant economic interest but there's also if you like a

disproportionate exposure to the way that the ETS operates. I mean do you agree or disagree with how I've characterised that?

A. Well it doesn't – that exposure doesn't arise, and I think this is in the evidence and in some of the documents that are referenced only because of forestry of course Māori are also disproportionately exposed in the agricultural sector, and that is always a consideration, has always been a consideration for every government since the ETS was first mooted. And then of course you know, well as we said in our summary, fishing is another very significant industry for Māori and Māori have tended to be at the lower socioeconomic, you know, end of socioeconomic. So they are exposed more than others to, you know, the cost impost from a, let's say a high, you know, New Zealand unit price. So there's a range of exposures here and it's not just forestry.

Q. Yes, look I understand and I also understand the point you're making which I think is that unit price can work both ways, if it gets too high then that has a flow through into the economy. Of course if it gets too low then there's no incentive to plant trees.

A. Correct.

Q. And if you own a lot of forest then you have a lot of NZUs. If that price goes too low then actually has a significant impact on you just from a straight financial point of view.

A. At least on the value on the balance sheet, yes, that's right. You don't have to sell them of course but yes.

Q. Right but it does have that immediate cost that you have to incur.

A. Well it's got immediate effect on the balance sheet, yes.

Q. Yes and if it has a bearing on the decision to invest and plant trees then actually has an impact on that investment decision.

A. Certainly. Depending of course on what each individual potential investor thinks is going to happen. The current price is not necessarily the perfect predictor of, you know, what people's expectations are of where carbon prices are going.

Q. No, but it does make a difference if for example you're in an area where, like the Tai Rāwhiti and you're –

A. We've seen exactly that.

Q. – and you're endeavouring to attract investment, actually you need everything working in your favour, log price, good price for NZUs, all of those things actually are things that can contribute to an investment decision in an area that needs trees.

A. [Simon Mandal-Johnson] I think it's been controversial to say that a forestry decision will be impacted by the NZU price, yes.

Q. Yes. One thing about the ETS and we're dancing around it a little but the prices fluctuated a lot, the value of NZUs over time?

A. I mean, that's definitely factually true, there's a wide variety of prices.

Q. Yes. And I think you say somewhere in your evidence and I can't remember where that actually the fundamentals of the Emissions Trading Scheme have not changed since its introduction. Like, the basic premise of the scheme has remained consistent, is that fair?

A. [Bryan Smith] There are some quite important changes that have happened, the particularly delinking from the international markets.

Q. Yes.

A. So when it was first developed as you know, it was fully linked to international Kyoto markets, which meant the New Zealand price followed the supply of units and demand for units internationally.

Q. Yes.

A. That was a deliberate choice because of the nature of what the ETS was intended to do which was reflect – help New Zealand meet its Kyoto Protocol obligations and then future obligations, and then encourage obviously international effort to take on obligations and to join the emissions trading system and thereby spread out the amount of economies that were picking up climate change action and facing a carbon price. So that was a deliberate strategy and of course as you know what happened is 2012 rolled around, only Europe essentially signalled that it was intending to carry on the Kyoto Protocol. The United States **(inaudible 16:36:36 had/hadn't)** joined. I was part of the negotiations going into 2000 and – right up to Copenhagen, and it was pretty clear that developing countries weren't gonna pick up obligations at that point and, you know, the Kyoto market became really chaotic and

there was a lot of units and not a lot of demand chasing them. So prices fell.

Q. And as I understand it and this is the evidence of Mr Insley, at that time Māori were against continuing to allow international units. They thought that the ETS should be a domestic scheme.

A. Look, I can't recall. Can you recall?

[Simon Mandal-Johnson] I'd have to go back to his evidence. I don't – I recall there was discussion about the role of international link. I don't recall there being a unified position that they should be **(inaudible 16:37:24)** in 2011.

[Bryan Smith] I think there was a proposal though to delink and it was rejected I think by the government at the time.

Q. Yes. Well, his evidence is that there was a meeting with Minister Groser who I think was the Minister for Climate Change at that time where there were Māori representations that you should delink it because of the impact that it would have on the value of NZUs. So that's the decision that Minister Groser or whoever at that time rejected.

A. Yes, I remember reading that not that long ago.

Q. Yes.

A. That was – it wasn't Minister Groser's advice to Cabinet.

Q. Yes, and of course the impact of those changes that you talk about meant that the NZU price basically tanked for five years.

A. That and amongst other things but yes.

Q. Yes. It was in low single digits for a good period of time as I recall.

A. Dropped to $3 I think at the very lowest in 2013.

Q. And it talks doesn't it to the vulnerability of the ETS to, I feel, like the wider market, and also policy decisions that are being made in relation to these areas.

A. [Simon Mandal-Johnson] I think there I would start from the international context. So at that point we are in a world where the Kyoto Commitment Protocol period is coming to an end. There is global discussion about the Paris Agreement and the potential move towards a completely different system of managing a global climate response. The ETS was designed, as Mr Smith talked about, in the context of international linkage around

Kyoto and a capped New Zealand volume driven through Kyoto. Paris moved that constructed quite dramatically. My point is I think that would certainly be a bearing in price of the NZU at that point.

Q. Yes.

A. To your broader point, have prices been impacted by policy decisions? I think it would be fair to say that the simplistic answer is yes. The ETS is a regulated market. The NZU, the core of it only has value because it exists in legislation and the government has stated that an emitter must **(inaudible 16:39:40)** NZU when it produces an emission. To that extent, there is less tangibility **(inaudible 16:39:46)** oil or another large market. I think what we have seen is repeated governments have had to balance questions of the value of the unit, the value of policy stability with the opportunity to make improvements and the opportunity to strengthen the framework. And I point out that after the 2020 Amendment there was a significant and ongoing rise in the ETS price for some time – the NZU price there for some time.

Q. Yes.

A. I couldn't attribute that for certain, but it would be reasonable to say that was on the back of the policy members of the time.

Q. Yes and what we've seen since the announcements in 2025 is the opposite. So when those announcements came out there was a 10% reduction in the value of NZUs almost immediately. And over the weeks that followed, a further 20% reduction.

A. I can’t recall the exact number but those sound directionally correct. I would also point out there's been a significant appreciation in unit price this year.

Q. But what it points to though is the vulnerability of if I own NZUs and Māori own a lot of NZUs, when there is this policy tinkering that occurs, there is a cost that's borne and a cost is borne by the NZU owner. I mean, that’s unarguable, isn’t it?

A. [Bryan Smith] Yes, and there's a similar reduction and liabilities to or exposure to electricity prices, so…

Q. But the reduction in liabilities to your earlier point is only tangible if actually you're gonna be able to change your land use, otherwise it's just a straight cost.

A. Well it depends what you're exposed to, yes. I mean if you're exposed to electricity cost which most or every New Zealander is then, you know, it has a corresponding reduction.

Q. And so I understand that, and so there's interesting questions, so who makes these trade-offs? So we've talked about the strong interest that Māori have in the operation of the Emissions Trading Scheme, but actually the 2025 announcements there are a couple of policy papers that were written to say these are the Māori interests but actually no Māori person was talked to, unless perhaps they were unofficial and the decisions were just made. So the trade-offs weren't made by Māori, were they?

A. [Simon Mandal-Johnson] So on the specific question of the 2025 Review there was a particular decision that I remember advising the minister on as to the question of whether there should be consultation on that particular point. I think the broader point I'd say is there's been the ETS is governed by some, I would say, quite prescriptive statutory requirements for consultation. They were inserted as early as 2009. They have survived the duration of the history we've talked through and they have been expanding over time as well. In particular, the 2023 review which considered a question about the role of gross afforestation, net afforestation, there was extensive pre-engagement with Māori, the three groups I referred to in my summary, where they were given particular access to the document before it was public, the ability to shape the options and the options analysis that were being given. So I don't think it would be a fair characterisation to say there is a one-size-fits-all approach to how Māori have been engaged with the ETS over time. I think it'd be fair to say it varied.

Q. Yes, I think that's very fair. 2025 may be a more extreme example where there was no discussion at all for the reasons you've given, but whatever the reasons there was no discussion. That's unarguable, isn't it?

A. There was no public conversation for 2025.

Q. So the decision about where the different interests might be accommodated was a decision entirely made by officials and ministers?

A. Made by ministers and officials. We obviously advise ministers on these questions but we don't make any decisions.

Q. Yes, okay, that's fair. And that's the point, the Māori interests haven't changed. They've, as we've talked about, they've remained consistent. What has been inconsistent is the policy responses to them. I mean, that's a fair summary of what's happened over the duration of the ETS?

A. [Bryan Smith] Well, yes, I mean, you know, there is a political process as well and the government of the day will put out its political position and then follow through on that, on that political position as well. So you know, it's a balance between those things for sure.

Q. And my ultimate point was ultimately that there's a cost to that and that cost does get borne by Māori NZU owners and Māori communities that are interested in forestry investment. I don't wanna overstate it but, I mean, that is one of the costs that gets incurred.

A. Yes, potentially, yes. There's an impact for sure.
[Simon Mandal-Johnson] Noting of course the costs also go in the other direction. When you have rising NZU prices, electricity as we were saying becomes more expensive, as an example people on lower incomes, Māori disproportion **(inaudible 16:44:56)** effects in that group have no option but to **(inaudible 16:44:59)** the increasing NZU price harms their interest.

Q. I mean, perhaps, I mean, that's at least relevant if you consider the source of electricity and the extent to which there's a cost, and I mean I also don't want to overstate it but that's only a component of the electricity cost.

A. Electricity is one point of course but we can broaden the point to most forms of transport, most industrial energy prices which **(inaudible 16:45:31)** benefit from.

Q. I mean perhaps and there are also technologies aren't there which deal with, for example, geothermal electricity generation, which are designed to avoid the release carbon dioxide and other gases into the atmosphere. I mean I know this, I'm the Chairman of a generation company.

A. [Bryan Smith] Yes, you're probably also well aware that I think it's – I might be making this up but I think it's around 70% of the time the electricity prices, marginal electricity price is set by a fossil fuel firming fuel rather than a generation, so…

Q. Yes and It's driven by a whole series of things such as how full are the hydro lakes at any given moment in time.

A. Sure.

Q. So I mean while I take your point, we do need to see it in the context of a broader range of things that will have an impact on any of those matters at any particular moment in time.

A. [Simon Mandal-Johnson] One way of thinking about it perhaps is that the impacts of a falling price are quite easily observable on especially Māori forest owners who, in the best way, are an organised group who will make representations to the government and will make it quite clear if their interests are being harmed. The costs of a rising NZU price are felt broadly across the economy as people are exposed to greater costs through a variety of goods and services, that response is less clear and less organised.

Q. Yes and perhaps less clear because there are a range of things that will contribute to that cost, not just carbon.

A. Of course.

Q. So it's important to note it, not overstate it.

A. I don't believe it was in our evidence. Unfortunately, for 4,000-odd pages I believe there's more we could've given you. In the last two years we published fairly detailed analytical modelling of the impact of a marginal one dollar increase in the NZU and what that does for say costs of living prices, petrol prices and so on. We do that to try and give an indication of how the average person and in particular if there is – we then **(inaudible 16:47:48)** by income. **(inaudible 16:47:49)** we can show how a marginal change in the NZU price is going to impact that.

Q. Yes, And I think, I think – last question, Ma'am, I promise. The point I'm making just, because I'm not disagreeing with any of those things, but there is a certain amount of trade-off when it comes to setting price. But

there is a strong Māori interest in how that trade-off is made and where those things are set.

A. I think I would have to quibble with setting price, as I don't understand – I can't think of any point in the history of the ETS where the government has explicitly said it wants a given NZU price.

Q. Maybe if I put it another way. So for example, you make a decision to exclude agricultural emissions. So Māori have an interest in that as well, and but actually agricultural emissions are 50% of New Zealand's total emissions. So as soon as you exclude that if it's in a domestic market, you are excluding – you're halving the market for NZUs.

A. That's true.

Q. So that's a trade-off that's being made, that the politicians are deciding that we don't want to incur that cost so we're not going to do that so we're gonna reduce the market for these units, and that must inevitably affect the value of those units. That's a judgment that the politicians are making, no one else.

A. [Bryan Smith] Well, yes, but it's made considering a range of interests. So, I'm not taking – I'm not trying to give a position on whether or not I think that was the right decision or not, but hill country farming becomes decidedly marginal when fully exposed to the price of NZUs at $50 or $60 or something. So there are a range of interest in that, there are, including Māori who are serious, big farmers in this country. So there are trade-offs everywhere.

Q. But doesn't that point to the need for those that are most likely to be affected to be participants in that discussion, not just the recipients of a decision?

A. Well, I think Simon pointed out before that major changes in policy generally require engagement.

Q. But as we're seeing, not always.

A. [Simon Mandal-Johnson] So just on a narrow answer, technically speaking the legislative changes would not require consultation, regulatory changes do. That's only a technical answer though. I think your basic point is the government of the day who can control the political process in the House and can pass legislation ultimately can choose

whether the extent and the degree and the nature of that consultation. I think what we've tried to demonstrate, and if I just take my two examples of the 2023 and the 2025 review, the government had in those cases made that trade-off differently. What I think I would say is through the theme of what we have seen across all of these is a significant and deliberate attempt to try and evaluate the trade-offs and in particular, so in particular to weigh the importance of consultation, the importance of engagement with other benefits **(inaudible 16:51:17)** don't –

Q. So what interested me a little about your evidence is I don't see a lot of evidence of that explicit trade-off. I see the issues being raised and I see decisions being made, but I don't see someone sitting there saying this will have this effect on Māori forest owners. This will have this effect on Māori communities, this will have this effect on the investment in Māori forestry on the East Coast. So it's one thing to have a listen to a whole lot of things that are said to you. It's another thing to actually make it part of your decision-making process, isn't it.

A. I'm sure we can provide you a link to this document, I'll share it to you, but if I just think about the most recent one I was involved in in the middle of 2025, we consulted on the annual updates of the Emissions Trading Scheme settings and those questions you're just traversing there, the impact of different possible settings to **(inaudible 16:52:15)** extensively considered in our consultation material.

Q. Yes.

A. We explicitly asked in our consultation, have we got our analysis and our understanding right.

Q. And very happy to receive it. I mean, my comment really was that I just didn't see it going through the evidence, and if you're doing that, that's what you would expect, wouldn't you. Every time you make a change. You know what all of these impacts are, you should be thinking about these impacts when you make the change. If you're meeting your obligations to Māori in terms of the operation of the scheme.

A. I think it's clearly good policy design to have as much information as you can, as much analysis you can have open to you at any given point.

There are obviously trade-offs between doing more analysis and doing more conversation.

Q. Yes and when you have Treaty obligations then that should be one of the things at front of mind, shouldn't?

A. I think our evidence has **(inaudible 16:53:02)**.

Q. Yes, so the answer is yes then, it should be front of mind, and it should have an impact on the decision-making. I think that was a yes.

A. Yes, sorry, that was a yes.

JUDGE MILROY ADDRESSES MR MAHUIKA – TIME, QUESTIONS IN WRITING (16:53:26)

MR MAHUIKA:

Thank you very much for both of your evidence. Look, we ask you these questions because we're obliged to ask you the questions but we're grateful for you coming and presenting this evidence and taking this time. Thank you.

JUDGE MILROY ADDRESSES COUNSEL – BATTING ORDER (16:54:02)

(16:53) MR SCOTT FLETCHER TO SIMON MANDAL-JOHNSON, BRYAN SMITH:

Q. Tēnā kōrua and thank you very much for your evidence and your very helpful answers to the questions that've been asked so far. My name is Scott Fletcher and I'm acting for Donna Awatere-Huata. And to sort of pick up from where Mr Mahuika left off, I'm going to go through, recognising both the constraints of time and the very lengthy history you've covered on some of the more major economic changes to the ETS at the time, and then to touch on a couple of specific policy examples that you talk about in your brief. Before we get into that though I wanted to start with a hopefully really simple clarification question, you've probably already it, but you might've heard Mr Mahuika asking some questions of Rebecca Prebble yesterday and one of the things that she said in answer to a question from him was that it's not – I may have misunderstood her answer but it's not MfE policy to model the specific effects of the market

of particular policy changes. And at least from, I think you were saying it's not in your brief, Mr Mandal-Johnson, but you were suggesting you do in fact model at least the effect of the price change on communities for example, so you do do in-house modelling and things.

A. [Simon Mandal-Johnson] So unfortunately I had intended but wasn't able to listen to my colleague yesterday. I'm not exactly sure which your projections she's – what modelling she's referring to. What I can be completely clear on is we do an annual process for updating the volume of units in the market and the price floor, and there is a process for that annual update made by regulation. As part of doing that process, we run various analytical models which we then publish the results of. One of the outputs from that model is we can show the impact of changes in NZU price on individuals through major **(inaudible 16:56:28)** in terms of inflation or the consumer price index. We can also track the impact by quint – in quintile and various other analysis and that sort.

Q. When you're doing sort of say for example we jump back in time and this is a very simple one, probably wouldn't need that much modelling, but if you were to have a policy to have the one-for-two surrender obligation and you were thinking about publishing that policy, you would do internal modelling as to the effect of that policy on carbon price if it was enacted?

A. I mean, I've clearly never worked on that question of what to do **(inaudible 16:57:02)**.

Q. Yes, sure.

A. I think a general principle would be clearly if we are able to model something analytically we would want to do so.

Q. Okay, that's what I thought you would say, thank you.

A. Just one point of clarification there is we built the analytical model I refer to. I believe it was built in 2023, it might've been 2022, as a result of just broader changes and how we do climate modelling more generally. So some of the earlier work here we'll not be able to access that just because it won't have had access to the modelling that we created in that time.

Q. This might be outside of your knowledge but was there a predecessor modelling system or are you saying you really brought in all of this in 2022-2023?

A. I am going to assume that there was analytical modelling done prior but I wouldn't be able to talk to any of that.

Q. Sure, that's fine. So just to go through what I wanted to cover in terms of your brief, I'm gonna use a few times this basic idea of polluter pays to try and keep things as simple English as possible. I'm sure we'll get into a little bit more detail. But it's fair to say as a starting point and picking up from your discussions with Mr Mahuika that the effect of the ETS' ability to incentivise people to reduce their carbon emissions is going to depend on the price, the higher the price, the more people are incentivised to reduce emissions. That's the basic point of having a price, yes? Just like Mr Mahuika, I'll get you to say yes rather than nod just for the transcript.

A. Yes.

Q. Thank you.

A. Yes, yes.

Q. I know it's very unintuitive.

A. Sorry.

Q. It's a perfectly normal response. And as a broad proposition, if your policy leads to a reduction in the price of the NZU then that will have a corresponding reduction in the incentive to reduce emissions?

A. I think that would be a fair comment from first principles, yes.

Q. Yes.

A. In the same way, generally speaking, an increase in **(inaudible 16:58:58)**.

Q. So I'm gonna sort of – you won't need to go to the brief, but if we start from the basic idea, you say in 118 of the brief that the original intention of the ETS was that the price would be determined in the trading market, you're talking there about the international market, but that's purpose of having the ETS. But if we start to just break down a little exactly what we mean by that, throughout the ETS' history, one of the constants has always been industrial allocation. So there's always been a government policy that certain polluters should be given free credits that mean that they in effect of being subsidised if you wanna use that term, you might not.

A. I wouldn't use the term subsidised, but yes, clearly industrial allocation has been a long-standing **(inaudible 16:59:44)** to the scheme. Was it present at the very start?

[Bryan Smith] Yes it was.

[Simon Mandal-Johnson] Yes.

Q. And there's no plans to remove that I think under this government at least, the industrial allocation.

A. There is, there is.

Q. There is?

A. Industrial allocation is being phased down on a legislative timeline that was set out I believe in 2023 or maybe 2020, and has been gradually phased out over time.

Q. Okay.

A. Absolutely that hasn't been changed **(inaudible 17:00:09)**.

Q. And if I was to say to you, given that we were originally planning to phase those out by 2030, is that the current timeframe now or…

A. So the current legislative timeline that was agreed by the last government has a phased rate of reduction changing in 2030, a different rate in 2040, and a different rate after 2050 for the highest emitters.

Q. But as you say in your brief, and this might be more Mr Smith's memory, the original plan was to phase all industrial allocation out by 2030.

A. [Bryan Smith] From memory that's right, yes.

Q. Yes. And if we think about other examples of sort of refining this idea of polluter pays, obviously to pick up a phrase you used before when my friend was asking you questions, if we were talking about the one-for-two surrender obligation, that effectively means that you're paying half the price rather than the full price?

A. Yes.

Q. And this is where I think we might have to spend a little bit more time listening to what you were saying to Mr Mahuika. If you have a price cap on the NZU then it's probably more accurate to say the polluter pays a price up to a maximum the government deems let's just say acceptable rather than paying a price per say.

A. [Simon Mandal-Johnson] So an imposition of a price cap in a **(inaudible 17:01:33)** is a significant restriction on its ability to achieve price discovery. That's a fancy way of saying **(inaudible 17:01:36)**.

Q. Yes, and that's obviously quite orthodox economics but it does mean that when we talk about the phrase polluter pays we have to be quite careful that we're actually being a little bit more nuanced about what that actually looks like, recognising as you said before that this is a, I think your term was regulated market which I'll just use for simplicity's sake.

A. Clearly introducing a price cap, caps the – if that is in effect that does cap the amount of **(inaudible 17:02:03)**.

Q. And to pick up on what I was saying before about industrial allocation, one of the themes I think that comes through very clearly in your brief is over time there have been a number of policies like the price cap which had been introduced often as a short term measure, so for example that was in response to the GFC back in 2008 with a policy position that says, look we want this just for now and then it gets extended and extended again, and in the case of both industrial allocation and the price caps. industrial allocation will be phased out, the price cap has been phased out. But there's been a bit of a drag in policy terms to change – to getting rid of those or changing those particular things. Is that a fair characterisation of the history?

A. [Bryan Smith] Yes, I mean, It's a responsive political process, so yes.

Q. Sure, sure. So then to pick up on the theme that we're talking about, you were discussing with Mr Mahuika, the consistent theme in those interventions by the government has been to constrain or cap the NZU price. There hasn't been far, as far as I'm aware, any attempt to inflate it or increase it. There's no interventions in that way.

A. [Simon Mandal-Johnson] The introduction for the $25 cap was an attempt to mitigate potentially excessive prices in the GFC, that's definitely correct to the time. I am not able to think of any government policy that's tried to consciously to inflate the price, but I can think of several policies that had the effect of increasing the price. I draw you back to the government at its heart sees the Emissions Trading Scheme as a way of meeting its legislated kind of goals and targets. And whilst the cost of doing so is an

important and very central considerations and decisions, it also has to engage with the – what do we need to do to get to our target question.

Q. Sure but just to go back to your prior answer, you're with me that there hasn't been – we might've constrained the price, we haven't tried to inflate the price. That's the general trend of government intervention.

A. I don't recall any intervention that has had its primary goal as being to inflate price.

Q. So when we think about – I'll come back to the important point you want to talk about in terms of the goal of meeting emissions targets, but we have here then a government that is consistently intervening in the market and affecting supply and demand in order to reduce the price and that has, to go to the theme around trade-offs, that means you're constantly intervening on one particular – this is overly simplistic obviously and I don't wanna avoid the nuances, but you're constantly intervening to favour people who would be exposed to the NZU price rising as opposed to people who might benefit from it getting higher.

A. I don't think the history would bear out that **(inaudible 17:05:09)**. The two-for-one cap was abolished. Various changes in 2020 created strong incentives for the price to rise. In the 2023 review there was a deliberate – there were four options, all of which would have the net effect of increasing the price **(inaudible 17:05:24)**.

Q. And just remind me, those 2023 options, which ones were enacted by the current government?

A. None, the review was cancelled.

Q. Thanks. I think then one of the things that I wanted to empathise having listened to your exchanges with Mr Mahuika is that if there is a particular goal that a well working ETS – well and you might not accept it's the primary driver of the ETS and I understand that perspective. But if a well working ETS leads to a higher carbon price that benefits Māori then, that means the trade-off is presumably consistently being through history in favour of those who benefit from a lower price as opposed to those, often Māori investment forestry, who would benefit from a higher price?

A. I mean I think my point a second ago was almost the opposite. Both the 2020 review, the removal of the two-for-one cap, the 2023 review, those

three pieces, all of those had either, would have or did cause a significant increase in the price. The trade-off **(inaudible 17:06:33)** the other way, the way you're talking about. If I think about the 2023 review, there was significant commentary from Māori participants they had actively benefited from the policies of the previous years which had led to a rise in price and that they were keen for this to continue.

Q. Maybe we can park the debate here then.

JUDGE MILROY ADDRESSES REGISTRAR – MIC OF MR MANDAL-JOHNSON (17:06:59)

Q. I think maybe we – I'm conscious of my time and I don't wanna hurt your voice too much but to summarise back, what I think you were saying before her Honour asked about the microphone, you were saying that from your perspective there have been some interventions which have had the opposite effect to what I'm focusing on, but you did agree with me earlier that the 2023 policies which you were talking about weren't enacted, that review was cancelled.

A. [Simon Mandal-Johnson] Yes.

Q. I wanted to talk now a bit more about the current state of the market because I think we're all agreed from prior questioning that the basic design principles have been the same but, and perhaps this is just a function of having a limited number of pages but I think it's quite important that we discuss the cost containment reserve and the auctioning model because those are not discussed in much detail in your brief and they're quite, I think you'd agree with me, they're quite central to how the current ETS works.

A. Yes they are.

Q. So if we go into that, again thinking about ways in which the government's interventions and the ETS affect the price, the purpose of the cost containment reserve is to add more units to the supply if the price reaches a certain threshold, yes?

A. Yes.

Q. And the effect of that therefore is if you add more units to the supply when the price meets the certain threshold, you're depressing the price?

A. By increasing the volume, yes.

Q. Yes. And obviously the auction model that we now have works around an assumption of a minimum reserve price which presupposes – you might want to flesh out my characterisation here but presumably the government is saying that minimum price is the price that we think should be paid for emissions units and that's why we've set the reserve at that level.

A. Yes, no, I couldn't quite agree with that characterisation. The auction reserve price is set at the level of which the government will not auction units. As in, if it set a certain point it's saying that below that level we want auction units below that. That's not the same thing as saying we would want prices to be higher than that. We have explicitly said, we do not have a price policy. What we have got is a volume based measure. We have a policy which is designed to encourage – which is based on volume containment. And if the prices trading in a secondary market below the auction reserve price, then that is something which reflects the supply of **(inaudible 17:09:48)** in the secondary market.

Q. So if I reflect that back to you then, if people aren't buying units to jump ahead a little on my cross-examination in the auction, then you would see that as being a sign that there is sufficient units supply in the market, is that a fair characterisation or what you've just said?

A. That would be the standard explanation for why auctions **(inaudible 17:10:08)**, yes.

Q. So then this is where I think we're perhaps parting company. If the effect of people buying units at the auction's minimum price is to increase supply in the secondary market, then that will presumably increase supply in the secondary market and have a corresponding effect on price?

A. Sorry, could you just make that point again? I'm trying to follow you.

Q. That's all right. If we say, I think you agreed with me before that the current price is based on the number of units in supply in the market.

A. Yes, the current trading price in the secondary market, yes.

Q. Yes. And if you're saying to me that the minimum price is triggered presumably because at that point people are buying units from the government in the auction because there is a need for more units to be supplied in the market –

A. Yes.

Q. – then the government's position logically would be that if there are no more units entering the supply through the primary option process, the government's happy with the current level of supply?

A. I see where you're going. Whilst you could read it that way, I don't see that that's how we – that isn't certainly how we think about these questions normally. I don't – I'd want to think a bit more about what you're saying as a characterisation. It doesn't sound unreasonable to me but we would – it's not how we would typically characterise the role of the primary versus the secondary market.

Q. Maybe that's something I should follow up on a written question and if you wanna think about it or if –

A. Happy to do so.

Q. I might jump now just to zone out a little bit and to pick up on a conversation again you were having with Mr Mahuika. He put to you that as he saw it there wasn't much explicit consideration of trade-offs in the individual policy decisions throughout the history of the ETS, and I don't wanna reopen that today, but I did want to put a specific proposition to you in that theme. I think you accepted under cross from my friends that obviously it's very important with the ETS that market participants have certainty that has all the usual economic benefits and investment and such. The more the government makes policy decisions to change ETS settings, intervene in the ETS, change the rules of the game even if the basic structure remains the same, the more that creates uncertainty for the market participants, and it doesn't seem to me that when we think through the policy, trade-offs, individual junctures in that history, there's any or very few examples of officials stepping back and going well actually quite apart from the merits of this particular policy proposal, you're intervening in a market which is going to have corresponding effects on that broader question of certainty. Would you agree with that characterisation?

A. To a degree but not fully. I think what I differentiate is the market is receptive to stable predictable intervention. And in particular, the angle regulatory processes we talked about there for updating the volumes and

the cost containment reserve and the auction flaws, they are fairly well established now. They follow an established protocol, people expect them to come at a certain time, the timeline is set down in statute. I think as a rule of thumb, I think people find actually that predictability quite reassuring and some of the statute's safeguards around that regulatory process to work quite well. That said, I think the government would absolutely recognise that policy can shape ETS price. Seems uncontroversial from what we're saying. And if I think about some of the commitments that the government made in ERP2 around the basic stability of the scheme, some of the very core **(inaudible 17:13:59)** about logic, around no vintaging, around one ton being worth one ton, that was I think at its core an attempt to try and embed the foundations of the scheme. If I think back to when we were writing that chapter in the ETS in ERP2, the core of what we were trying to get to was to reassure the markets and to set out the government's clear position that it wasn't going to tinker with **(inaudible 17:14:24)** fundamentals.

Q. And it's a really helpful answer but just to pick out one particular part of it and to link into some of the things that Mr Smith has been saying, it's not just the predictability of things like when the auction occurs that affects certain **(inaudible 17:14:40)** market participants.

A. No, of course.

Q. It's the political changes also obviously have that effect too.

A. Yes, of course.

Q. And just before we move on to my next topic and to link again to the broader themes in this inquiry, one of the things I think is very clear that you've both accepted is that when we think about, to put it in very simple economic terms before I move on to the question, if someone has a poorly performing asset that's a land that has forestry for use in the ETS and they'd rather, to use the example from your brief, sell it and buy dairy land, they can do that but that's not really the context in this inquiry we're talking about in terms of Māori ownership of forestry. Maybe the yes again rather than the nod.

A. Sorry, yes, yes.

Q. And so, would you accept then that if we start from the assumption that Māori are disproportionally forestry owners, that compared to other market participants, their ability to exit the market or guard against those kinds of economic harms if the price drops or if it doesn't suit their particular circumstances is less than people who can simply walk away?

A. [Bryan Smith] I'm not sure how to answer that. I see where you're going with that question. I think sorry, I've lost my train of thought. Can you just put that question again?

Q. Let me break it down. You're with me that it's a different calculus for someone who has whakapapa to land to sell that land to, say, a Pākehā dairy farmer, just using your example from the brief.

A. Yes.

Q. So if we accept that Māori tend to be disproportionately invested in forestry and we also accept that the ETS is a volatile market that impose a lot of costs on people who are invested in it, it's not the same for Māori to walk away from that investment as it would be for somebody else?

A. Yes. Sorry, thank you for re-putting that question. The point is that anybody else will still – yes, I agree in principle with that. The other owner is still going to be affected though. I mean they're still going to wear a disp – you know, a hit from the economic impact of having to walk away from a –

Q. Sure.

A. So it's not a level playing field, I accept that, but it's still a playing field that affects all parties, all land owners.

[Simon Mandal-Johnson] All and perhaps just say the obvious that for post-'89 forestry, participation in the ETS is voluntary, and whilst there are – whilst there's clearly a significant avenue for Māori groups to use, the choice to engage is to the choice that's been made. I accept that's not the case obviously for pre-'90 forestry.

Q. Well let's just break that down because I thought you'd accepted what my friend Mr Mahuika was putting that a lot of the land that we're talking about that's owned by Māori realistically is in forestry or nothing else.

A. I accept the point that the ETS is incentivising many Māori groups to choose to invest in forestry, yes.

Q. I think the point's a little different, isn't it. If we're talking about, and Mr Mahuika's far more qualified to talk about Tai Rāwhiti than me, but you're not talking about prime dairy land in that part of the world, say, compared to the Waikato which is, you know, it's not as simple as just the same block of land can be in two different economic things.

A. Correct.

Q. Yes. I want to, just in case I run over time, briefly talk about, and yes I'll take you to paragraph 144 of your brief now. You have that paragraph I'm hoping?

A. Yes.

Q. Fantastic. So I'm curious about this particular paragraph and I'm not so interested in the specific idea of what Ngāi Tahu is talking about when we're getting to the original ETS but rather the broader principle that's being discussed here. So I'm not gonna ask you necessarily to say that you agree that the Crown owes an obligation to avoid imposing costs that de-value settlement assets. I know that's a pretty big question to ask, but you'd still be sympathetic to that proposition, at least in principle that the Crown should avoid devaluing settlement assets as a result of government policy?

A. [Bryan Smith] I think I would start and did with this advice. I think I would start with the reverse, which is that, you know, a government of the day will make any number of decisions that can potentially affect the asset – the value of particularly commercial assets that've been transferred in whatever sense right, transferred as a Treaty settlement. It can put up the minimum wage. And if you have bought assets and those assets are being operated by people who are on the minimum wage, that will affect the value of those assets. There's no question about that. If you put up the excise duty and you've bought an asset that relies on a lot of fuel, then that will affect the value of that asset. And so, the advice here was that when a Treaty – when a Treaty settlement picks up a commercial asset, it operates in the commercial world like every other commercial asset. So that was the starting point for this advice. Tempered by – or hang on a minute. If you've just transferred an asset and there's a major change that affects that asset, then the Crown should be thinking about,

okay, is that really fair? Does that really maintain the good faith that was going into that decision? How long is that time period? We don't know. And so that's what this advice is kind of saying. I know you didn't wanna talk about Ngāi Tahu specifically and I know this is ongoing litigation. But as it says here in the evidence, that was nearly 10 years between those two things happening.

Q. I'll come to the time point in a moment because I do want to discuss that but let's just break that answer down a little bit. So you'd agree with me if I said – when we're talking about the government's decision to raise the minimum wage that's likely in most economic contexts to be one of the constellation of factors that affects the commercial viability of whatever business it is that is affected by the minimum wage. What we're dealing with here is a situation where you might disagree with the cause and effect analytically. But I would've thought that the government's decisions around the carbon price have a far more direct influence on the value of forestry planted to benefit from that carbon price through NZUs than something like excise tax or the minimum wage. So we're dealing, I would've thought, here with a much sharper and closer causal relationship, yes?

A. Depending on the nature of the asset in this particular case when you're transferring forestry assets, yes that's probably true, yes.

Q. So if we focus, zero in on forestry assets then –

A. But can I just qualify that as well –

Q. Yes, sure.

A. – to say that that only relates to forestry assets that are exposed to that price. So if the forestry asset is generating revenue and you transferred post-89 forests and they could generate that revenue, that could be true, if you're transferring pre-1990 assets and it may actually work in reverse depending on how low the carbon price falls because it may give you additional flexibility to change land use.

Q. Well let’s just come back to that point again then. I think you, given how much you seem to recall about this, you'd probably know that a lot of the land that we're talking about that’s transferred as part of Treaty settlements is pre-1990 Crown Forest Land, yes?

A. Correct.

Q. So if we again zero in on that and recognise that's a significant portion of the kinds of assets that are being transferred as part of the settlement, then that means your – what we just discussed around the post-1989 position doesn't really apply, does it?

A. Correct.

Q. So then where I think you're driving in this paragraph and what you were talking about before in terms of the timing is that well it's a very different causal relationship if we're talking about Crown policy 10-15 years after a Treaty settlement as opposed to, say, a year afterwards.

A. That's the conclusion we reached in this statement, yes.

Q. What I think and I want to put to you is that's not a particularly logical proposition to take at the point that you've accepted that there are quite fundamental constraints within tikanga on the ability of Māori to change land use. And so, if you're in forestry and that's what you're given back as part of a Treaty settlement, it might be 10-15 multiple generations down the line, but that decision about having effects on the carbon price will continue to apply to that asset which continues to be held across that much longer timeframe.

A. Again, well two things. One, these are commercial assets that were transferred. My understanding is that they were sold quite quickly, not all but a sizeable chunk of these forest lands that were transferred were indeed sold. think somewhere around 90,000 hectares, somebody might correct me on that, from memory. You're stretching my memory a bit. But many tens of thousands of hectares of land that were transferred were sold straight away. And I don't know the rationale for that but I'm assuming Ngāi Tahu had strategic reasons to wanting to shuffle its portfolio around.

Q. I don't want to interrupt your answer, this is not a criticism to my friends, but are we talking about Ngāi Tahu specifically in your answer or are we talking about CNI?

A. I'm not talking about CNI because I don't recall what happened with the CNI lands, I don't understand that issue.

Q. I don't either, **(inaudible 17:25:21)** I'm just getting confused from two different directions.

A. But in terms of exposure to the carbon price, you could argue that these forests, because they're post-1989 – pre-1990 forests, aren't exposed to the carbon price except to the extent that there were compensation paid in the form of NZUs.

Q. Right. So to just put that back to you, what you are suggesting to me, I think may go to the beginning of your answer around some of these are commercial assets that are transferred, implicit in that I think is the recognition that that's not universally applicable. I don't think you feel comfortable assuming that it is universally the case that we're talking purely about commercial assets, particularly because I think you have said more than once and agreed with me that calling land a commercial asset and tikanga is probably a slight over simplification. At least it is broad proposition. So I think as I understand the balance of your answer is yes there might be some reasons to think that the effects is not significant in terms of the actual carbon price. But I think implicit in that is you're not disagreeing with me that even if we're talking 10-15 years down the line for assets that have transferred as part of the Treaty settlement and principle, the Crown's actions could reduce the value of that and the Crown should be quite careful given it's part of a settlement back and how it makes decisions around that.

A. I think the Crown should be cognisant of that but the Crown also needs to have room to operate and these are commercial assets. The lands – a decision was made to take these assets.

JUDGE MILROY:

Mr Fletcher, you've used the 10 minutes that Mr Sharp lent. So at this moment we've got five more minutes. I do note that Ms Rongo has five minutes' worth of questions. You might want to negotiate with other claimant counsel about getting further time for Thursday. But at this point I think we need to leave it and ask Ms Rongo to use the five minutes.

MS RONGO ADDRESSES JUDGE MILROY – QUESTIONS ON THURSDAY (17:27:47)

MR BENNION ADDRESSES JUDGE MILROY (17:28:12)

(17:28) MR BENNION TO SIMON MANDAL-JOHNSON, BRYAN SMITH:

Q. Thanks both of you for your evidence. Mr Smith, I seem to remember you from some Lake Horowhenua issues.

A. [Bryan Smith] Oh yes, that's right.

Q. So thanks both of you for your evidence and I know, yes, you know, long history with MfE and thanks for your work. But I guess I just want to pick up for the points that have just been put to you with some pre-1990 forest land issues. So we brought some evidence from the Pipiriki Incorporation which is in the upper Whanganui River, and they have a Muldoon "Think Big" forest planted up there on some very steep country. There was advice at the time that it was going to be a pretty tricky thing to pull off the slopes and it's almost un-harvestable. So just my questions were about that sort of situation. Just one thing that is happening for them up there is that they are – so as I understand it, they would have their land placed under the ETS, that wasn't voluntary but they were given some credits as compensation out of that. Was it 55 million credits or something set aside, yes?

A. Yes, I would think given you said it was a Muldoon era, they would've received somewhere around 60 units per hectare.

Q. Okay. And we know that doesn't necessarily cover the – that's just partial coverage for the units that might be required per hectare.

A. If they wanted to deforest that difficult country.

Q. Yes **(inaudible 17:30:04)**.

A. It doesn't sound like that difficult country is terribly well suited to deforest, but…

Q. No, in fact they can't get people even to come and make an economic go of it. So it's just gonna get wind thrown and things like that, so they've got that problem. But just a couple of things. One is they've – I couldn't put all the documents here because they're commercially sensitive but

they've done some leasing of credits for a period. Is the government across different financial arrangements? Because I was kind of – couldn't find any information about different options in that area, you know, what you can do with credits. You sort of have to go to private providers and see who's doing that, providing those services.

A. [Simon Mandal-Johnson] So my answer here will rapidly get quite technical and I will try and stop myself. In addition if we really have further questions, there are a particular teams in the Ministry who work on this question and we can do some follow ups. As a broad concept, the Crown takes possession that the secondary market – secondary market instruments such as leasing are matters between two private parties who choose to enter arrangements that they wish to do. There are proposals very recently under development, I believe in 2025, around some proposals to regulate. We call this market governance and I, again I'm a little hazy on the details here but they're around various obligations to disclose transactions, to disclose ownerships. It also comes down to the basic regulation of an NZU as a financial instrument versus not. To your broad question, is the Crown across that? I think it will be fair to say in broad terms if we heard about it anecdotally, yes. But conceptually, analytically no, we don't take – we don't systematically track third party arrangements of that sort.

Q. All right, and from your answers to my friend Mr Fletcher it seems to me for a pre-1990 forest of this kind, the governments need to be careful about its policy settings and the effect on the price of NZUs. It needs to be even more careful with the pre-1990 forest cases like this because there was never a choice by these owners to pick up even in settlement context to actually pick up forest land. They'd just got this problem that was lumped on them in the 1970s and now they have a brand new limitation on the land.

A. [Bryan Smith] Yes, I mean technically they have a new limitation on the land. In practical terms, the chances of that land being deforested seem virtually zero. I mean even if it gets wind thrown, it will regenerate. We've had this discussion in 2008 and it's been ongoing. So the chances, deforestation does not mean harvesting, it doesn't mean wind thrown, it

means you deliberately change land use to something like a pastoral land use. So yes, technically it's a limitation because they couldn't change that back to pasture. In practical terms, I don't know, I'm assuming they got 60 units or there abouts, you know, if they were worth $30 that's $1,800 a hectare. So there is an income stream. But the ETS can't correct the fact that the commercial forestry block wasn't a successful commercial forestry block. I mean, that's the core problem here right is that they can't harvest it and get 30 or $40,000 a hectare stumpage from a forestry block.

Q. Yes. Should I do one more question your Honour just before we close for the day? Yes, so just then I'm just looking at your response to the, they've got a problem – their sort of theory is can we try native, planting natives, and they've put up numbers to show what that sort of cost looks like. You've, at paragraph 297 of your evidence, you've got a response to the Parliamentary Commissioner's report of April 2025 about native forestry prioritisation, and you're saying – or the PCE said let's just shift incentives to favour native forests and your response at 297 is to say you're exploring ways to enhance incentives but the main one I think you talk about is the NZ ETS yield tables. So trying to find if there's more carbon in various different native species and updating the tables. Is there any serious thought beyond that in terms of actual financial assistance around native planting?

A. [Simon Mandal-Johnson] In large part, that's a question I encourage you to put to my friend Ms Collins in week 8, that you're getting there into essentially non-ETS forestry interventions.

Q. I apologise.

A. No, no, no. It confuses us too at some point. **(inaudible 17:35:22)**. The paragraph there is referring to what can be done within the ETS. Which **(inaudible 17:35:28)** predominately a technical questions as you say **(inaudible 17:35:29)**.

Q. Yes, okay, no, thank you. If I leave it there, thank you.

JUDGE MILROY:

Thank you. We'll close for the day, so I will just ask our kaumātua to close for us please, Matua Kevin.

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING ADJOURNS: 5.36 PM

HEARING RESUMES ON WEDNESDAY 18 MARCH 2026 AT 8.33 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

(08:31) JUDGE MILROY: (MIHI)

Tēnā koe Kevin, aku mihi mō te karakia tīmatanga. Welcome back. We've got a long day today but not as long as tomorrow so hopefully you'll keep your energy up. Our first witness is Professor Jane Kelsey.

(08:32) MS SYKES: (CALLS)

Mōrena e te tēpu, e te Taraipiunara. He nui aku whakaaro kia mihi atu ki a Professor Kelsey i tae mai ā-tinana ki te tautoko i ngā kerēme ō mātou nei tari. Ka huri te rākau ki a ia, engari i mua i tana tīmatanga, I'll just explain some housekeeping matters which may help us progress matters a bit faster.

In January of this year and following the adjournment of Professor Kelsey's evidence from November, we were lucky that the Crown over Christmas prepared a number of questions of clarification. We filed a document in response to those questions of clarification document #A142(f) and if we could have that up before she proceeds to open today. I've discussed this with my friend, and rather than go through all of the answers to the questions that were posited by the Crown, I've asked Professor Kelsey just to confirm some matters relating to some earlier briefs of evidence and amplify those that she would like today. We anticipate 15 to 20 minutes for that to occur and then after that has occurred my friend. There are a couple that have asked for cross-examination of Professor Kelsey that I think should go first and then will hand it to the Crown for their completion. They have estimated an hour of her time today to cross-examine, although that's a generous feeling I've been told from my friend for the Crown, Ma'am.

On that note, I don't want to go through; remember it took me 20 minutes to confirm all the evidence. She has got five affidavits. We've already confirmed that in November. This is the newest affidavit and Professor Kelsey will just confirm that the contents are true and correct and then go into her introductory comments. Kia ora.

(08:34) PROFESSOR JANE KELSEY: (MIHI, #A142-(f))

E ngā rangatira mā tēnā koutou. E te Karauna tēnā koutou. It is a pleasure to be back here in person. As counsel Ms Sykes has said, I'm Jane Kelsey. I have done and prepared a number of affidavits in this inquiry, which have set out my various qualifications so I don't intend to revisit those or to revisit my evidence in chief which we've traversed before.

The response, which is on the screen, to the Crown's questions are quite fulsome. There are a number of references with those, which I hope provide enough context in relation to the specific matters that are discussed there.

I have set them out in a format that I hope makes it easy to engage with, rather than in a narrative form.

When I did those responses, I didn't have the summaries from Mr Vitalis and Ms Hallum, so I am hoping that we can engage to some extent with matters that are also in their summaries that are not addressed in those responses. I do want to acknowledge especially Mr Vitalis in the work that he has done in responding to this because it's a very difficult time for him, and Ngā Toki Whakarururanga, whom I am the expert witness for today, he has done his very best within the paradigm that he works within to develop a very constructive relationship. I really want to acknowledge the efforts that he has made. So whatever critiques I make of that today are certainly not critiques of him and what he has been doing with Ngā Toki Whakarururanga.

I would, with the permission of the Tribunal, just like to touch on a very small number of matters. I may not take as long as Ms Sykes indicated but I think underpinning much of the detail that is in the various efforts is a conceptual

tension. I think that underpins the evidence that you'll hear from me and responses to cross-examination as well as the evidence from both Mr Vitalis and Ms Hallum.

When the initial evidence from Professor Barge was presented (and from India Logan-Riley), the underlying tensions between worldviews was absolutely critical and that tension Mr Vitalis acknowledges himself in his evidence saying: "It's difficult to reconcile them." Where I sit in that space is (as someone who has spent more decades of my life in the international trade and investment zone) seeing the economic growth model and the extractivist model that Professor Barge talks about are increasingly imploding and those tensions are reflected in the fact that Māori have raised issues around these agreements for decades.

What we see now is that tension really coming to the fore internationally as well as in Aotearoa. That is what I really want to stress just in these short contextual remarks. Because we are actually seeing not simply because of the US President and his actions but more generally, this economic growth and extractionist model being unsustainable as the world is almost consuming itself. We have a model that is built on a belief that that economic and extractionist approach can continue forever not only with the climate crisis but also now with the tensions that there are on geopolitics and the tensions that there are with demands for control over resources, such as critical minerals and deep sea mining and so on, which have almost overtaken the digital control of data in the digital space as the international point of contest.

The model that Mr Vitalis will talk about is a model that in many ways reflects what those of our generation knew as Tina, there is no alternative. All we can do is try to rescue this model. And so the arguments around the free trade and investment agreements at present are: "Yes, it is broken. It has got lots of tensions. But New Zealand is deeply invested in this. It is what our future holds and therefore we need to rescue it."

The argument that came from Ngā Toki Whakarururanga in the position put to the Tribunal was that there are always alternatives and there need to be alternatives and we need to be able to examine and put in place those alternatives. What does that alternative look like? It is based on the holistic worldview that has been presented by all of the witnesses from the claimants here to create a sustainable future in a time of climate crisis.

Whilst Mr Vitalis will be looking at the rescue mission, my concerns will be how do we transition from that broken model to a model that reflects te ao Māori and indigenous people's more generally, including the issues that the ICJ looked at in their advisory opinion. To do that, to come to Ms Hallum's evidence, the Crown cannot do it on its own sitting at the table because the Crown is wedded to that old model. And if there is going to be a transition, that transition has to be reflective of rangatiratanga, of bringing to the table te ao Māori responsibilities and duties not just rights and reconfiguring how Aotearoa and New Zealand presents itself and operates internationally. So that's the context that I wanted to set out before getting into, what we in trade terms call, the weeds of the agreements themselves.

(08:43) MS SYKES TO PROFESSOR JANE KELSEY:

Q. Before you start, you mentioned India Riley. Is that the affidavit evidence of India Mero Logan-Riley document #A024 that you were referring to?

A. Āe.

Q. Thank you. If you look at the questions in the table, can you take it to those parts of the table that you'd like to amplify, having now read the summaries of witnesses for the Crown and see if there's any particular matters that you would like to enlarge upon.

(08:44) PROFESSOR JANE KELSEY: (CONTINUES)

The one thing that surprised me, I suppose, in the questions from the Crown was that they were all focused on Investor-State Dispute Settlement not on the trade agreement issues, which are the ones that address those more paradigm matters. One of the points of discussion that we are having at present is when we look at these agreements in relation to the climate crisis and we are told that

trade agreements for example only deal with trade issues, there is a question firstly about what trade issues involve and then there is a question about even within those agreements do they deliver what they could deliver if there was a commitment to genuinely addressing the climate crisis.

And so I included, for example, a paper from Rory McLeod who is a former negotiator for the Crown. He was the intellectual property negotiator during the TPPA negotiations. He has been quite critical of the selective nature of the agreements when they are coming to deal for example with questions of subsidies. And if you look at the agriculture sector (and the agriculture sector that isn't part of the ETS and doesn't have to deal with the implicit subsidies that are provided to it for the contributions that it makes to the climate crisis, it doesn't have to pay for those. It doesn't have to alter its behaviour to address those. He says those kinds of subsidies are ones that could be addressed in agreements but because it is not convenient for states that are negotiating these agreements to have them they are not in there. They are outside the framework of what is considered to be the kind of subsidies that are addressed.

Likewise if we deal with fossil fuel subsidies. I am sure Mr Vitalis will talk about the agreement on climate change trade and sustainability. Having worked on that for a number of years, I am a bit cynical about the use of the term climate change in there. Because in the first place the Minister when he announced this said: “The benefits to New Zealand will be that we are able to export more forestry and wool products.” What has that got to do with climate change? But likewise, the part of that that deals with fossil fuel subsidies talks about harmful fossil fuel subsidies that are very narrowly defined. Now in this country we have just introduced a series of fossil fuel subsidies, for example, for gas exploration. They seem to fall outside this agreement.

So those are just a couple of examples of the difficulties that we have in seeing some of those agreements that claim to be addressing the climate crisis that in fact skirt around doing things that are meaningful because commercial interests will be adversely affected.

The EU FTA we are told in the enforceable environment chapter requires us to comply with our Paris Agreement obligations. Well, we have a government that has systematically not pursued that path. It has likewise adopted measures to attract investors here that lower our environmental standards and so on in breach of the agreements. So the argument that somehow these agreements require governments to comply is contradicted by what we are actually seeing in practice, including Minister Jones saying: “I'm really not that fussed if we breach the rules.”

I could give a number of other examples but for time purposes I won't. I would just say that, whilst we have problems with the model itself, especially when approaching it from a Tiriti o Waitangi perspective and Ngā Toki Whakarururanga has been done a number of Treaty of Waitangi assessments of these agreements, even within the agreements within that model the commercial interests take precedence over taking what action could be taken in relation to the climate crisis.

(08:49) MS SYKES TO PROFESSOR JANE KELSEY:

Q. Can I ask you to pause there –

A. Yes.

Q. – because you're starting to go a little bit longer than we thought.

A. I'm stopping here. I’m at the end, yes.

Q. Okay. If we go to pages 1 and 2 questions 1 and 2 you're quite happy. As I understood in my discussion with you, there's no further comments on question one and two. Is that correct?

A. That's correct. I would probably just add, and this will come to the Crown's question 6 as well, I think about what might be done about Investor-State Dispute Settlement. Australia has a policy similar to New Zealand's of no Investor-State Dispute Settlement in new agreements, but it has actually also got a policy of reviewing existing agreements to address Investor-State Dispute Settlement. Someone in Australia alerted me to this a couple of days ago, so there is just a short piece there that explains how they have gone about doing that, because the Crown was interested in what the suggestions are about what you

would do. So that is question one and two. The rest I think is largely explanatory.

The chilling effect issue as well about the possibility of government not proceeding with a proposed climate-related initiative, especially a Tiriti-based initiative because of potential investment disputes. Mr Vitalis said, in response to the Official Information Act request that I made, showed that there was no such advice. There actually were more documents from MBIE which I have referred to that actually show that in the original oil and gas ban offshore there was clearly advice similar to what then Climate Minister Shaw said that they had truncated the policy in response to concerns about Investor-State Dispute Settlement. So those documents have been provided

And likewise, Mr Vitalis's interpretation of the Wai 2522 Tribunal on the chilling effect of ISDS under the response to question 7 the Tribunal actually said: “Yes, it is an issue and it needs to be addressed. We don't accept the Crown's arguments that claimants fears in this regard are overstated. The risk extends beyond actual investment claims to the scope of regulatory chill.” So this has been an ongoing concern in the Tribunal hearings over some time that the risks of these very expensive prolonged investment agreements may be used by governments to pull back on what they should do in terms of Treaty compliance. Those are the main things I would highlight in those responses.

Q. Go to question 4 and there's a specific question there about the ISDS risk arise and commentary from the Wai 2522 Inquiry. Just for the record, I don't think any of these members were on that inquiry. Can you just elaborate what that inquiry was in very brief terms please?

A. Yes. The Wai 2522 was the inquiry on the Trans Pacific Partnership Agreement and a number of hearings. The first one was an urgency hearing but the most detailed one was the issue for hearing around electronic commerce and digital. That was the one where there was a trade expert also on the panel. That was where the issues of regulatory chill and the risks of ISDS were delved in considerable detail. The Tribunal agreed with the evidence that I had given on that, rather than the evidence that was provided for the Crown.

Q. If you could summarise, there's a series of questions that suggest that when the US pulled out of the Trans-Tasman Pacific Partnership that things improved than what you had been giving evidence about in Wai 2522 and your answer at 4.3 would suggest something different. Would you like to elaborate? Let us start that as incorrect.

A. New Zealand has a lot of agreements that preceded the CPTPP that have Investor-State Dispute Settlement in it without effective protections. The CPTPP we had government accepting that Investor-State Dispute Settlement posed risks. In 2017 that was reflected in a policy of no Investor-State Dispute Settlement and new agreements.

That was a problem because the TPPA which then became the CPTPP, I apologise for the acronyms, became a real problem because it was big capital exporting countries involved there. The government sought side agreement side letters not to use Investor-State Dispute Settlement. Only some countries agreed to it. Some countries didn't, including Japan and Canada, Singapore, Mexico. So that agreement remains problematic.

There is a review underway at present of the CPTPP. But my understanding is the parties have declined to further engage with reform of Investor-State Dispute Settlement.

In the meantime, other agreements have been reviewed, including an ASEAN-Australia-New Zealand one which is the one that Clive Palmer the billionaire Australian mining guy is suing Australia for many hundreds of billions of dollars on climate matters and that has been renewed with Investor-State Dispute Settlement still in it. There is a review as to ISDA that is supposed to take place two years after that last review. Australia has already sought submissions from people about how to reform that. I am told that New Zealand won't seek any submissions until the end of this year. New Zealand is kind of behind Australia which is behind a number of other countries in trying to deal with this problem.

Q. And before I leave that, because I am just conscious some of the panel don't know these acronyms, ISDS mean?

A. In international agreements most international agreements are state on state. The investment part of these agreements are either in free trade agreement, investment chapters, or standalone bilateral investment

treaties, the investor can sue the state. In international arbitral Tribunals that are largely ad hoc (and Crown may want to explore some of those), they are very controversial now. Countries have been withdrawing from them trying to reform them and those disputes UNCTAD, which is the main international body that deals with those, tracks known disputes because there's not a requirement to make them public in many instances so we have a lot of unknown ones. But increasingly, those disputes over the last few years have involved challenges by investors to climate and fossil fuel based policies and have claimed billions of dollars. So the Australia and Clive Palmer for example has four disputes underway seeking around $300-plus billion against the Australian Government and four disputes. When we talk about the chilling effect, the chilling effect is what the threat of those kind of disputes is for governments that proceed with climate policies.

Q. Can I take you to question 7.2. After reading the summary, are you any clearer as to what Mr Vitalis' position is on ISDA? You say in response to the Crown's questions: "I am unclear whether he Mr Vitalis shares the view of successive governments." Would you like to enlarge on that please?

A. Well, I rather feel for Mr Vitalis here, because on the one hand he has to defend the existing agreements by saying: "Nothing to see here. There's no problem," at the same time as we have successive governments that have said: "No ISDS because of the potential legal and fiscal and reputational risks that can come out from such disputes." On the one hand, he has to defend the status quo and on the other hand, he points to the fact that we don't have them in future agreements as showing that there's not a problem.

Q. My last question is from 8.1, and you've read both the summary of Ms Hallum and Mr Vitalis. Would you like to enlarge in those comments there? I think it very much sits with some of the conceptual issues you raise when you posited the context of your testimony today. But would you like to enlarge, having read those summaries now, on those matters?

A. Yes. Leaving aside the question of international law and who makes international law, which there is a long history about being basically

Western imperial powers making international law, setting that side, it is correct that at present the state needs to speak externally with one voice. The question is what is that voice and does that voice only have to be the voice of the Crown which the Crown claims is a consequence of Crown prerogative rights that arise from Crown sovereignty without saying where the Crown secured sovereignty from. If we go back to Wai 1040 and there was no cession of sovereignty in 1840, and if we look at the Tribunal reports that have talked about the Crown's exercise of a role in the international domain, it has been a role that is largely sourced back in the 1840 context of dealing with foreign entities in defence purposes and threats from foreign countries not international trade and investment agreements that are very expansive that put constraints on all sorts of things that the Crown can do.

If we are going to look at, firstly, where did the Crown claim this prerogative from. That is a question. If we are looking at whether the response and 1840 of rangatira saying: “The Crown can do these things we see in the Tribunal.” The Tribunal has said: “Yes, but in ways that retain and protect rangatiratanga,” not that gives sovereignty to the Crown to do whatever it wants, including overriding Te Tiriti o Waitangi. Now these issues have been addressed as well in Wai 2522 TPPA, addressed in the Constitutional Kaupapa Inquiry. But here the question is if New Zealand speaks with one voice internationally does that voice have to be only the Crown or how does it involve rangatiratanga in the exercise of international relations.

Quite a lot of work that we have done with Moana Jackson over time, he says: “Mana would never have been ceded to the Crown to treat with other polities.” Which takes me full circle to where I started which is that if we are going to move out of this paradigm and deal with a paradigm that can take us into the future that is consistent with Te Tiriti o Waitangi and that we all benefit from, then it cannot just be the Crown at the table. There has to be some form of co-governance relationship that involves rangatiratanga and kāwanatanga operating internationally in an agreed way. The Wai 262 Tribunal which I note is Ms Hallum has actually corrected herself, did say: “There will be things that are so important to

Māori that Māori need to have an agreed consensus position with the Crown and there are some things so important that in fact Māori should be delegated the authority to be the voice in the international arena." So that set of issues about Treaty-making prerogative is kind of at the very core of how you address and redress these questions.

Q. Just for the record, you referred to Ms Hallum. Are you referring to her summary evidence and her discussions at paragraphs 18 and succeeding around Māori engagement with respect to international treaties and her comments there?

A. Yes, and her affidavit.

Q. Yes, and her affidavit. Have you got any further comments? That is all I wished to clarify for you. I believe there are a couple of counsel on the claimant side which have some questions. Oranganui Law I know does.

QUESTIONS FROM CLAIMANT COUNSEL – NIL

(09:05) MR PREBBLE TO PROFESSOR JANE KELSEY:

Q. Tēnā koe Professor Kelsey. Ko Jeremy Prebble tōku ingoa. Kei konei ahau mō te Karauna. Thank you very much for all of the evidence that you have filed. It is a privilege to listen to you and to listen to your very insightful and obviously deep understanding of these issues. With that in mind, I come with a far lesser understanding of these issues. I will ask you probably some prosaic more basic questions for you. Some building on the table but other ones not in the table itself.

If I start, I just wanted to talk a little bit about the economic benefits of trade. To do that, I just wanted to go to a document that is one of the documents referred to in Mr Vitalis' evidence. Hopefully if we can be given sharing permissions, we can bring that up on the screen. It is at MFAT.003.0839.

A. Do you have a paragraph in this affidavit?

Q. I can find that for you. In the meantime, I just wouldn't mind taking it to the actual document but I'll come back to that.

A. Okay.

Q. This is a MFAT working paper. If you go to the front page of that document, Employment in New Zealand providing goods and services for export. It is a document that is now a little bit dated. It is from 2018. This is by Peter Bailey and Dean Ford. If we go down to the fourth page of this document, I really just wanted to take you to the table that is there where it looks at export employment. It has got export employment estimates and in that top column you'll see – it may be a little bit hard but hopefully it can be enlarged on the screen – across the top there you'll see agriculture, forestry, and fisheries. Really it's just an estimate of the employment in those particular areas. You'll be aware, I assume, that we've heard quite a lot of evidence about Māori being heavily invested and involved in those three industries. I don't think that's a particularly controversial proposition. Do you agree with that?

A. Yes.

Q. As I understand it, in terms of this table the difference between industry, employment, and export employment is that one is the total number of people working in a sector regardless of output, whereas the export employment is specific to export. Are you familiar with those metrics or is this foreign?

A. Not these specifically but generally, yes.

Q. Okay. Would you agree that export employment is therefore to a large extent reliant on New Zealand's trade agreements?

A. There is a difficulty in conflating the two but let me keep it at a high level. I know you probably want a yes or no. But there are a couple of elements to that. One is where Māori are in the chain there. So if we look at forestry, for example, most of the forestry exports are whole logs (inaudible 09:10:01) which carry with them all sorts of other difficulties in the climate context as we have seen and as the evidence before the Tribunal has shown with the forestry industry. But also that there have been long standing issues on employment in the forestry context, likewise in terms of fisheries and so on. think we need to be nuanced when we are actually looking at where Māori are in those chains, what the dynamics have been over time, but also how sustainable they are. Because if we look at mining for example, or we look at forestry, or we

look at some of the water intensive, fertiliser intensive, agriculture and so on and we take the more holistic approach to those looking just at employment issues doesn't deal with the kind of issues that are before the Tribunal here. It comes back to that economic growth model. I know you're just talking about employment there –

Q. Yes.

A. – so if you want to talk about other things, then I'll-

Q. No that's fine. I have some further questions but carry on.

A. So when we have been looking at those export industries (and we are seeing this now especially with the energy crisis, the oil crisis and the supply chains issues), New Zealand's agricultural exports are basically low value added exports that rely on international supply chain that relies on maritime transport that relies on functions across all of the countries that are a part of that supply chain. When I was talking before about the model being broken, the model based on the economics of comparative advantage and so on is a model that is deeply problematic as we are seeing now. So yes, the New Zealand economy has become very immersed in this model and Māori, especially through a number of the settlements, have become significant players in a number of those.

Q. Particularly, for example, fisheries where they are significant owners of quota.

A. Yes, but where quite often they are not the ones that are the main beneficiaries of the fishing industry either. It varies and there is a question of how sustainable the fisheries. I do work with the Pacific Island countries especially and what the issues around the climate impacts are on the sustainability of the fisheries and so on. Again, it is putting these in a context.

Q. Sure. No thank you for those answers. I guess attempting to be at that high level, and you may well tell me it needs to be more context driven, but my understanding from the evidence of Mr Vitalis is that the rules we negotiate and the market access we secure through trade agreements at least is relevant to New Zealand's prosperity in terms of these kinds of markets. Is that a fair proposition?

A. I would say that a large part of the New Zealand economy over the last 30 to 40 years has been directed to that model and some of us consider that to be a significant overdependency, especially in relation to the Chinese market. But the productivity commission as well, under the previous government, produced a report that said: “We need to have more domestic sustainability of our own production and not just be a quite vulnerable part of an international supply chain.” So that's part of that shifting dynamic that we are seeing at present.

Q. Yes. No that’s helpful. And what I'm taking from your answers is you don't necessarily disagree that we are obviously heavily invested in these models. It's more that you see or take the viewpoint that they're not sustainable and that we need to transition away from them is what I'm effectively hearing. That's a fair summary of what you're saying.

A. Yes, and if we're looking at a Tiriti based response to the climate crisis, we absolutely need to do that. But I would add one thing which is this notion of a rules based system (and I'm going to be talking about it at the WTO in Cameroon next week) is that the rules based system was a set of rules put in place by big powers in the previous era of making the rules. Those rules don't work for them anymore so they are changing the rules. So there's a question and this is what I meant about Mr Vitalis trying to rescue the system and some of us saying: “The system is actually broken and we need to think differently.”

Q. No, thank you again. I'm sure he can explain whether or not he's rescuing the system or not.

A. Yes.

Q. But I think really the proposition from your answers that I was essentially looking for is while we, in your view, obviously need to move away from it, I think you'd accept we need to do it in a way that is very mindful of the fact that Māori are heavily invested in these sectors.

A. Yes. That transition process though is I think a key question in itself and it is really important in the climate context. One of the kaihautū in Ngā Toki Whakarururanga on the Board, Jessica Hutchings, is involved with Te Waka Kaiora and the Hua Parakore food production systems, so how do we do agriculture differently when Māori have had systems in

place for many years that aren't vulnerable to the whims of the economic growth model and so on and can provide an alternative. How do we move from where we are now to something more sustainable is a critically important question that goes to our te ao Māori approach to this.

Q. Thank you. I might just move on now to that table. Obviously, it has got our questions which, as you've reflected back to us, is focused on ISDS but I did want to take you to a question in there which is towards the end. I think it is question 6 where we said similarly at 49 onwards you take issue with Mr Vitalis' evidence that the ISDS disputes from Clive Palmer are unlikely to be an issue for New Zealand. Given your concerns and given ISDS clauses are no longer in international agreements, what are you hoping to secure from the Tribunal with this evidence? I think you were thankful for that answer and then provided a question –

A. Yes.

Q. – I should say and provided a number of responses. I just had a couple of them that I wanted to ask you questions about. The first one withdrawing from the Hong Kong and China bilateral investor treaties which you say: "To which there are no legal obstacles." My question really is that in suggesting that what are the economic consequences of that and have you considered that?

A. Yes, in that piece from the Australians, you will see the Australians actually have withdrawn from there bilateral investment treaties with China and Hong Kong. They have an FTA with China that has ISDS in it but which is not as raw as the old bilateral investment treaties which are kind of a similar vintage to New Zealand. They have shown it is possible. I am aware that Mr Vitalis was involved in attempting to do that with I think the Hong Kong one. It is quite possible for New Zealand unilaterally to withdraw from that.

Q. I guess my question was, because I didn't see it here but you may have considered it, what downstream practical implications would it have in your view to our reputation as a trading partner?

A. None.

Q. Right.

A. If other countries can do it, and Australia can do it, and countries internationally, including many in Europe, are withdrawing from old bilateral investment treaties. It is actually quite common now and UNCTAD has been encouraging countries to do that, so I don't see any particular-

Q. Or economic consequence.

A. No.

Q. Right.

A. No. Unfortunately, ISDS is in the China agreement as well and someone I was talking to it a conference last week was saying: "Well, actually, you've got ISDS with China and ISDS with Japan that basically covers the bases, which wasn't an answer that made me very happy. But those ones if we're going in a sequence of which are the very worst, there's not even a Treaty reference to te Tiriti in there. There is a-

Q. For these earlier agreements.

A. For these earlier ones. Very narrow health exception in there. Sorry, I just saw Mr Vitalis has snuck into the room. I did acknowledge you previously. Yes, we are on kind of a spectrum of how bad agreements are and those ones are bad. Australia has exited from them, as have other countries of similar ones. I don't see any economic consequences for New Zealand to do that. But I'm sure Mr Vitalis can explain why it's not happened.

Q. So any economic or any implications for our trade reputation generally you say is none.

A. No.

Q. Okay.

A. Withdrawal from those old bits is actively encouraged by UNCTAD.

Q. I thank you for those answers. That's very clear. If I move down to (iv) you say: "We should insist that the Tiriti protection carve out recent co-designed by Ngā Toki Whakarururanga and MFAT is included in all new agreements so as to provide genuine protection for Tiriti consistent measures and actions by the Crown and to mandate to seek to insert it in existing agreements." I was just really picking up on that word "insist" where you say that: "We should insist that this new clause that has been

co-designed is included in all new agreements." By that, I take you are suggesting that that is a bottom line for New Zealand.

A. That is certainly the position that I would take and position that Ngā Toki Whakarururanga I know has taken. What is the point of having a new Tiriti protection that drops the problems with the 2001, which is limited to measures that provide more favourable treatment that is subject to what we call the chapeau, which is another condition, which is an exception that you have to plead as opposed to a carve out that takes it out at the scope. And that addresses the problem that was in the 2522 inquiry that it was unclear whether an Investment Tribunal had to take New Zealand's interpretation of its Treaty obligations or could in fact re-examine them.

Q. Yes, I was going to come on to just a couple of remarks about that Tribunal report. But I guess when you said "you would" does that mean if you were in the position of negotiating a new fair trade agreement or having to deal with something where you wanted to include this clause, you would say that it should be a bottom line for that negotiation.

A. Yes, although they are free trade agreements not fair trade agreements.

Q. I'm sorry, if you would just agree –

A. Yes.

Q. – negotiating in these.

A. Yes, because I approach this from a Tiriti o Waitangi perspective. I don't think that those FTAs should in any way be permitted to override the Crown's obligations to Te Tiriti o Waitangi. There is a real dilemma, and I was discussing this – I sound like I'm name dropping – we did a session with the Ontario Chiefs a couple of weeks ago because they are reviewing their US-Mexico-Canada Agreement and what the protection should be in there and a part of it was how to ensure that there are genuine protections in there that aren't traded off for exports of motor vehicles or dairy products, yes. That comes to the core of this is which Treaty is more important. What is the point of us having, in a very constructive dialogue with MFAT, developed this new gold standard protection if the other party can just say: "No, we're not going to do it."

Q. Yes, and I think that's really where I was going with my questions. In that, obviously, a party that you are negotiating with could take that position –

A. Has.

Q. – and from your answers I hear you would say: “It is a take it or leave it,” type thing. I guess I'm just putting to you that often negotiations – not having been personally involved in these but they do, as I understand it, require a degree of compromise and we have got to consider what are we trying to achieve with this negotiation, how hard do we want to push on certain things. And so isn't it potentially unrealistic to take a viewpoint that: “No matter how important the agreement is we are going to have that as a bottom line?”

A. That depends on what you see as more important. There are discussions with MFAT at present about how to deal with this in negotiations, yes. For example, it is known that the India FTA they said no. The question is then, where does that leave us? Do you try to put protections in different parts of the agreement, like not having Investor-State Dispute Settlement, which is the UK and the EU and the UAE and India but doesn't help you deal with the intellectual property chapter. It doesn't help you deal with a number of the other areas that of critical importance to Māori.

I go back to when the Tribunal was saying: “There are some things that are so important for Māori that the Crown needs to agree with Māori on the position to be taken or should delegate the role in the negotiations to them.” Having said that, I don't underestimate the issues, nor do I underestimate the vigour with which in very recent years the Crown has sought to advance some of those questions and Ministers and some ministers in some instances. But the question is who makes those decisions.

Q. So I'm picking up there though that or you're drawing a distinction, if you like, between the process of reaching a position, which you're saying should involve the Treaty partner being at the table and almost like as a process point reaching a position to take for negotiating what we include, but there's also the point of do we take a bottom line or do we take a hard line on this particular clause in every agreement. I think on that you're also saying: “Potentially, but it does depend to some extent on the nature

of what is being negotiated and the kind of what you can secure as an overall package." Is that fair?

A. The process and the outcome aren't distinct, yes.

Q. No, of course, they're overlapping.

A. Yes.

Q. But I'm just trying to understand –

A. Yes.

Q. – what your answer is saying. I think clearly understood the point about all Māori should be at the table for a negotiation. But in terms of bottom lines and so forth, I do think you're accepting, are you not, that whether or not something like this should be a bottom line depends upon looking at the package as a whole and what you're prepared to compromise on.

A. I think it does depend on context of a negotiation but I think the context I would think about is probably different from the one you're thinking. I'm thinking if there's a negotiation with the Pacific Island countries, yes, there's a different set of considerations there. When we're dealing with an entity like the World Trade Organisation the position that might be taken there that has 165 countries saying: "No," there is then a pretty fundamental question, which has arisen in the case of some plurilateral agreements recently, about whether New Zealand should be a party to those or not. Those decisions have been made by the Crown alone.

Q. Again, that point about who makes that decision is key or in your view is a critical one. But also from what I'm picking up in your answers there we aren't always a big player and, in fact, we could be a very, very small player in part of an overall negotiation. I think that's obviously fair, isn't it?

A. Yes. It does depend on what the issues are in a negotiation. Some negotiations are quite narrow and some negotiations that involve matters of real significance to Māori I would say the primacy of ensuring that protection is critically important.

Q. No, thank you. I mean I think your answers demonstrate the complexity that those who are tasked with this negotiation have to grapple with really. I just had some questions now on sovereignty in New Zealand's constitution. Bravely, I will try and go there with you. I asked you

questions on that in our table briefly about what were you meaning when you're talking about federal or a similar structure for New Zealand's constitutional state and you answered that at question 8 in the table.

A. Yes.

Q. And in doing that, you cite the work of Dr Moana Jackson, who you have already cited this morning, to make clear that Māori never gave the Crown their intrinsic mana or rangatiratanga to make international treaties with other polities and you noted that those arguments had been set out in a paper by Ngā Toki Whakarururanga which commissioned you to write a paper on mana in the international treating-making which is on the record, as I understand it, in Wai 3300 which is the Constitutional Inquiry.

A. Yes.

Q. You are obviously familiar with that work that you prepared which I think it is entitled “Mana and Constitutional Transformation”. I had a look at that and just had a few questions really on this topic. Because as I read that paper it discusses the status of hapū at the time the Treaty was entered into. That is one of the things it covers, right.

A. Yes.

Q. No tricks here.

A. No, I’m just listening.

Q. You assert that the Crown has unilaterally, I think is the way I see it, assumed sovereignty from 1840 onwards. Is that fair?

A. Yes.

Q. And so I take from your proposition and argument in the paper, which is broadly your position, that the Crown has wrongly assumed and continued to assert sovereignty in a modern day setting.

A. Yes.

Q. And so I understand you to argue that that is essentially a fundamental breach of the Treaty as understood, particularly now that we have the more recent 1040 Inquiry report –

A. Yes.

Q. – and I think you are therefore saying: “Therefore, fundamentally, our constitutional frameworks and institution should change.”

A. Yes.

Q. Yes. Therefore, you are really in that paper making an argument for constitutional transformation. Correct me if I'm being unfair here but, you wouldn't therefore accept currently the legitimacy of New Zealand's Government. Is that fair?

A. Yes, that's fair. Unitary Crown sovereignty, yes.

Q. By that, I also mean the constitutional arrangements we've got. So, with the legislature, the executive, the judiciary, you don't accept it as it is currently formulated. Separation of powers, parliamentary sovereignty, those concepts are ones that you would have reformed.

A. Yes, I think they reflect what Moana Jackson referred to as the concept sites and specifics of power that the Crown has established to the exclusion of the concept sites and specifics of power that was anticipated in He Whakaputanga and in Te Tiriti o Waitangi.

Q. Yes. And so there is that point of what the Tribunal has found as at 1840 and then what has happened since and I guess your broad proposition is that what has happened since is fundamentally not what was agreed in 1840 and therefore you don't accept the legitimacy of the current constitutional frameworks that we have is really what your position is here.

A. Yes, that’s correct. I don't think it reflects the rangatiratanga kāwanatanga relationship that was anticipated.

Q. And that, as I understand it, is not dissimilar to Dr Moana Jackson’s views as I read his evidence in Wai 2522 as well.

A. Yes, he and I worked together for many years.

A. And really, I wanted to come back to this inquiry because this inquiry, which you may or may not be familiar with the scope of this inquiry, but it is about considering how the government has responded to climate change and at least our understanding is a contemporary focus, forward-looking focus of this inquiry as to how the Crown is responding, its actions and omissions in dealing with the threat of climate change. Are you aware of that being the broad scope of this inquiry?

A. Yes. All the contemporary inquiries that I have been engaged with have, however, raised the premises on which the contemporary discussions occur, whether it was the Treaty principles and regulatory standards or the Tūhoe Urewera or Wai 1040 or whatever and so taking the

contemporary constitutional framework asserted by the Crown does not make-

Q. No, I'm not seeking to say your issues are not legitimate ones to raise here. I guess from what I've heard you were essentially saying to the Tribunal that you would like the Tribunal in this setting to make a finding as to whether or not over the last 170-odd years the Crown has breached the Treaty through assuming sovereignty is to then make a finding as to whether or not, for example, entering into international agreements as it currently stands the paradigm is wrong. I think that's what you were essentially asking.

A. Yes, I'm challenging the notion of the Crown prerogative that a Tiriti-making process that is consistent with He Whakaputanga me Te Tiriti o Waitangi needs to involve a relationship of rangatiratanga and kāwanatanga that is not what is reflected in the Crown prerogative and dealing with both free trade and investment agreements and dealing with the climate context it needs to become constitutionally legitimate.

Q. Because at the moment we are proceeding on an understanding or a framework that you don't agree with, so I think that's very clear. I guess these are, putting it mildly, very big questions –

A. Yes.

Q. – and I just put it to you that this kind of debate and I guess the need for evidence and discourse and consideration of these issues is also on the table, as I understand it, in the Wai 3300 inquiry which is the Constitutional Inquiry.

A. Yes, it is. But it is also quite specific to hear, for example, when I raised in my evidence this review of the International Treaty-making process where MFAT did its own thing. Didn't tell, as far as I'm aware, any Māori. Excluded any question of Crown prerogative, even though it acknowledge that Māori would be unhappy with not doing so. And became a kind of self-justifying review that tinkered at the edges. So that is a kind of micro element of that bigger question that is very specific to here.

Q. Yes, and I guess I just put it to you that to make these changes, obviously, there would need to be decisions at the very least by Cabinet but most likely decisions in legislation, right. To change the current frameworks, it

would be a significant constitutional discussion that would need to occur is really what I think would be realistic as to changing our current settings. Is that fair?

A. It is certainly what I would like to see. But at the same time, even the *Wai 262* report, which preceded the Wai 1040 findings on cession of sovereignty, said that there are matters of such significance to Māori that Māori need to be at the table or should have delegated authority, yes. And so the notion that the Crown and the Cabinet decide for themselves whether they are going to want to share power is it kind of a circular problem and it is very disappointing that there has been no attempt to engage with that. I'm going back full circle to where I started, if we're going to move paradigms, if we're actually going to deal with the fact that the current model is broken, then there needs to be a willingness to engage with that.

Q. No, thank you for your answers.

MR PREBBLE ADDRESSES JUDGE MILROY – MICRO BREAK (09:39:34)

JUDGE MILROY ADDRESSES CROWN/CLAIMANT COUNSEL – TIMETABLE UPDATE (09:40:21)

HEARING ADJOURNS: 9.41 AM

HEARING RESUMES: 9.44 AM

(09:44) MR PREBBLE TO PROFESSOR JANE KELSEY: (CONTINUES)

Q. So you talked about it this morning about I guess the environmental measures and you made a few points about, almost from a practical perspective, how some of the provisions in our FTAs were not sufficient or didn't go far enough and also actions of Ministers, you mentioned Minister Jones and the decision on mining and concerns around that, and I just did want to ask you a few hopefully brief questions on this. So at paragraph 30 of your affidavit in reply to the Crown's evidence, which is the 12 November affidavit, you may not need to go there, but you note in

your analysis of a number of the pro-environment measures in recent trade agreements is that you are calling them mostly soft measures which have minimal or substantive effect. I'm not wanting to quibble about your kind of terminology of them, rather whether or not you would agree or accept that soft measures, as you call them, maybe a useful starting point for over time harder or more binding obligations to form in the future and whether or not you would accept there is merit at least in taking a longer view of some of these issues.

A. I have a different view of that from what Mr Vitalis was suggesting in his summary. I view them as largely, I was going to say window dressing that's not the right word, an attempt to legitimise and address criticisms without actually addressing what the causes of the problems and the issues are. We have had this issue about including a number of Māori terms in provisions that are actually anathema to those Māori terms. We have had difficulties when negotiators have included language about partnerships and dialogue and so on that are then totally ignored in processes such as the critical minerals dialogue under IPEF and because the language is soft compared to the hard language in some of the agreements – IPEF itself is a soft language – but if we look at that forming the basis, for example, some of the negotiations on critical minerals with the US and others, there ain't nothing on indigenous peoples and indigenous rights and so on. All of that goes and it tends in fact to go backwards. So I don't think we can make the kind of assumptions that you've got a linear process from something soft that then becomes something substantive.

Q. Sure. Okay, no, thank you and that's clear. Related to this and you have commented on them, there have been outcomes achieved in the recent FTA negotiations concerning climate change and you referred I think in your opening remarks to the agreement on climate change trade and sustainability. New Zealand is also there for our free trade agreements with the EU in the UK. As you are aware, for example, the NZEU FTA Article 19.6 requires New Zealand in the EU to effectively implement the Paris Agreement. You are live to that provision obviously.

A. Yes.

Q. Yes. Do you agree that that contains the highest standard of climate change obligation in any New Zealand free trade agreement?

A. On paper, yes.

Q. On paper, thank you. Do you agree that that obligation are also the strongest obligations in any trade agreement between the parties?

A. The EU has been negotiating, as far as I'm aware, similar provisions in some other negotiations. It is certainly the most explicit that New Zealand has adopted but the language in it is sufficiently elastic to allow for what New Zealand has done in walking back its Paris and NDC commitments to, as far as I'm aware, not be called upon by the committee set up under that chapter to account for what New Zealand has done. Mr Vitalis will be able to tell us whether it has been or not.

Q. Yes, I wasn't going to get into what we are doing as such. More just the recognition that the language being deployed here and they effectively implement the Paris Agreement is at least a step in the right direction, I would've thought you would agree with that?

A. Again, on paper but there is an awful lot of stuff on paper that doesn't actually get implemented. In the discussions I have, I have a number of friends in the European Parliament who have said that this is never going to be implemented. They can't even get human rights commitments in relation to war addressed in the European Parliament in their trade agreements. I think we need to understand the dynamics that underpin this the language. The more important issue for me in the EU FTA is what we call the non-derogation provisions of not lowering your environment or labour standards to attract investment or trades and the Minister has been very explicit about that. I understand that there was actually advice, which I refer to in one of my affidavits, that this could breach New Zealand's obligations under those provisions and nothing has happened, as far as I'm aware.

Q. No, thank you. And I certainly wasn't wanting to go into the actions. More just at least attempts to put in place agreements that are reflective of our international obligations and doing in some ways are heading in the right direction when it comes to things like the Paris Agreement. I don't think you're necessarily saying that is not a step in the right direction. It's more

the implementation in the broader context which you have a concern about I think.

A. It also depends on the wording. As I said, the wording in the EU FTA is quite elastic about the commitments in relation to Paris. Similar to the ACCTS in the harmful fossil fuel subsidy agreement, which is very carefully word it, I'm assuming because Norway was a part of the negotiation so made it as unthreatening as possible and then didn't join the agreement in the end. We have to be somewhat sceptical and interrogate actually the wording and the loopholes and how the parties to it designed it. Similar to agriculture subsidies and what Rory McLeod was talking about, about not dealing with the implicit subsidies to agriculture and so on.

Q. Thank you. I just wanted to briefly, and I know that I have only got seven minutes of your time left and hopefully the answers can reflect.

A. I will try.

Q. You can try it, but it might be my questions are not able to be answered simply. But in terms of ISDS I didn't want to spend long on it, but it has obviously been considered previously and you were one of the three experts that gave evidence in the Wai 2522 stage one inquiry, right.

A. Yes.

Q. Yes. You have given extensive evidence on the ISDS provisions and as part of that the investor obligations in the Trans-Pacific Partnership (TPP) agreement as part of that process, you agree.

A. Yes.

Q. And we know that the US withdrew from that agreement and that the remaining parties negotiated the CPTPP agreement, you agree with that.

A. Yes.

Q. And we also know that Article 2 of that CPTPP suspends the application of some of those TPP investor obligations. I understand those are ones that you're particularly concerned about in the Wai 2522 stage one in Inquiry. Is that fair?

A. The ones that was suspended, no.

Q. Article 2.

A. The investment agreement provision was part of what was suspended. The key provisions on minimum standard of treatment, expropriation et cetera weren't suspended. And then it came down to what the side agreements/side letters were with the countries that were prepared to sign the side letters which were only some of them and not the major capital exporting countries and which those that did sign the side letters didn't affect the other agreements that they were a party to with New Zealand that has ISDS.

Q. Maybe we just go to the fact that obviously you are mentioning the side agreement. New Zealand did have side letters with majority of the CPTPP parties which means that the ISDS under the CPTPP does not apply between New Zealand and those parties. Is that right?

A. Yes, but they are not the main parties that one would be concerned about.

Q. Right.

A. They don't affect the other agreements, like the (inaudible 09:55:23) that still has ISDS –

Q. Yes.

A. – and that Mr Palmer uses in his dispute.

Q. I think the end point where we get to with some of this is, and your answers have made a clear, that there's a disagreement as to the level of risk as to ISDS, particularly in this situation but more generally. Whereas I think Mr Vitalis' evidence is that the level of risk from any such challenge is significantly reduced. I think you are suggesting that: "No that's not the case."

A. No, it certainly is not the case. And were it the case, why have we had successive governments that have said: "The risk is such that we are not going to enter into new agreements that have ISDS?"

Q. I think that's an interesting proposition though, isn't it, that because we're not putting them in that means somehow that the risk must be high. I don't know if you can necessarily draw that logic.

A. Why would they have it if they didn't see a risk? And the 2522 Tribunal was quite clear in its later inquiries. Not in the urgency one where this was all new to them. But certainly in the stage three inquiry were very clear that the risk wasn't just losing a dispute, it was the chilling effect

which goes back to the issues raised by Minister Shaw and others and then the more subsequent advice on investment disputes.

Q. Yes. I think it potentially I mean without getting further into that but there could be a number of factors for why a position is taken and obviously risk is one of them. As I understand that you were saying because we don't have these anymore, it tells you a lot about the nature of the risk. I think there could be a number of factors that go to why we don't include them in our agreements.

A. I was a part of the discussions that led to the original policy decision and so certainly risk was a major factor in that. But I would point again to the fact that New Zealand is not alone in this and many other countries have withdrawn from those agreements, including in the European Union from the Energy Charter Treaty, which is the one that is being used most to challenge climate change initiatives. I just got another analysis a couple of days ago of three more investment disputes involving the EU on climate issues that had been previously secret and nothing has been released on them. Yes, this is not an isolated New Zealand policy decision that might have a variety of factors. It is a part of a general recognition internationally that Investor-State Dispute Settlement is deeply problematic.

Q. No, and not quibbling with that and not quibbling that it has obviously been decided that it's not going to be included, and Mr Vitalis' clear that that has been the government's position. It was more just the drawing of a conclusion that because they were no longer included, it gave you a definitive answer on the risk profile was what I was asking about, and I understand it does not understand your point.

A. I think it does.

Q. Yes, no, I understand your perspective. Very, very quickly because I am about to run out of time, since the Wai 2522 report and the Treaty of Waitangi exception, there have been a number of steps. I understood your evidence in that proceeding was critical of the Treaty of Waitangi exception as it stood at that time.

A. Yes.

Q. You would agree that that exception does, however, allow New Zealand to adopt measures necessary to accord more favourable treatment to Māori. That is the understanding of the provision.

A. Yes, but more favourable treatment doesn't cover most climate change mitigation initiatives that might be taken.

Q. And you are familiar with the tribunals findings which focused on that exception.

A. I'm familiar with the findings in the urgency. I'm familiar with the findings in the Issue 3 Digital which found that that exception combined with a number of other exceptions did not provide active protection for mātauranga Māori.

Q. And in stage one, are you familiar with the finding that the Tribunal found that it would function substantially as intended, so to provide a reasonable level of protection for Māori interests if the Crown needed to rely on?

A. Yes, and that was interrogated again in the Issue 3 because there was a practical application of it in Issue 3 that showed where the floors were with more favourable treatment, the chapeau, the issues about Investment Tribunals being able to examine New Zealand's interpretation of Te Tiriti o Waitangi.

Q. Thank you. And on that stage three, you having been involved and familiar with that, you are familiar with the fact that in terms of the final report it did not issue recommendations.

A. Yes, that is in part because of a very constructive mediation process that was developed between MFAT on behalf of the Crown and the claimants, yes.

Q. Yes.

JUDGE MILROY TO MR PREBBLE – TIMING

Q. Thank you very much for your evidence.

A. Pleasure.

JUDGE MILROY ADDRESSES PROFESSOR JANE KELSEY – RECALL LATER (10:01:29)

MS SYKES ADDRESSES TRIBUNAL PANEL – ASSISTANCE (10:01:53)

JUDGE MILROY ADDRESSES ALL COUNSEL – DOCUMENT #A142(g) (10:02:09)

(10:02) MR PREBBLE CALLS
EVANGELOS VITALIS (SWORN)

Q. Tēnā koe Mr Vitalis. I will just do some formalities and then we can have you underway with your summary. Can you please confirm your full name for the Tribunal?

A. My full name is Evangelos Thomas Vitalis but I'm normally known as Vangelis.

Q. And perhaps just bring that microphone towards you so that we make sure the transcript can pick up everything. And can you please confirm that you have signed a brief of evidence stated 26 September 2025 in this proceeding.

A. Thank you. Yes.

Q. Do you have a copy of that before you today?

A. Yes, I believe so.

Q. Just for the record, noting that is #A123 and the appendices are #A123(a). I understand you've also prepared a summary of your evidence for reading to the Tribunal today.

A. I have, thank you.

Q. For the record, that is #A123(b). I just now invite you to read your summary to the Tribunal. Thank you very much.

A. Thank you.

(10:03) EVANGELOS VITALIS: (MIHI, #A123-(a), (b))

Just to reassure you, I won't read it but I will speak to it. But let me start with a little bit about myself. Ko Serifos te moutere. Ko Hora te maunga. Ko Aegean te moana. Ko (Greek inaudible 10:03:52) te papakāinga. Ko Perseus te tangata. Perseus is a hero from our island, the island of Serifos and he killed the gorgon Medusa. Our island is also known for having participated in some of the major campaigns, the Battle of Salamis where 50 Serifians died and at the Battle of Marathon as well where four Serifians died.

And in that context, I wanted to also acknowledge (inaudible 10:04:24) the Māori Battalion because there are deep links between the battalion and the people of Greece and the Greek-New Zealand community here in Wellington. (inaudible 10:04:37) and I want to pay a particular tribute to Sir Bom Gillies who recently passed. We say in Greek, (Greek inaudible 10:04:47), long life to us so we may remember him, long life to us so we remember them all.

I wanted to speak to my summary and I wanted to speak in sort of four interrelated parts. I wanted to give you a bit of a flavour of how I try to think about a representing Māori interests in negotiations. I wanted to start by saying something about why trade matters for Māori and then I want to talk about what we have been trying to do in the trade and economic group over the last seven to eight years. And then I want to explain with reference to what I've said in my evidence what it is like to be a small state in these negotiations.

I'm going to make a particular reference to Investor-State Dispute Settlement which I know has been a feature of the discussions this morning.

Then I also want to make some observations in the trade and climate space with particular reference to the agreement on climate change trade and sustainable development that agreement as a kind of a case study of what we are trying to do but also to make the observation about the than need for both strategic patience as we move from norms into rules. I have more confidence about that aspect of the way in which we look to approach those things.

REFERS TO #A123(b)

Just in terms of why trade matters for Māori, Māori are not spectators in international trade. It is well known and this is not new data that $126 billion represents the Māori economy, $5.2 billion worth of exports, roughly 6% of our total exports are in fact focused in Māori enterprises and Māori enterprises have a greater proportion of their revenue is derived from export. By comparison with Pākehā firms who derive about 25% of their revenue from exports, Māori companies derive about 39%. There is a working paper on the New Zealand

Ministry of Foreign Affairs and Trade website that talks about this. Exports are very important to Māori.

The other observation I would make is that Māori are heavily concentrated in a number of sectors where global protectionism is highest in agriculture, in horticulture, in sheep meat, in wine. To give you some very practical examples of that, the wine tariff in India is 150%, so for every $100 of wine we send, a Māori (inaudible 10:07:33) would have to pay 150% on top of that.

In Japan, before the CPTPP negotiations, the tariff on hoki and muscles range between 20 and 25%. We were able to eliminate those tariffs which then provides both a preference and levels the playing field for Māori exporters into that market.

The same for sheep meat where Māori interests are heavily concentrated. We used to supply 85% of the Indian import market for sheep meat. As a consequence of the Australia in the FTA we now account for less than 9%. The 33% tariff that exporters, including Māori exporters, faced into India makes them simply uncompetitive against their competitors who were there trading at a zero tariff.

The tariff on honey, mānuka honey into India is 66%. These are significant barriers to Māori exporters. Māori exporters are significant generators of wealth back home. We know from research that if you're an exporter you supply an additional 6% or you pay 6% better wages than a company that's domestically focused. You have 89% higher levels of productivity and one in three, which is more than for Pākehā, Māori jobs depend on exports. For these reasons, we take very seriously indeed Māori interests in the trade negotiations.

That brings me to what we are trying to do in the Trade and Economic Group to make sure we really understand what it is that we are trying to do with Māori in the negotiations that we pursue. Our reference points (and I know this will be touched on later in the piece) are, of course, the 2011 Cabinet Strategy, the International Treaty-making Manual and of course, something that I take very

seriously, is the Tribunal's advice and recommendations and the reports themselves, even when they don't make recommendations.

Our approaches evolved significantly, and I did want to touch briefly on how seriously I take this in my group, we have structured engagement that I personally am involved in on a monthly basis with Te Taumata, Ngā Toki Whakarururanga, the Federation of Māori Authorities, and then I meet quarterly with representatives of the Iwi Chairs Forum. I meet monthly with those three bodies, Te Taumata, Ngā Toki Whakarururanga, and Federation of Māori Authorities, and then quarterly with the Iwi Chairs representatives. I invest that time because it is important. But that is not the only thing that my group does with Māori so that we do understand and internalise the positions, the thinkings and adjust our own approaches as a consequence. At the working level, there is a busy and intensive level of engagement with all of the representatives of those groups as well as participating in regional hui throughout the country on a regular basis. I expect my staff to take that seriously. I do believe that as an embedded part of the practice in my group to consult actively with Māori on all forms of our trade negotiation processes and policy that we look to take forward but we aren't perfect and we learn all the time.

We learnt a lot from the stage three inquiry. As I said, there were not recommendations but there were nevertheless observations, comments, and suggestions that we took onboard as we did. I personally read through the earlier series of panel reports making recommendations and suggestions about how we might improve the way we work with Māori and that has been the evolution of our approach.

One of the things that we did, that I regard is an extremely important part of building trust and confidence between us, has been the establishment of confidentiality agreements between us and particular representatives of each of those groups. Those confidentiality agreements mean that we're able to share text, live negotiating text with partners to seek their views and their views on the positions not only that New Zealand takes but the positions of our

negotiating partners. In order to do that, I need to have the confidence and trust of my negotiating counterpart whether they are from the UK, from the European Union or indeed from India or elsewhere. The practice that we built-up with Māori with the use of these confidentiality agreements has been one of the most important things, in my view, in terms of shaping the way in which we've conducted our negotiations and the issues and the elements that we've looked to pursue in the negotiations themselves. If you think about where we got to in the digital chapter of the EU New Zealand Free Trade Agreement, the additional safeguards that were in many cases worked through together with representatives from a range of those groups, if I think about the way which we made the balance and the trade-off suite and the decisions we made for example in the seafood sector in terms of what we decided to do, again, I believe that faithfully reflected the kinds of things and the information and the advice we received from Māori during those negotiations.

And then we've looked to roll through the approach in both process and substance into some of the initiatives that we've looked to take. For example, introducing a very novel concept which is having specific chapters, Māori Trade and Economic Cooperation chapters in free trade agreements. No one else does that. We also have the Indigenous Partnership for Economic Trade and Cooperation agreement, which is again a novel agreement, led by us but in partnership with Māori developed the text. It is an agreement that involves now Canada, Australia, Taiwan, as well as New Zealand and it is in the implementation process, one where representatives from Māori that they select themselves, sit next to us as officials as we look to implement the agreement.

I wanted briefly to make a comment about what it is like to lead a negotiation for a small country in a world that is becoming increasingly challenging. Here I refer to the asymmetry of power between a small state like New Zealand and almost all of the partners that we negotiate with.

There were a number of vectors through which we conduct those negotiations “bilateral” where the asymmetry of power is particularly stark, China, European Union, the United Kingdom. And then the other vector is of course plurilateral

the CPTPP, the Regional Comprehensive Economic Partnership Agreement, the ASEAN-Australia-New Zealand Free Trade Agreement where you are negotiating as one member of a group of other 11 states. And then of course, as I heard Professor Kelsey say this morning, there is a multilateral process where you are negotiating with 165 other members. Each of those has differences and challenges but, in all cases, the question we are always asked is: “What do you bring to the table New Zealand?”

It is clear, or it is at least clear to me, why we need the agreement with the European Union, why we need the agreement with China, and with India. It is not clear to my counterparts why they should bother with us. New Zealand is a population of five million people. We have next to no tariffs in place. If you're a negotiator you're trying to present your outcome back home to your Ministers, you want to have a narrative to tell. There isn't a narrative for the EU, for China, for ASEAN colleagues that says: “I remove the 33% tariff or the 150% tariff on New Zealand wine or anything like that. There isn't that narrative.

Compounding the challenge that we face is the things that we need in these free trade agreement is access into the super hyper politically sensitive areas of agriculture for those other countries into the EU, into China. Dairy, meat, horticulture these are ultrasensitive sectors. So again, we're asking partners to do things and we're not able to bring a great deal of leverage to that negotiation. And of course, we also have expectations in the climate change and environment space and we also have expectations in terms of the Treaty of Waitangi.

We need to be honest about the fact that many of our counterparts do have indigenous populations but only until recently they do not look to include that as part of their negotiations. The only other example is the recent USMCA. But if I think of the negotiations with ASEAN colleagues where I was leading in negotiations seeking the inclusion of the Treaty of Waitangi exception, you think about those partners Indonesia, Australia, Malaysia all with indigenous populations and none of which were going to have that exception. The problem for them becomes very acute: “Why give it to New Zealand? How do I explain

as an Australian, as a Malaysian, as an Indonesian negotiator when I go home that I agreed to this for New Zealand but I don't have any such thing for myself because I've got my own political sensitivities."

I hope I've given you a flavour of how challenging that part of the negotiation can be. In my experience, the Treaty of Waitangi exception, which is an absolute bottom line for us, is one of the last. And if I think about the negotiations I've been involved in, it has been the last thing to be resolved, until people finally do believe that it is of such significance for New Zealand that we could not do the trade agreement without it.

A quick observation on Investor-State Dispute Settlement which feeds into my observations on the lack of leverage in the negotiations. If you look at where we were able to land in the CPTPP, we were able to carve out Investor-State Dispute Settlement as instructed by the government. We were able to do that in the dying phase of the CPTPP negotiations because we had leverage. That leverage was because Vietnam, Brunei, and Malaysia all wanted something from us which was, they wanted us to support them in another part of the negotiations and in exchange, they were prepared to agree the side letter that would carve out the investor-state dispute obligation between us and them. We had leverage. We were able to use it. We were able to remove the provision that subset of the chapter.

Together, with the agreement with Australia, a longstanding one where dispute settlement does not apply between us, that accounts for nearly 90% of all investment flows between CPTPP partners into New Zealand. In other words, we were able to say that more than 85% of the investment that came to New Zealand would now have Investor-State Dispute Settlement excluded from it, particularly because Australia was not going to be part of it. When we don't have leverage, it is very difficult indeed to make that change.

Professor Kelsey is correct that in the ASEAN-Australia-New Zealand free trade agreement, we have not been successful in taking out Investor-State Dispute Settlement. Investor-State Dispute Settlement, when we negotiated the

ASEAN-Australia-New Zealand free trade agreement when it was concluded in 2008, the policy was we could accept the inclusion. The policy has since changed but we have not had the leverage to be able to say to partners Vietnam, Malaysia, Brunei, who have already agreed to exclude it from CPTPP, to take it out of the ASEAN-Australia-New Zealand free trade agreement.

I can elaborate on that and I know one of the questions that claimants have for me is going to ask me to collaborate and I will do so. But I did want to make the observation that is simply because we didn't have leverage there. It does not mean that we haven't tried to create leverage. It does not mean that we have not tried to pursue this with the vigour that the Government expects us to, given it is a policy.

That is a situation where in the ASEAN case there are 11 other partners they all need to agree and they do not and so what we have tried to do we have a protocol that is now – and there is an agreement to keep this under active review. I accept that is well short of what the Government's expectation is and it is certainly well short of what the claimants expect. But we have absolutely been pursuing and trying to remove the Investor-State Dispute Settlement provisions but we are in a world where New Zealand has limited to no leverage. When we have the leverage we use it, but for most part we don't have that ability.

That brings me to my final set of observations which was about to make an observation in the trade and climate space but in particular to make an observation about the way that we think about what I know Professor Kelsey called soft law. I try to think of this as the shift from norms into rules and the concept here is of strategic patience. We are a small state. We do have important values that we do want to see reflected in our free trade agreements but sometimes we are not able to secure immediately the hard law. As the lawyers describe it, and I'm not a lawyer, but the hard law obligations that we would like to have in there so we start somewhere. And it does take time, it is true. It can be frustrating and disappointing and frequently, my group is

disappointed and frustrated. That is the life of a small state negotiator but we do need to start somewhere.

I think there are two elements to this. The first is that by developing these norms we are shaping what these look like and over time those norms do find their way into what the lawyers call the hard law obligations to which dispute settlement can apply. Let me use hear the example of the Agreement on Climate Change, Trade and Sustainability. This started as a classic norms-based process. New Zealand established the Friends of Fossil Fuel Subsidy Reform and for years, this small group of countries pursued an agenda of trying to say that trade needs to make a contribution to dealing with climate change. We acknowledged of course that trade is not going to be the silver bullet that solves the climate change problem but we and those countries that were in that grouping with us (and at one point there were more than 20) and in the WTO signing onto the statement, you know, one of those norm-based statements or soft law statements, we got to 50. That is not nothing, it is a starting point. The important thing is that as you go through those processes you build trust and confidence. What is important to me as a New Zealand negotiator is that we are shaping what those look like, what those trade rules will look like that can help us make a positive contribution to the climate change challenge that we face.

In the case of fossil fuel subsidies, which was the particular focus of the work we did, work that has been going on since the mid-2000s right up until today, the idea was that the G20 countries year after year were saying in their declaratory statements: “We must reform fossil fuel subsidies because of the urgency of the climate challenge.” We as a small group of small-medium sized countries said: “We agree with you, how shall we do this?” Each year, we would also put out a statement at APEC and elsewhere and in the World Trade Organisation saying how important this was because we knew from the work that the European Union Joint Research Centre has done that if you can eliminate fossil fuel subsidies that is the equivalent of stopping the emissions of 165 countries immediately. That is a significant contribution to the climate change challenge but you have to eliminate all fossil fuel subsidies.

We started with these norm-building, I guess the lawyers would call them, soft law approaches. But over a decade and a half, this is my point about strategic patience, we moved into developing the agreement on Climate Change, Trade and Sustainability which is an International Treaty. It is enforceable. In many ways, it is a classical trade agreement so it has the very orthodox response of trade negotiators to the climate challenge which is: “Let's remove the tariffs from environmental goods and technology and free up environmental services so that we reduce the cost of the consumer of using those environmental technologies and the environmental goods (solar panels, pollution monitoring control equipment and so on) and by reducing the cost you increase the uptake and therefore you improve environmental outcomes. But we also said that we've learnt something from trade negotiations and what we have learnt from trade negotiations is that actually you can discipline subsidies and that disciplining subsidies through a trade agreement is the most effective way to reform subsidisation.

The WTO agreement on agriculture is extremely significant in that sense. That was the first time that we were able to bring agriculture and agricultural subsidies into the international trade system and reform and cut subsidies. In the case of agricultural export subsidies, for example, a significant challenge for New Zealand, we were able to eliminate agricultural export subsidies through the Nairobi decision of 2015. We said: “We should try something similar on fossil fuel subsidies. We should use these trade rules to try to tackle fossil fuel subsidies, given the impact that those subsidies have on decisions that companies make about their use of fossil fuels.” We wanted a trade agreement that would help us tackle that problem.

And so we got the agreement on Climate Change, Trade and Sustainability which does have disciplines on fossil fuel subsidies. We would of course have loved for it to be stronger and more robust but we had to start somewhere. They are again hard law obligations. Now it is easy to be amusing about the agreement and say: “Well, it is just four small countries, New Zealand, Costa Rica, Iceland, and Switzerland.” It is easy to say: “Well, what difference

does that really make?" But the agreement on Climate Change, Trade and Sustainability is precisely the New Zealand Trade Policy Strategy that has been placed for a long time now. It is the idea that you want to make sure that New Zealand is shaping these rules, you therefore start somewhere with a small group of countries and then make it, what we call, an open plurilateral. In other words, you invite others to join afterwards.

We have good practice on this. The P4 Agreement, Singapore, Chile New Zealand, and Brunei was a tiny agreement of limited commercial value to the four countries that did it. It was done for strategic reasons. But that agreement formed the core 14 years later of what became CPTPP – strategic patience.

A similar example is the Digital Economy Partnership Agreement. Again, three small countries, Singapore, New Zealand, and Chile developing digital rules. In the context, I should add, of the stage three inquiry on e-Commerce where we look to bring in those learnings. We thought it was important that we do that at the ground floor before these things were imposed on us by the big tech companies or the bigger China and the United States, so we set up this agreement. That agreement has moved much quicker than P4 did. Within 18 months, we had Korea as an applicant and there are seven more countries ranging from Thailand, Korea, Uruguay right through to China and Canada that have applied to join the Digital Economy Partnership Agreement. Again, an attempt by a small country to start with a small group of countries and then make sure that we have got influence on the way in which those rules look and then look to expand it over time. But it does take patience and it does take time/

That is an important characteristic, I believe, for New Zealand negotiators is the willingness to take the long view and accept that you don't immediately get what you want. So that becomes a really important feature of what we look to do in our trade policy is take the long view about the norms and think about the fact and remember that the work that was done in APEC, all norms-based, all voluntary, all code of conduct guidance principles, those eventually find their way into the hard rules that we see in our trade agreements. The same with

the P4 which expanded and the same with the agreement on Climate Change, Trade and Sustainability – a ground breaking agreement we are on the ground floor and helping shape that in a way that really serves both our interests but also looks to make a contribution on climate change. Our question to the big countries is: "You say you want to make the reform on fossil for your subsidies, here is a trade agreement that actually does it," because we know from agriculture and we know from fisheries the only way you get real reform on subsidies is either through domestic unilateral reform or through a trade agreement that forces governments to make changes.

I will stop there. I am very conscious that I have now taken quite a lot of the time but I wanted to give you a bit of a flavour of the things that we have been trying to do in the Trade and Economic Group with Māori in terms of improving the way in which we work, and I hope of given you a sense of that evolution. I hope I have also given you a sense that we certainly don't think that we have done this perfectly, that we have got it right every time, and I absolutely accept that. What I would like to think is that we learn as we go, but that we have in place structures that meaningfully enable Māori to participate and be involved in shaping New Zealand's trade negotiating approach.

I hope I have also given you a sense of the challenge that we face as a small state. But I hope I have also finally given you a sense that we do have a strategy here in that strategy is about strategic patience and in a sense strategic incrementalism but we do get there. That sort of persistence in determination, which is a feature of the colleagues in the Trade and Economic Group, is I believe a crucial part of making sure that New Zealand, despite being a small state, does have influence and is able to shape the way in which trade agreements look, including on behalf of Māori. Thank you.

JUDGE MILROY ADDRESSES TE MINENGA – ADJOURNMENT (10:33:01)

MS SYKES ADDRESSES JUDGE MILROY – CROSS-EXAMINATION TIMING (10:33:24)

HEARING ADJOURNS: 10.34 AM

HEARING RESUMES: 10.56 AM

(10:56) MS SYKES TO VANGELIS VITALIS:

Q. Ko te tuatahi, kei te mihi atu au ki a koe e te rangatira, roa te wā i tūtaki ai tāua engari kei te hōhonu ō kōrero whakaaro rangatira ki tō tātou nei koroua a Bom. Kei te mōhio au koia tētahi o ngā, e kī ana i roto i te reo Pākehā, icon e whai atu te whakaaro mō te mana Māori motuhake me te tino rangatiratanga. I runga i taua tūāhuatanga, kei te mihi atu au ki a koe mō tō mahi tautoko i a ia i te wā i tū ia i te mata o te whenua kei Gallipoli, kei āna kaupapa. Kei te mihi hoki ki tō whānau, te whakaaro hōhonu i whakarongo i te ata nei tō aroha ki a rātou, hei manaaki i a koe i te wā i tipu ai koe ki Pōneke nei i Te Whanganui-a-Tara ā tēnā tātou. **It's been a long time but seems like yesterday when I've had the pleasure of having use a witness in this form. It was really lovely to hear your tributes to someone who was like a grandfather to me koro Bom. But also to hear your deep felt love for Wellington, the place that you grew up in the arms of your Greek community. But I think with a deeper understanding of the kind of values that Māori share so thank you for that.**

I'm going to be asking a few questions which aren't going to be a surprise to you because I think we've already provided them but I might augment some of them with parts of the evidence. The questions relate to aspects of your brief but also to the replies of Professor Kelsey.

In front of you on the desk is her evidence that she spoke to this morning. Document #A142(f) is the appellation number. I may take you to parts of that evidence and because my learner junior, you haven't met Mr Sam Vincent from our office, he has to go to a criminal matter shortly. He's going to leave us not because he doesn't want to listen to you, but the parole hearing needs my client more. He will seek leave. But I've asked the learned junior from Crown to put those paragraphs up, if we get to them. Is that fine?

A. (No audible answer 10:59:09).

Q. So I want to start with Te Tiriti o Waitangi relationships and Māori influence on negotiation positions. As a segway into those topics, rather than going to the evidence of Professor Kelsey who is an expert for Ngā Toki Whakarurunga, I'd like to take you to some paragraphs of the evidence of Professor Maria Barge and the evidence of Ms India Miro Riley.

Now Professor Barge's document for the record is #A015 and I want to start in the middle of her brief talking where she is at paragraph 10 about international trade agreements which perpetuate extraction. If you could read that to yourself that would be really an advance on time for us. It's up there on the screen and tell us when you've read that paragraph and the paragraphs right up to paragraph 15.

A. (inaudible 11:00:26).

Q. It's the evidence of Professor Maria Barge. It's document #A015. I'm only asking you to read to yourselves the paragraphs 10 to 15. While we're waiting for you to do that, she is a member of Ngā Toki Whakarurunga as a technical expert. She has written extensively on international free trade agreements and is one of our few Māori academics that has also looked at the intersect of climate change in that arena. I just thought it was a useful way to segway into your comments by looking at what she has to say about two of the topics you talked about today which are the Māori rights and interests and Māori participation in free trade development.

It's on the screen. Can you see it? Sam, you want to read it out on the screen.

A. Yes, which part?

Q. 10 to 14. To help you, I'll get Mr Vincent to read it out.

A. Okay.

MR VINCENT READS #A015 PARAGRAPHS 10-15

(11:02) JUDGE MILROY TO MR VINCENT, MS SYKES:

Q. I'm sorry, Mr Vincent. We were looking at paragraph 10 –

A. [Mr Vincent] Yes.

Q. – and on the screen, you see, it says: "The following Tiriti-derived principles."

A. That's right. Apologies, this is the summarised affidavit.

[Ms Sykes] sorry, it's #A015(a), Ma'am.

[Mr Vincent] Apologies, that was thes summarised affidavit.

Q. Ms Sykes, just to help us, are we looking at the full brief or the summary?

A. I was going to take you to the summary paragraph 10 to 14.

Q. Okay, thank you.

A. But the total brief in full is the context of that summary.

[Mr Vincent] The appellation number is #A015(b), so we are looking at the summarised affidavit of Professor Barge.

(11:04) MS SYKES TO VANGELIS VITALIS: (CONTINUES)

MR VINCENT READS #A015(b) PARAGRAPHS 10-15

Q. The second criticism, because I want to take them as the evidence that was put before the Tribunal by Ms India Riley, and that document number is #A024. And if I could ask my friend again just to read into the record paragraph 38 from that document

MR VINCENT READS #A024 PARAGRAPH 38

In your evidence this morning, you've very helpfully talked about the groups that you're engaging with, certainly in the last eight years from the Māori world, that are trying to give assistance to you in your negotiations and in advice you were developing around the negotiations framework. Have you been informed by the kinds of matters that both these experts in our world, who are very young, both of them are very young, they're in their 30s, but their brief will tell you they've represented New Zealand internationally in significant fora around these matters, around the structural dimensions of criticism of the current agreements and how that might be adapted in any process?

A. I'm sorry just to clarify, you're asking me about the UNFCCC process?

Q. Both of them, yes.

A. Right. So that is not my area of responsibility or expertise, I'm afraid. So the Trade and Economic Group is not involved in that aspect of those international negotiations. That is another part of the organisation.

Q. So there's-

A. Sorry.

Q. I'm sorry, no, I don't want to interrupt.

A. What I will say is that we do have sort of cross-coordination engagement between our groups on the intersection between trade and environment. The principle that we take into that is that the trade environment systems need to be mutually reinforcing, which is the the term of art that we use or the language we try to use to try to sort of ensure some coherence, but it is really important to acknowledge what it is that trade agreements do and what they don't do, as opposed to what the UNFCCC process and the Paris agreement and indeed, the other agreements that you've mentioned in there. Those are distinctly different things and those are not my area of expertise.

Q. Would you accept though that the sentiments, the values that underpin both the criticisms are matters that should be taken into account by you in developing approaches to trade and understanding the impacts of trade on Māori?

A. Yes, I certainly do believe that that's an important dimension of the work that we do try to do in the Trade and Economic Group. Again, I'm being open about the fact I'm not an expert in the climate change process, but if I think about the engagement with the regular engagement that I have personally with Te Taumata Federation of Māori Authorities and Ngā Toki Whakarurunga, I am confident that I'm certainly exposed to some very strong views on that, including the kinds of views that Professor Barge has expressed and indeed, we've just read out here as well. But again, I'm not the chief negotiator for the climate change process, so I'm really outside of my area expertise if your asking me for particular perspectives on that.

Q. I'm trying to bring you back into your area of expertise. You're the Chief Lead Negotiator for the Crown in trade agreements, aren't you?

A. Yes I am.

Q. And you've been asked to participate in the negotiation of free trade agreements which impact on Māori, don't you?

A. Yes.

Q. How will Māori exercise their tino rangatiratanga in such negotiations beyond the Engagement Strategy that you outlined in your evidence?

A. Maybe, if it's helpful, if I talk a little bit about how we think about the question you've posed in the Trade and Economic Group which is the question of tino rangatiratanga. I think there are four elements that are features of the approach that we take in our group. The first is working together and where possible co-designing. Professor Kelsey talked about one of those examples this morning about the co-design work that we had done together on the Treaty of Waitangi exception. The second is to ensure that the provisions that we secure and prosecute in the trade agreements are in fact Treaty consistent. That is a really important feature of the work that we do. The third area, and this is a very specific trade element to it, of course, is supporting Māori led initiatives that support Māori exporters internationally. The fourth area, which goes to the heart I think of what you're talking about, is protecting Māori rights and responsibilities, for example, of the digital, the data space in traditional knowledge and intellectual property. Those are important features of what we try to do. Those aren't just words, let alone words on a page. They are actually in substance what we've looked to secure in the agreements that we've negotiated.

I've talked a little bit about the commercial aspects, but if you think about the work that we've done together, again Professor Kelsey herself was closely involved in the safeguards that we introduced into the EU agreement in the digital space, that was a practical manifestation both of our response to the Tribunal's report and the unease – it’s actually stronger than unease – that we got from many of the claimants, including through Ngā Toki Whakarurunga. But I want to also acknowledge that we did work with Te Taumata and the Federation of Māori Authorities on this as well and that the safeguards that we introduced, which were difficult to secure because the European Union certainly did not accept that we needed those additional safeguards, but those safeguards were specifically negotiated in the context of, I think, the point you're trying to make around tino rangatiratanga and the need to ensure that things in the digital space, for example, as the stage three report made vividly clear, are the kinds of things that we need to be thoughtful and structured

and ensure that that informs and shapes the outcomes that we then secure.

Q. I just want to do well a little bit, particularly on the criticisms from both Ms Riley and Professor Barge not in the context of digital but I think it's their desire to look at negative climate change implication from mining for example and there are many briefs on this record of inquiry. Another client we act for is from Taranaki, Alison Cole. I don't want to take you to that evidence. I think we haven't got the time for that today. But at the heart of their criticism is how will the Crown actively protect the whenua, moana, and the ability of mana whenua (that's hapū rangatiratanga-based groups at place) to exercise responsibilities and duties to Papatūanuku and Tangaroa, including through prior informed consent and profiting? I want to raise that because Māori is not homogeneous, you'd agree with that?

A. Yes, absolutely. That’s one thing I’ve learnt.

Q. We have a particular population spread, which is really quite interesting at the moment, with over one million and over 40% of that one million under 30. Therefore, when we're looking at free trade agreements that go for significant proportion of years, we really need to be looking at that significant part of our population the Māori population and how the agreements being negotiated will impact on them. You accept that.

A. Yes, I do.

Q. Would you accept-

A. I’m sorry, I should add to that, I take that really seriously.

Q. Yes.

A. I do think that's an important dimension of the work that we are trying to do in the group.

I just want to make a small observation. There is a distinction between agreements on critical minerals, which are not in my responsibility in my group, and trade agreements. The extract that was read out and that I saw on here is actually about mineral extractions. That is not my area of expertise. I understand you will be receiving evidence from the relevant agency which of course is MBIE not the Trade and Economic Group.

Q. I thank you for that clarification. I'm rather drawing general propositions about the nature and relationships of Māori to taonga and how that relationship, which impacts on those other extractive matters –

A. Yes, that's fair.

Q. – that are the impacts that they're worried about would be taken into account. So I come back to that, how will you actively protect those voices in your current development of trade arrangements, review of those arrangements and in terms of the spectrum for change? You discussed participation and rangatiratanga in that spectrum.

A. Thank you that's a fair question and it does go I think into the work that we look to do as well. Again, I come back to the four elements that I see that do go into both the negotiation of these agreements, their implementation and indeed, as you correctly point out, the review of those agreements.

A. All I can talk about is what we do in the Trade and Economic Group. We have those structures in place. And I did acknowledge and I want to say it again, I'm not by any means suggesting we've got the perfect answer here. There is a regular evolution of the way in which we do things and how we work together. But I do think those four elements that I talked about the sort of the working together, co-designing when we can, and there's demonstrable examples of that.

Most recently, in the India agreement and the FTA agreement and as Professor Kelsey talked about this morning the EU agreement, the definition of mānuka honey for example involved are a large number. It is indeed an example of the point you made which is the very diverse views of Māori on things, including how to define mānuka honey. So that was quite an experience to work that through in the heat of a negotiation with the European Union who did not necessarily accept that mānuka honey was a unique designation. Of course, it is now in the agreement as a taonga.

These aren't just words on a page. We look to work with Māori and then translate that into negotiating positions and then into, I guess, what you as lawyers would call hard rules. We really do take that seriously. I do

see a critical function is the work we do beforehand with Māori on specific issues, including on the text.

I come back to the observation I made earlier that the things that we've tried to do in terms of confidentiality agreements also means not just working on New Zealand text but seeing the text of our counterparts so essentially being involved in a live negotiation. The EU example is a really good one where Māori were directly involved in those negotiations in determining what we thought about the trade-off between hoki, mussles, and aerosquid for example, but a very vivid memory of the very different views that Māori had about which ones of those should be prioritised in the negotiation; similarly, on manuka honey; similarly, on the safeguards in the digital chapter. So, I do believe that is a key part of the way in which we do need to approach this.

Now I have to be open about the fact that is hard work. It is very challenging and there are often very different expectations from the various groups that we speak with and the representatives they send. But that is a something that the group we take really seriously. We are very committed to working through and finding solutions that perhaps not everyone thinks are perfect but certainly re-position the way we thought about some of these really big questions for us. So that's one part of it that I think's really important.

The other is ensuring Treaty consistency. And again, that is driven in an enormous way by the work we do with you, with the Māori representatives. I know you've been previously involved yourself. Again, to get that right was one of the big things we learnt from the stage 3 inquiry. We didn't do that properly. We didn't do it as effectively as Māori expected and I don't want to be the one that repeats a mistake. So again, that Treaty consistency, ensuring that we have the Treaty exception language, those are really important parts of getting to the point that you're looking to make.

I mean the other one about the supporting Māori leader exporters and initiatives, I'll leave that to one side because I think what you're also talking about is protecting Māori rights and responsibilities in terms of those extractive industries. Again, I would argue that a key part of that is

the actual work we do directly with you in the text and then in the implementation phase. And then when we come to the review of the agreement, of course, we then need to circle back and see if circumstances of change if we can secure an even better outcome, a more powerful outcome that really speaks to Māori.

And Māori interests change. That's one thing I've certainly learnt in this process is there is also a change, a shift in the thinking. I think you've touched on it, there's an intergenerational challenging change there. The challenge from my group, believe it or not, I've got young people in my group as well, who are very engaged and committed to this as well, and we want to get that right. It's not the old crusty dinosaurs like me. But there is a real shift in the approach that I believe in our group we've taken because we genuinely want to get this right.

Q. Do you have your main brief in front of you? I'm looking at paragraph 11 at the moment. The following question I really want to develop further the relationship of kāwanatanga and rangatiratanga under Te Tiriti o Waitangi in the context of international trade. I'm glad you mentioned the mediation agreement. I think that was one of the best exemplars of how we can find compromise to protect rangatiratanga while respecting the obligations and exercise of kāwanatanga. What does it mean for MFAT in the context of negotiating and implementing international trade and investment agreements in addressing the climate crisis that mediation agreement because it is sometimes very limited and very narrow in its application? What do you think it means in this context?

A. You're asking what the trade agreement means or what the mediation agreement means.

Q. The mediationion on agreement.

A. So I can be really direct about that. What I think it means is again a seriousness of engagement on the part of my group with the claimants who were part of the mediation agreement. But indeed also, I expect the same behaviour and style and substance of engagement from the rest of my group with the other groups that we work with, FOMA, Te Taumata and of course, with Iwi Chairs as well. And again, it is about the hard work of spending time working through challenging issues and being

open on our side about the challenge we face internationally to persuade our partners to do these things, the challenges we face, and then ensuring also that the key decision-makers, which actually is not in my group or indeed me, it's actually Ministers, that Ministers are well informed about Māori perspectives on the specific issues that we are looking to negotiate, whether that is a trading and climate change provision, whether it is about where we landed on a commercial element, the elimination of a 17% tariff on mānuka honey for the EU for example, the decisions we took on hoki and mussles in those negotiations as well.

Q. So what we are exploring together – because I've only got a little bit of time and I could listen to you all day and I'm sure you could rattle on to me all day, ut I've only got an hour and I've got about 10 more questions – but at paragraph 11 you acknowledge this tension between worldviews I think is the best way, the languaging of it, is Māori and I don't like the term Western but non-Māori worldviews (because quite often it is not just a Western paradigm that is dominating in any free trade), you would accept that sometimes they are not quickly or easily reconciled?

A. Yes, it's a fair question and I've thought really hard about that question when I received it. Like you, I don't like the sort of Western, non-Western dicotamy. I don't think it is particularly helpful. I think in a trade policy context what we have been trying to do is try to bring in that perspective and look to advance it in the approach we have taken in the trade policy world. If I think about the things that we have tried to do at the World Trade Organisation, for example, we often forget that trade and indigenous issues is not actually a feature of the WTO discourse. It is not and it has not been. But New Zealand's been one of the pioneers in introducing that concept into the World Trade Organisation. Professor Kelsey can certainly take an enormous amount of credit for that. But also we have funded representatives from Māori groups to attend meetings at the WTO public forum and the view we took was one of strategic patience. We knew we needed to start somewhere. We knew we need to expose our colleagues to this worldview. We knew it would be challenging and difficult. We knew that the first few times the panel discussions, as I'm sure Professor Kelsey will recall, are not always well

attended by the people you're looking to really influence, so fellow trade negotiators.

Q. Can I just pause there, I want to have a crack at this strategic patience. It sounds like the Sword of Damocles. I'm being patient while my culture gets erased, it's sitting there. Māori term is whakairi patu, like a patu ready to strike me and knock me out, while everybody is meandering along gracefully while all of their culture is living. Isn't that the danger of strategic patience?

A. I'm glad you mentioned-

Q. That you become so patient that you actually lose your culture.

A. I'm glad you mentioned Sword of Damocles because that of course has a Greek term and of course, it didn't happen. It didn't happen because the various heroes that were involved were able to find a way around it. Now, I do understand and I sympathise with the point you're making about the risk that you run as these very slow (and indeed, they are slow and painful processes are underway), but my reference to the WTO was simply as one of multiple tracks that New Zealand is running here.

There is the WTO process. There is the plurilateral process that we looked to do in, for example, the indigenous partnership for economic trade and cooperation arrangement. This wasn't dreamed up by me or my group on our own. This was an initiative that we worked together on. That was another way of bringing that perspective and that actually happened pretty quickly. We used our APEC host year to introduce the concept against considerable resistance. And we introduced the idea of trade and indigenous dialogues in 2021 and that has survived. Those trade and indigenous dialogues they continue to happen at every APEC meeting now. The number of Ministers who turn up to that dialogue is gradually expanding. So that's another track. Then there is the IPETCA, this arrangement. Then there is what we try to do in our free trade agreements.

I can't speak to what is happening domestically. But I can assure you that in an international sense the perspective that we bring to the trade negotiations is not your classical orthodox western view. It is a much more sophisticated perspective that tries to bring together the range of

views of Māori to shape and inform the approach we take into the negotiation. So if you think about what we tried to do in our free trade agreements, there are a range of ways in which we've looked to do that, from what we have done with the United Kingdom (and I believe that is explored in some detail in my evidence) and then what we have done with European Union, what we have done with United Arab Emirates, and each time we try to lift perspectives, we try to encourage. What we were also trying to do is we were trying to build coalitions. We are trying to build trust and confidence with our partners. We are trying to work with countries like Canada, Australia, Malaysia, Mexico, Peru, who all have indigenous populations, who to some extent at least share our views and we try then to work together with them, support the dialogue at APEC.

Q. So can I move to my next question. I'm going to jump a bit. Paragraph 46 of the Crown's revised Trade Environment and Climate Change Framework, because we're here for climate change mainly whānau. I have just got to keep reminding myself that, okay. Our client, Ngā Toki Whakarurunga provided several inputs to the proposed framework that challenge the approach being taken to consultation, you might recall that. That's that paragraph 46 of your brief I'm referring to. The Crown's inadequate and inappropriate approach to te taiao and honour te Tiriti and ask for a kaupapa Māori process to discuss the active protection of te taiao from first principles. Do you recall that?

A. Thank you. Yes, the Trade and Environment Framework is a really important example of what you're describing and of our attempt to find our way into reflecting those perspectives in the framework that then helps us in our negotiating context.

Q. But none of that occurred of what we putt up, did it? For whatever reasons, it didn't happen.

A. I don't share that view. Because I look at the text itself and I can see, and I hope Ngā Toki Whakarurunga in particular can see, that several of the principles that are in the agreement are clearly incorporated from the work that we did with Ngā Toki Whakarurunga and other Māori groups. Of course, we could not only bring in that one perspective. We did have to do, what was always very challenging in these processes, to weigh the

different perspectives, including of other Māori groups who were involved in this.

Q. But isn't there a danger? Like even in your summary this morning that your preferred potential groups are those that are benefiting from capitalism, FOMA, Iwi Chairs, significant holders of capital that are developing certain resources for and on behalf of certain beneficiaries and against that group are those people that are suffering devastating climate change outcomes. You know Tairāwhiti of the East Coast it's coming closer, for people like the Mauao situation highlighted for the peoples of Tauranga. So there is this spectrum and yet, even in your opening this morning, you talked about how many billions of dollars the Māori economy is. I mean even that finger figure is I think illusiory because many of these snapper cuts for example have cut-off about 10 billion in value of some of those export sales for snapper. So you've gone to look at different better conditions of trade for other species. But the fundamental is the tāmure which is an iconic specie for certain iwi is under threat. There is these balancing and I don't want to go into that. But how do you actually ensure that balancing of kaupapa Māori philosophies and obligations is infiltrating?

A. Look, again, it's a fair observation. It is a real challenge for us to work on that and get it right. It does require a lot of work to think about how one would deal with a balance of interests that are expressed by a wide range of stakeholders. I mean, in a sense, I am dealing with the world as it is, rather than the way I might wish it to be. One of the challenges we have is the multiple perspectives; there's an intergenerational one; there's certainly the class one. I mean I do take those points.

What we do try to do – and again, I do want to move away from the idea that this is solely in my hands or in the hands of the group, the Trade and Economic Group – we then provide advice to Ministers. The one thing I am absolutely confident of is that we reflect in detail what we hear from you and from the other Māori groups so that Ministers are well informed about the choices that confront them. If I may say so that is a big shift, that we now do have advice that goes to Ministers that says: "Here are the range of perspectives," including perspectives from groups that

fundamentally disagree with the paradigm that we're working in, as you've touched on.

Q. That is an important obligation of the Public Service Act accountability to provide full, free, and frank.

A. It is, yes.

Q. But there is also an obligation of stewardship in that principal. Do you agree that stewardship would also require stewardship of the values of the Tiriti o Waitangi which are as diverse is what we're discussing?

A. Yes, certainly I do see that perspective.

Q. Now I just want to move again to the Engagement Strategy 2001 which is that paragraph 18.1 of your brief of evidence. Are you aware that the Waitangi Tribunal in the Wai 262 and Wai 2522 inquiries were both critical of the 2001 strategy from a Treaty of Waitangi perspective but that no action has been taken to change it, in response to those criticisms and recommendations from the Tribunals? So it becomes a little hollow when I hear you say: "I'm listening carefully to the Waitangi Tribunal," yet when two significant Tribunals make criticism of the engagement no change. Would you care to give us an understanding why?

A. I'm just trying to find the right question. Is this question five?

Q. 4.3. I've jumped a bit. It's 18.1 of your main brief of evidence. And if you're feeling that I'm being unfair to you because of time, please have the opportunity to do write some answers while you're on your plane to Camaroon. We do value your input.

A. No, thank you. Look, of course, I am aware and I know you're seeing a colleague of my later on this week, who appropriately she is the Government's Chief Legal was at the time and still is in fact the Chief Legal Counsel, so I'll confine my remarks to what I know. What we were tasked to do was relatively narrow in scope and the improvements that we've looked to make in the Trade and Economic Group, again, fully acknowledging that we have distance to travel, we looked to then take the Cabinet Strategy as our reference point, not as the ceiling for what we were trying to do but as the reference point, the foundational block on which we would look to build out what it was we were going to do in the Trade and Economic Group.

Q. The danger of that though is with change of government and change of policy framework, unless that foundation is very strong that it is subject to visibility.

A. No, sorry, I disagree. We have had a change of governments. I've worked for several governments and several Ministers with different perspectives on this. I am confident that what we are able to do in the Trade and Economic Group does give Ministers the information they need to inform them on decisions they need to take so that we can create the parameters of our negotiations and that is properly in the capacity of my group. It is of course up to Governments and Ministers as to the decisions they take, but the work that we do with you and with others that is enduring.

Q. Like our relationship I hope, kia ora. Can I go to the next question please. It is Rory McLeod's paper. I want to try and do this in my time. At paragraph 48 of your main brief, you note Professor Kelsey's evidence that trade agreements exacerbate the climate crisis. I assume you are aware that Rory McLeod, a mainstream economist and former New Zealand Negotiator wrote a paper on trade and climate for the Pacific Economic Cooperation Council in 2024. Is that correct? And are you aware in his view efforts to tackle climate change may be hindered by trade rules and regulations that send signals and create incentives that sit at odds with policies needed to address issues involved with climate change? Are you aware of that? Do you agree with his opinions, his observations?

A. I have a lot of sympathy with Rory and his work. I'm an economist myself so a lot of what he describes and the very thoughtful structured approach he took in his paper certainly speaks to me. I don't share his view, which is quite a strong one, that it is as clear cut as he says. I do believe that trade agreements should play a role but I don't pretend that they will resolve or be the silver bullet that solves the climate crisis. But I do believe the rules that we negotiate in trade agreements can actually make a meaningful contribution to that. I did talk about that in some detail, both in my written submission but also this morning on the case of fossil fuel subsidy reform. I do believe that that is meaningful and that there is good

evidence that trade rules do drive reform because we've seen that through the WTO agreement on agriculture where agricultural subsidies were cut. Of course, the problem is that we haven't been able to expand the WTO agricultural agreement because some of those big economies that have big incentives not to undertake reform have flatly refused to do what they promised to do in 1994 through Article 20 which was to continue those negotiations and make further cuts to agricultural subsidies. They have not done that –

Q. Yes, I just want to acknowledge-

A. – but the agreement does-

Q. Yes, I want to acknowledge, you mention it in a number of places in your brief. At paragraph 12.1, paragraph 49, 68 and 97 to 100 so you do talk about this. I want to focus though on one element which is the environmentally harmful subsidies as contributors to climate change and subsidies as contributors to matters of trade policy where they are used in roles that Mr McLeod specifically points to is implicit to the fossil fuel and agricultural industries is providing incentives. So you know this is this balance. You have subsidies to help the elite farmers, like my father, you know, while my mother's family are forced to take pre-1990 forestries for example and they are now being penalised because of those Treaty settlement outcomes. But to carry on with the question, would you agree with the Rory that these matters could be disciplined in trade agreements but that the current international trade rules are totally unsuited to do so?

A. I do agree with Rory actually that implicit subsidies is one of the really big challenges that we face, not just New Zealand but a whole range of the major economies. There are three challenges. The work that has been done on explicit subsidies is much more extensive. There is a meaningful time series on that that can help you drive reform. We do not have the same data for implicit subsidies and certainly not to the depth and extent that we would need to drive a trade negotiation. So I have a lot of sympathy with the idea. But again, I'm having to deal with the world as it is where in that world we have not been able to tackle environmental help for subsidies, let alone the basic ones the 100 and whatever it was back in 1994 members agreed on agriculture.

Those are explicit subsidies. Those are the ones that are relatively transparent that you can actually capture in a trade agreement. The implicit subsidies one of the big challenges we have is a data problem. There's a policy problem and then there's a problem of capturing that in the trade disciplines themselves. Now that's not a reason not to do it, but we do have what I'd call the relatively lower hanging fruit which is the explicit subsidies. We do have the data. We do have the policy information. We do have the environmental damage effects of that. And we do have examples existing in the fishery subsidies agreement, in the WTO agricultural agreement, and the agreement on Climate Change Trade and Sustainability that has disciplined environmentally harmful explicit subsidies.

Q. But what about the implicit ones because that's really-

A. I would love to deal with implicit subsidies, but given how difficult it is to get countries to agree, even to tackle the explicit ones, the order of magnitude of the challenge of moving into tackling the implicit subsidies is such that I think we're some way away from that.

Q. But some of the political real politic also impacts domestically with the farmers for example, you know, polluters pay subsidies for some of the implied benefits to those. Has that ever been considered as part of the trade framework?

A. The Polluter Pays Principle, which is kind of one of those foundational elements of some of the work that the OECD did in the 60s and 70s, is a really good example of where one starts and then how that evolves over time. It is a really good example of one of the soft law things that lawyers seem to regard as a problem but over time has become the driver for the way in which we look to discipline the subsidies. And indeed, has been a major part of some of the domestic reform that countries have done, which is to link that principle as you have suggested.

I think the challenge we face is that persuading other countries even to deal with the explicit subsidies is difficult but the magnitude of the problem we would have beyond that is another. That is not the same thing though asking the question domestically about dealing with those implicit subsidies. As an economist, I would have absolute sympathy with that

but I'm a trade negotiator and so my world is a different one and so that's outside of my area of responsibility. That is a domestic economic question. It is a really interesting one. It is a really important one for the good reasons you've noted. And as an economist, I'd make conservation about the sort of strong fiscal burden this imposes at a difficult time but that is a personal view. It is not one that is burden by the responsibility for having to deal with that in a domestic setting.

Q. Can I go to paragraph 51 of your affidavit and the binding environment chapter in CPTPP prohibits the weakening of laws to attract trade or investment. Professor Kelsey in her evidence cites the comments by the Honourable Shane Jones, Minister for Resources saying: "He was not overly concerned over MFAT officials advice that an oil and gas ban would likely breach requirements in the free trade agreements with the EU and the United Kingdom not to reduce environmental standards so as to attract trade and investment." That's in the affidavit of Professor Kelsey 21 October 2024 at paragraph 18 for the record. Have we been challenged by the CPTPP parties for doing this?

A. To answer your question directly, no, that has not been raised with us by the CPTP parties.

Q. Do you know why?

A. No, I don't know why. I mean I don't know whether it will be a subject that colleagues are wanting to pursue. I think it is really important to remember what we look to do in the committees that we negotiate in these trade agreements. These committees are not about wacking each other on alleged breaches of the agreement. They are actually about trying to grapple with some of the really serious problems that we as CPTPP members or fellow countries dealing with the climate crisis have.

One of the features of the conversation we looked to have in the Trade and Environment Committee for example, or indeed in the Trade and Sustainable Development Chapters that we would negotiate, is actually to try to talk to colleagues: "How are they thinking about the challenges that we face on energy security on the climate change challenge we face and then how is it that we as trade officials can think about the tools that are in our toolbox to address those challenges?" That is the function of

those committees is to not just the operation of the agreement but also to talk about some of those big challenges we face. So that cooperation element, the sharing of information and knowledge, sharing of best practice is a really important feature of those agreements.

I know that can be disappointing to lawyers but that is actually what happens in those processes. They are cooperative. We look to work together with our colleagues. We look to build trust and confidence there. To come back to your question, no. it has not been a feature of the CPTPP dialogue.

Q. So what does their inaction say about the effectiveness of these rules? You know rules sometimes can be used as a persuasive tool or as a stick to actually get people to conform. Climate change crisis is immediate. So we need more sticks, we need more punishment, we need more reflective conduct, to ensure that we balance Papatūānuku to the earth's needs against the avarice of the opportunity by a particular economic export outcome.

I'm looking at paragraph 80 and the legally binding and enforceable commitments in the New Zealand European Union FTA to effectively implement the Paris agreement. The government has admitted that New Zealand will not meet its nationally determined commitments by domestic action and buying offshore carbon credits. Has the environment and climate change subcommittee of the New Zealand EU FTA raised New Zealand's potential breach of its FTA obligations?

A. Maybe to make it a brief observation on the first part of your comment.

Q. Yes.

A. I understand what you're driving at and I understand the attraction of using the trade agreements to drive climate change. There's a certain irony to that. But I really want to emphasise that the trade agreements are a tool. They are not "the tool". The way that New Zealanders try to think about trade agreements is to see them as one of the tools to help us mitigate and address some of the challenges including given the urgency. I mean I think we absolutely agree with you. But I don't want to overburden what the trade agreements can actually do. The sticks that are there, as you suggest, are not going to solve the climate crisis. There

are other places for that. The trade agreement can do certain things and the mutual reinforcement between the environment climate change world and the trade world I think that is an important feature of that.

Sorry, the second part or the actual question was about: “Has it been raised in the New Zealand EU FTA Committee?”

Q. Yes.

A. No. So no, it has not been raised in the committe but it has been raised with me not in the sense that you mean. To give you a sense of the discussion with my EU colleagues. I do raise with my EU colleagues the concern we have with the risk of protectionist measures from the carbon border adjustment mechanism that the EU has in place. Our concern is with certain member states who, we believe, are perhaps lowering the standards that they have in place and that they may be doing that for a trade advantage. I have a dialogue with my colleagues about the EUs Forestry Domestic Regulation, which we regard as not achieving the environmental outcome, which is to prevent deforestation. But actually, has a significant negative effect on our economic prospects, you know, having negotiated the Free Trade Agreement, then to find ourselves facing a new sort of non-tariff measure designed to keep us out which is a very cynical view that I know number of our sectors have of the way in which the EU has approached that. So, we look to have that discussion. I don't allege breaches to the Free Trade Agreement but I do flag to my colleagues: “These are some of the things we are concerned about.” And my colleagues then respond with their own concerns about questions that they have. But neither of us have said: “You're in breach of the agreement.”

The way in which these processes work is that the committee is designed – well, I haven't actually had the committee meeting yet. Although, I do expect this to be a feature and indeed, for us to be asking the commission questions on all of this as well. So, all of these things are a feature of the way in which we look to operate in the trade agreements, including to get the benefit of wisdom from the learnings that we've had or where we've made mistakes and what we can learn and how we can share that with our colleagues, whether it's the British, whether it's the EU or our Chinese

colleagues or whoever it might be. And likewise, we are interested in hearing from them about the challenges they face and how they've dealt with them, to see if there's an applicability to us. But we also do raise with them, concerns that are retarding our access into their market.

Q. But isn't one of the objectives also though to create conditions or conducive to climate change regulation to meet, to honour our obligation to our mother, isn't that also? It's not just: "I don't need to punish them because we have actually got this influential discussion going on of pluralism with a number of people that may share your same ideology or same concerns for the planet, I'll use it that way, and want to protect the planet." But isn't there a danger, that if you don't actually start to initiate what little power you have, that it actually becomes defunct or in the minds of populations that would be persuaded to change behaviour becomes ineffective?

A. Yes, I mean I think I really don't want to overstate the power of the trade agreement to drive climate change mitigation or indeed to resolve the climate crisis. I do come back to the challenge we face which is that the trade agreement can do certain things but it can't do all of the things that I think that the claimants would like it to do, and I can only operate within that paradigm that we've got. And I would observe that the agreement with the EU is now what barely two years old so we are only just now getting into the rhythm of that regular engagement that we do need with colleagues to inform ourselves and to have a sense of the kinds of challenges they face, that we face, and then what trade measures are they using, how effective have they been to address the climate change. Now the European Union colleagues have got longer deeper experience than we have, so it is a valuable tool for having that engagement. And if you're a small state like us, there are no other fora where we can engage in substance with our commission colleagues, so this agreement provides us that forum that I know our colleagues from MFE, from Department of Conservation from elsewhere do find extremely useful and valuable.

Q. Yes, I'd still come back. It's like you have a power of enforcement under the Resource Management Act. You see somebody interfering with your

tūpāpuku that's on the beach and then you choose to turn your back on it. I just feel you're FTA you've got these powers, you may not be choosing your back, you may just go on the road having a cup of tea kōrero about it. But actually that's not effective for those people whose tūpāpuku are now subject to climate or managed retreat who are now being subjected to significant relocatio or dislocation. So penalties aren't just there, I think, for influence. They actually must have a bite.

A. I really would have a question in my mind as to whether the trade agreement is the best way to address that, or whether actually domestic economic policy is actually a much more effective way to tackle exactly those problems. I mean I share your view about the seriousness of that problem and including the serious challenge we face as a country here but I'm not convinced that the trade agreement is the solution. I do think that that is a domestic economic policy and environment policy question and the intersection between those two that is the really important thing that would drive actual change. As always in sort of the economy, it is the domestic piece that often is the most significant. And in this case, I certainly think so in terms of the examples you've used.

MS SYKES TO JUDGE MILROY – GRANTED QUESTIONS IN WRITING

Q. I do want to thank you. I always find it really engaging to hear it ā-kanohi from you. I have to say I know how busy you are and it's such a privilege to have you present again in this forum and to give the mana to the forum that I think it deserves so thank you.

JUDGE MILROY ADDRESSES TE MINENGA – MICRO BREAK (12:02:04)

HEARING ADJOURNS: 12.02 AM

HEARING RESUMES: 12.04 PM

(12:04) MR KUDDUS TO VANGELIS VITALIS:

Q. Good afternoon Vitalis. How are you today?

A. As well as can be expected, thank you.

Q. I understand that you've got a fairly busy schedule so I'll get cracking right into my questions.

MR KUDDUS TO TRIBUNAL – TIMING

Right. Now Mr Vitalis, at paragraph 1 of your evidence, you confirm that you are responsible for negotiating and implementing New Zealand's trade agreements and for leading engagement with Māori as Treaty partners, correct.

A. Yes, that's correct.

Q. Those negotiations are conducted by the Crown acting through the executive, correct.

A. Yes.

Q. Ultimately, decisions about the content of trade agreements are made by the Crown and not Māori, I would presume, yes.

A. No, I don't share that view. I don't see it quite in such a black and white way. I do believe that the views of Māori are reflected in the advice that we look to give Ministers and that they then take decisions on that and give us the negotiating mandate and the negotiating mandate can be very specific or it can be the broad parameters that we can use to approach a negotiation. Often for something like the Treaty exception that tends to be very clear. That needs to be there. That's a red line. On things like what the phase now might be for hoki would it be seven years or five, what could we accept, there would be a range of views and they will be informed about what the view of the various Māori groups that we have been working with is on that. For example, I can recall on mānuka honey the difficult trade-off we made between mānuka honey and honey more generally and the way in which we proceeded in the negotiation was informed by the views of Māori, which were faithfully reflected back to the government, and that became the position that we then adopted in the negotiations.

Q. But Māori as tangata whenua have no formal decision-making authority in those negotiations, do they? Essentially, you in your role are responsible for putting the views of Māori to the Crown to then make decisions, yes.

A. Yes, that is correct.

Q. Thank you. Now at paragraph 6 of your evidence, you refer to engagement with Māori, including your relationship with Ngā Toki Whakarurunga, correct.

A. I do.

Q. And you describe that engagement as involving dialogue and ongoing discussion with Māori, yes.

A. I can't see the exact words but yes, I think that's correct.

Q. But that engagement does not give Māori a decision-making role in trade negotiations, does it?

A. No, and I don't have a decision-making role in that sense. If you mean in the sense of the final decision on a negotiation that rests with Ministers, Cabinet.

Q. Yes, of course. And Māori are not a party to trade agreement entered into by New Zealand, are they?

A. Look, I'm not a lawyer, but the negotiations that I'm involved when I represent New Zealand, and I do regard that then as encompassing also Māori perspectives as well in that negotiation. I'm sure there's a sophisticated legal way to express that and I'll leave that to my colleague who is presenting later this week. She is a lawyer, I am not. But when I represent New Zealand, I take it seriously to reflect that broader range of use than I think the one you appear to have in mind.

Q. Now which colleague is that and then I can perhaps put that question to her later on in the week?

A. It's Victoria Helen. She is the Government's Chief International Legal Advisor. She is also the head of the multilateral legal group.

JUDGE MILROY TO MR KUDDUS – WITNESS APPEARING

A. Sorry, this afternoon.

Q. Yes, thank you. I believe I am cross-examining Ms Helen so it might be a good question to put to her. Moving on Mr Vitalis, you also acknowledge in your evidence that Māori perspectives are regularly conveyed to officials in the course of engagement, and I think you have mentioned that just before with me as well. Ultimately, those perspectives must be balanced against other national interests in negotiations, yes.

A. Not necessarily. I do take a different view than I think the one you're trying to pursue here. I do want to be really clear, one of the things that doesn't get traded off is the Treaty exception. It is not the case that we would enter into negotiation and then we would have flexibility to remove that exception. Where we would have flexibility is for example in how long is it going to take to remove the tariff on mānuka honey, is it going to be seven years, is it going to be 12 years, should it be three years. There is flexibility there.

Again, I do want to emphasise though, even there, our view and the advice we get from government or our Ministers is informed and shaped by what we hear from Māori, for example, where there are really very strong interests for example in seafood. But there are some areas where there isn't that trade-off. It is simply not a thing that we would contemplate. That makes it very challenging and, if I may say so, stressful for the group because often the Treaty of Waitangi exception is one of the last things that gets resolved in a negotiation. But it is not one of those ones where we can trade it off, and I mean that in terms of the language itself as well. I do want to be really clear about that. In a way, this is one of the easiest provisions for New Zealand negotiators to negotiate because we have no room for maneuver and it is this, or we can't be in the agreement. That was the position that we took, and I was the Chief Negotiator at the time, for the ASEAN-Australian-New Zealand Free Trade Agreement. There was no trade-off as you've suggested. It was very clear to the Indonesians, to the Australians, to the Malaysians, to the Filipinos, to Myanmar that if they did not agree this, then New Zealand could not be in the agreement. That was the position we took. It was resolved at literally within the last hour of the negotiations before Ministers were meeting either to announce or that we could not be part of the deal. We did have flexibility on things like how much dairy or how much meat might be included in the agreement. There was no flexibility on the Waitangi exception. Sorry, I use that example but there are others as well.

Q. But I guess what I was trying to get at Mr Vitalis was that Māori input may be considered but it does not determine ultimately the negotiation outcomes, does it now?

A. Again, I'm not sure I agree with that assertion. Again, I mean I should acknowledge here that on the Treaty of Waitangi exception by the way, I mean, there are a range of views on that as well, but there is no Māori group that I've talked to that says: “You can drop it.” But there are a range of views. I know you've heard from the claimants, they have a very strong view that the current exception, the one that the Tribunal – I can't remember the exact language – adequate level of protection, described as an adequate level of protection. I know the claimants regard that as insufficient but that is one of the non-negotiable elements, so there are a range of views that goes into that which say: “You should be doing more, you should add to this, you should put an additional safeguards.” If you look at the EU agreement for example, you can certainly see an example of that. I’m sorry, and there, for example, the Māori view frankly is decisive. Certainly, let me be really open about it, for me, that is a decisive view and I think it's a decisive view held by all of my team of negotiators. I do not believe that there is any one of my group that believes otherwise.

Q. Thank you Mr Vitalis. Moving on. At paragraph 10 of your evidence, you refer to concerns raised by Māori that trade approaches are market-based and reflect Western economic models, yes.

A. Yes, I do see that perspective, yes.

Q. Those concerns include that such models may be inconsistent with tikanga, mātauranga Māori, and kaitiakitanga, correct.

A. I can certainly see how that view could be held. But I hope what I’ve tried to demonstrate, both in the written material that I provided and in the discussion that we've had today, is that what we've tried to do is to actually shift the way in which that paradigm works, while acknowledging that the influence and power of a small state in these processes is necessarily modest.

Q. Now you accept in your evidence that the tensions between the two worldviews, i.e., tikanga and the Western economic model are real and complex, yes.

A. Yes, as I said earlier today, I don't really like sort of the dictomy, the sort of that Western and non-Western tikanga view. I think it is a lot more sophisticated in a New Zealand context. I accept that might not be the case in some other countries but in a New Zealand context I believe the view is much more sophisticated than you've presented it there. I do believe that what we're trying to do in a trade policy context is very different to what you've sought to describe. I do accept that the perspective of the claimants is that the world's are far apart, but what I'd like to think is that what we are trying to do is find ways to bring those different visions together and in particular, to embed that in our trade policy practice.

Q. Thank you.

MR KUDDUS TO JUDGE MILROY – CLARIFICATION

Q. Now Mr Vitalis, going back to what we were discussing, given that it is well accepted that the trade agreements fundamentally structure around market-based economic systems, would you then accept that these agreements do not incorporate mātauranga Māori as a foundational framework?

A. Yes, I think that's a fair observation. If you're thinking about the agreements internationally, of course, they do not have as their framework the mātauranga Māori one that you've described. What I would draw your attention to though is what we've looked to do is to try to shift the way other countries think about this. I talk at some length about the Indigenous Partnership for Economic Cooperation and Trade Arrangement which is our effort to reshape the way other countries think about indigenous issues and that was shaped through an intensive engagement with Māori in 2021 as part of our APEC host year. So while you are correct to say that those international agreements don't reflect that book, I hope what you can see is that as the Trade and Economic Group, we have been trying to bring those perspectives in. I should acknowledge the fact that it is by partisan. We

have been doing this with both the current government and the previous government. During my time, I've served different governments and different Ministers of different political stripes but this has been an enduring feature of the way in which we've approached this.

Q. I thank you for that. Finally, on that point, you would then accept that Māori worldviews are not determinative in the design of trade agreements, yes.

A. Again, I would argue that the Indigenous Partnership for Economic Cooperation and Trade Arrangement really challenges that perspective that you've put. If I reflect back to what that agreement looked like certainly in my mind and then where it ended up, it's a very different thing and it's a much better piece of trade architecture as a result of that. If I had dreamt that up on my own, it would not have looked as good and as strong as it does. I do believe that is a meaningful contribution that New Zealand has made. If you think about the other colleagues that are around the table with us, Canada, Taiwan, Australia, and I would like to make the observation the United States is an observer to this.

I know there is an impatience on the part of lawyers who want to see quick results and I also accept the point that Annette Sykes made earlier today about, you know, time is not the friend here. But I hope what you're seeing is that what we are trying to do, with some vigour and determination, is to try to shift that approach and to shift the way in which not just we think but also our colleagues and partners think.

Q. Thank you Mr Vitalis. Now, turning to the role of trade agreements and climate policy. At paragraphs 51 through 54 of your evidence, you generally explain that climate related provision and trade agreements are negotiated outcomes between parties. Would that be inaccurate take away from that part of your evidence?

A. Yes, that's not the only thing I say there but, yes.

Q. Those provisions are designed to reconcile trade and climate objectives rather than prioritise one over the other, yes.

A. The way I prefer to think about it and in the trade policy world, we think of these as mutually reinforcing measures, so that the two worlds don't collide but rather they are complimentary and self-reinforcing.

Q. Would climate commitments and trade agreements depend on what other countries are willing to agree to?

A. Yes, it is the case that in negotiations you are always very dependent on what your partner is willing to agree and of course what you yourself are prepared to agree. And then if it is a plurilateral negotiation or a multilateral negotiation, then you can be talking about large numbers of partners, what they're prepared to agree and contemplate in the context of a trade negotiation. Yes, that's correct.

Q. Therefore, New Zealand cannot unilaterally impose its preferred climate measures through trade agreements, can it?

A. Yes, unfortunately, that is the case. You know the world that a small state operates in, a small state that brings very little to the table that is of interest to bigger partners is a challenging world to negotiate in. But I do remind my staff – and there is what I like to call the Mick Jagger principal of trade negotiations, which is really important for small countries and our team to remember – you can't always get what you want but you can get what you need. I do believe that's a really important way of thinking about how a small state operates in a very difficult and challenging environment. We do need these agreements. I do believe Māori need them too but sometimes we have to accept something less than we would like. But when I say that, that does not include the Waitangi exception. That is a non-negotiable.

Q. Now, you refer in your evidence to participation initiatives, such as the Indo-Pacific Economic Framework Clean Economy Agreement. And at paragraph 122, you note that there is flexibility for Māori representatives to participate in certain forums, yes.

A. Sorry, yes. I love these lawyer leading questions, thank you. I learn a lot about your practice here of lawyers.

Q. I'm glad sir and I learn a lot about what you do for New Zealand as well. Now the participation of Māori is limited and contingent, in that case, is it not?

A. Yes, it is. It is an example of us not getting everything we wanted but we did get what we need. I think it's fair to say that the people that were involved in the negotiation directly had wanted a great deal more. But if

you reflect on who the members of this agreement are and the sensitivities that many of them had, I go back to some of my earlier evidence where I observed or I made the point that countries like Indonesia, Malaysia, Australia, all have indigenous populations but have real sensitivities about how they involve them. They have a very different view to the one we bring to the negotiations. I won't sort of comment on what other countries are doing but I will just say as a negotiator for New Zealand what we are doing is completely different to what most of our counterparts are willing to contemplate. Therefore, we're in this uneasy space of trying to find a way – and again, it comes to my point about sort of strategic patience and strategic incrementalism – where we try to start with something and then as the reviews of these agreements come we try to improve each time what we do there. But I do accept it is short of certainly what we wanted. And of course, I do also accept it will be well short of what the claimants would have wanted.

Q. Now, Māori representatives on these forums do not negotiate on behalf of New Zealand in those processes, do they?

A. They do not because the agreement has been concluded so actually what we're talking about is the implementation and then the further review and improvement of the agreement. But no, indeed, to answer your question directly.

Q. Therefore, involvement is participatory or advisory rather than decision-making, yes.

A. Yes, I know what you're driving at and again, I come back to the original point that I was trying to make is that the decision-making authority properly rest with Ministers. I am confident though that the Trade and Economic Group faithfully reflects Māori views, the range of Māori views to our Ministers so that they are well informed about the choices and decisions that they then need to make.

If I may make an additional observation. The way in which we conduct these negotiations has fundamentally changed and that does include the use of these confidentiality agreements that allow us to share a text and to work together to try to shape the agreement in a way that is closer to where the Māori groups that we work would like to see it. But again, I'm

not pretending that the outcomes are perfect by any means, not even for us in the group, let alone for the Māori groups that we work with, sorry.

Q. Thank you Mr Vitalis. I believe I'm coming towards the end of my time, so I'll seek leave to put the remaining questions in writing. And in doing that, sir, I'd just like to acknowledge your contribution that you have made to New Zealand in terms of your role as a trade negotiator for the country. I thank you very much sir. Given that I've read your evidence, I personally have learnt a lot about what you do for us as well on the international scale so I thank you very much. Hopefully you can bring the fuel prices down for us at some point.

A. That's very generous of you. Thank you.

JUDGE MILROY ADDRESSES VANGELIS VITALIS – MICK JAGGER QUOTE (12:28:26)

(12:28) MS RONGO TO VANGELIS VITALIS:

Q. Tēnā koe. My name is Eve Rongo. I represent a small iwi at the top of the South Island called Ngāti Kōata. Ngāti Kōata were one of the six claimants that brought the Wai 262 claim to the Waitangi Tribunal which later became the Wai 262 Inquiry. John Hippolite was a long time activist, and at the time of the drafting, Moana Jackson did the drafting of the Wai 262. He was particularly concerned about the way that the Crown had acquired Takapourewa Island and assumed control over Ngāti Kōata taonga specie the tuatara. When drafting the Wai 262 claim each of the claimants who represented different iwi were asked to champion a particular area of interest or species and Ngāti Kōata to chose the tuatara. To Ngāti Kōata actually the 262 claim was particularly about tino rangatiratanga and it was about Ngāti Kōata speaking for Ngāti Kōata about matters that concerned Ngāti Kōata. You'll probably see where I'm going with this.

Now coming last, a lot of my questions have already been asked. You've already spoken about Māori as significant contributors to the New Zealand economy. You've spoken about Māori perspectives and how they may differ from market-based approaches. I wasn't quite sure

if you acepted this. I think it might've been implied but I'd just like to cover this. In regard to the differing worldviews for Māori perspectives and market-based approaches, you accept that tikanga-based approaches that Māori would predominantly follow emphasise kaitiakitanga and environmental stewardships? You would accept that wouldn't you?

A. Yes I would.

Q. And when it comes to constraints of international negotiations, I think you've already spoken about how New Zealand faces in asymmetry of negotiating power with the larger trading partners and how sometimes we can't always achieve our negotiating objectives, okay. Trade policy, you would accept, is developed at more of a national level?

A. Yes, in the sense that it's prosecuted at a national level. But it is informed by various regional perspectives, so we do have sort of regional engagement meetings around the country to try to explain what it is we're doing and we do have hui with Māori as well. There is certainly regional input. Last week I was in Rotorua and Hamilton, the week before in Christchurch talking about for example the India Free Trade Agreement and then some of the things we're trying to think about in the future as well. But I take your point, it is nationally-driven in the end, but it is informed by a range of perspectives, including regional ones.

Q. Yes, but you can't always tailor the outcome to each specific environmental circumstance of each individual iwi, can you?

A. Yes, that's a really interesting question. One we did grapple with, because there were different views – yes, there were different views – about the prioritisation we should place on particular seafood species in the negotiation. So that was indeed our attempt in a bespoke way to try to deal with different iwi perspectives on particular products that they were interested in selling to the European Union at a much lower tariff. But I take your point, it is very challenging to reflect that. I can think of several examples where we meaningfully try to address the differences between particular iwi on **(inaudible 12:32:55)**. I mean, for example, the definition of mānuka honey that's somewhat contested depending on who you talk to. So we try but I take your point.

Q. And I'm disappointed to say all the rest of my questions were taken but thank you for your time.

QUESTIONS FROM KEVIN PRIME – NIL

KEVIN PRIME ADDRESSES VAGELIS VITALIS – MIHI, ACKNOWLEDGEMENT (12:33:45)

(12:33) BASIL MORRISON TO VANGELIS VITALIS:

Q. Thank you most sincerely for your evidence and explanations that you made in regard to a number of questions and queries and comments. My comment really is I've found it incredibly interesting coming from where I've lived in this world and trying to negotiate the impossible is something that I really rank highly. So I thank you most sincerely, wish you the best, and thank you for what you're doing. It's not an easy task. And I've talked to you about the Resource Management Act the amendment that's before Select Committee at the moment how that's affecting rural and provincial New Zealand in the production of food and fibre and all of those issues, which, I assume in response to the questions you've already been asked and answered, are all part and parcel of what you do in negotiation. So wish you the best and thank you most sincerely.

(12:35) PRUE KAPUA TO VANGELIS VITALIS:

Q. Kia ora Mr Vitalis. I support the comments made to date. I just had a couple of questions, maybe clarification questions. When you talk about the Treaty exception that goes in as of right into every agreement. Is that correct?

A. Yes, it has been in all of our agreements. Since 2001 all of our free trade agreements, yes.

Q. Right, thank you.

A. I don't want to give the impression that it goes in as of right because other parties fiercely resisted for the reasons I described but it is an absolute must for us.

Q. In a particular form.

A. Yes, that's a fair question. The form that we've used has been the original form. The one the Tribunal found was providing an adequate level of protection.

Q. Yes.

A. Most recently, we tried, with the help of some of the claimants, to evolve that text. We used that evolved text with our Indian colleagues and, as Professor Kelsey explained, they would not agree to that. They would only agree to what everyone else had agreed which was the original exception. I've got to say that was pretty disappointing because I had hoped that India of all countries would have the kind of understanding that I would've hoped they would've had. But it was my experience in that negotiation that the political sensitivities for them were such that they simply could not accept the evolved version. And indeed, the version that we managed to secure was secured. It was the last thing that was secured.

Q. In the event that there isn't agreement, then New Zealand would not enter the agreement. Is that correct?

A. I can only talk from my previous experience. I know that the mandate for example in the ASEAN-Australia-New Zealand Free Trade Agreement was very clear and my job was to make it clear to my counterparts that we could not agree without the exception. We would not be party to the agreement.

There is an element of your colleagues are all negotiators too so they think there is an element of bluff to that so they push you right to the edge. I think what has happened since then is that colleagues that we negotiate with, for example, the British or the EU or the UAE or indeed the Indians, they do see the pattern of practice. That it is in all of our agreements. That we're not lying, it is in all of them.

The trade policy world is a relatively small one. We all talk amongst ourselves. So there is a knowledge on the part of our colleagues that this really is a non-negotiable one for New Zealand. I mean, certainly, some of those countries have certainly tried it on and they always have left it to the end before they finally agree. Yes, it can be very stressful at the end.

Q. You talked earlier about ensuring Treaty consistency and I acknowledge from obviously those who have worked with you your personal commitment and that of your team. Do you have a view about how, in ensuring the Treaty consistency, you can embed it beyond the good will of those who are involved in the negotiations?

A. Sorry, you mean beyond my groupd or?

Q. Beyond your group. At the moment, you have a relationship which you clearly value in terms of the work that you do with particular groups and there is obviously a reciprocal amount of trust there. But in ensuring Treaty consistency, as you've talked of, and we've heard evidence about how people should be at the table for example, do you have a view on how moving away from the good will of those involved, you can ensure Treaty consistency in some kind of structure that will always ensure that the issues of te Tiriti are paramount or prioritised?

A. I do believe that the commitment of the Trade and Economic Group is an enduring one. I don't think it hinges on my presence at all. I do believe it is now an embedded part of trade policy practice in the group that we do work with Māori to ensure Treaty consistent outcomes. There are a range of views though about how consistent we've been. One of the things that we do get, including from the claimants, are assessments of agreements which show that there is certainly places we could do better. That is part of the homework that we have as a group which is to continue to work and improve what we do to make sure that we are meeting what I know – and I don't just speak for myself but I speak for my colleagues – senior colleagues and junior colleagues in the group take really seriously that the Treaty consistency **(inaudible 12:41:17)**. But I don't believe it just depends on myself. I believe that's an embedded part of negotiating practice.

Q. All right. So it's a part of practice. But you don't have a view about whether there's some kind of structural basis that can ensure that there would be always irrespective of whether there's a particular group established. You don't have a view about some kind of structural change that could reflect and ensure that consistency.

A. I mean I think what we've been trying to do is to create that kind of framework through the structures that are in place with the mediation agreement, the memorandum that we have with both the Federation of Māori Authorities but also Te Taumata. We have these sort of frameworks that, you know, we're in the process of updating the one with Ngā Toki Whakarurunga now and an active process of working with them. I see them as providing sort of a living structure that is the enduring way in which we seek to ensure Treaty consistent outcomes in the agreements we seek to negotiate.

Q. Okay, thanks for that. The MoUs that you talk about, do they require Ministerial sign-off?

A. They don't. They're signed off by us, the Ministry –

Q. Both.

A. – yes, which is the appropriate way to do that in my view.

Q. All right, thank you. Thank you Mr Vitalis.

(12:43) PROFESSOR DAVID WILLIAMS TO VANGELIS VITALIS:

Q. Āe, tēnā koe Mr Vitalis. Thank you for your time with us today. You having mentioned Mick Jagger, I checked up on other things he might've said, and one of them was: "Anything worth doing is worth overdoing." Anything you think is working well, let's make sure you overdo working it well.

I think you mainly covered the answer to the first question I had. It's just about this word "embedding" things within MFAT itself. You've got the relationships with Māori organisations but you know like Cabinet has got a Cabinet Manual. Does MFAT have a policy manual of some sort that says that: "Even if Mr Vitalis dies, the group will continue to be committed to this policy approach about robust engagement with Māori," which is paragraph 20 of your brief.

A. I'd make two to observations on that. First, I think the enduring structural kind of institutional nature of the relationships we have which are framed by those MoUs and the mediation agreement, those are kind of enduring structures that will continue regardless of who is in the group. But the second thing that I think is really important is that the culture of the group

is to take this seriously. The expectation of myself and senior managers is that no matter who the staff member is junior, mid-level or whatever it is they are expected as part of their professional work for us in the Trade and Economic Group that they are working with Māori.

Q. Right.

A. We do have expectations also that they work with other groups but the partnership piece that's with Māori and that is the culture of the group.

Q. Right, yes.

A. Sorry, and then you've got the backstops of these mediation agreements, the memoranda of understanding, and so on.

Q. Yes, good. Thank you. My only other question – I mean like Ms Sykes I would find it quite entertaining to talk you for a long time but we've got limited time – the open plurilateral agreement idea and the agreement on climate change trade and sustainability, I'm just trying to think of some other examples of the benefits of strategic patience. Correct me if I'm wrong, but I think the CFC agreements in the Montreal Protocol of 1987 started out with a smallest group of nations that were really determined to get CFCs out of the environment to protect the Ozone layer or to repair the Ozone layer and eventually, it became, I think a universal agreement. Am I right about that? And can you think of some other examples where it's been a small group of nations that initiate it? Because the general multilateral approach to Treaty-making is you all have to be there for the beginning and you all have to agree at the end which is unlikely to be successful in most climate change areas.

A. Yes, I'm not an expert on the Montreal Protocol or indeed the others. But my understanding is that, yes, it started off with a small group of countries concerned about the specific challenge of CFCs and then widened to become the actual protocol itself. In the trade world, there are many, many examples of how the plurilateral process with small groups of countries being advanced. In the Uruguay, around the conclusion of the Uruguay round, it was based around a series of plurilateral agreements that were then brought together to form the key of the WTO set of agreements. But to give you some examples, to take your point about the open plurilaterals. For New Zealand, we have a number of examples,

the P4 to CPTPP the example I gave, the Digital Economy Partnership Agreement three countries, now four with a fifth about to join Costa Rica, sixth Peru, and then another seven in the queue to join. So again, open plurilateral that's growing. The other one is IPETCA which is an open plurilateral. We hope the other countries who share our views-

Q. The indigenous ones.

A. Sorry.

Q. Those are the indigenous.

A. That's the indigenous one, yes.

Q. Yes.

A. And then there is the Inclusive Trade Action Group which is a group of countries now including I believe 12 or 13 of us. It started off as just three, New Zealand, Canada, and Chile. We've also got the Global Trade Agenda Arrangement. That also started off with just three countries, Chile, New Zealand, and Canada. And again, that has expanded. There are lots of good examples of it.

New Zealand prefers to do those kinds of things because we can start with a small group and we have then influenced on shaping what those rules look like. And then the challenge we have is that the patience that's required for that to then become this bigger agreement that then really drives things.

It can be challenging also in a political context, of course, because you are asking Ministers to front foot and explain publicly why there is this little agreement with Singapore, Chile, and New Zealand and why that's a worthwhile endeavour. It may not become this big agreement in the term of their electoral life, so it does require quite a bit of effort and sort of trust and confidence that the strategy really does work and deliver.

Obviously, I do believe that it delivers. I do accept that it takes time and patience, and I do acknowledge the point that Annette Sykes was making about what that challenge then means in terms of Māori perspectives on that. But I am a big believer that this is the way in which we have influence and we actually get to shape outcomes and we get to protect an advance our interests. Because if we're in the ground floor we can then make sure that Māori perspectives are actually advanced and protected in that,

because it's much easier to negotiate with our Singaporean and Chilean colleagues than it is to negotiate with 16 others who have this range of very difficult and challenging views on the same things.

Q. All right. Good. Thank you very much. And I hope that the Dionysus or whoever it is doesn't have this sort of Damocles coming down on you at any time soon. So thank you very much.

(12:50) JUDGE MILROY TO VANGELIS VITALIS

Q. Thank you Mr Vitalis. It is very interesting to listen to your views about the importance of those trading agreements and the various different agreements that have been entered into. I think Professor Kelsey characterised it as trying to rescue the world of international rules forms applying which seems to be in a state of crisis at the moment and I believe one of our previous witnesses said that international law is totally in abeyance at the moment. Hopefully, you're not single-handedly trying to turn back the tide of Barbaraism, if I can put it that way.

My question is really about some of those soft normative actions that you're undertaking because yes lawyers do like hard law. But I do think that the language that is used in agreements and even in discussions amongst negotiators is important in terms of first of all getting to that trust and confidence point. I suppose one of the things that Māori might say about dealing with the Crown is the lack of trust that the Crown often has that Māori have the capabilities, the good will, the interests of not only themselves but the rest of Aotearoa in mind when they're dealing with the Crown. I am interested in how you get that trust and confidence from your colleagues to, for instance, agree in the end to including the Treaty clause. It can't be just: “New Zealand is going to opt out of this agreement because they have an agreement amongst themselves.” As you said, we haven't got that much that they might want. So I am interested in the process that you undertake to bring people to the mindset where they think that: “Okay, this is important enough to put into the agreement.”

A. Yes, it's a great question. Yes, and I shouldn't have given the impression that we sort of somehow threaten negotiations and behave appallingly. To take the example of the Treaty exception, what we try to do throughout

the negotiations is provide opportunities for colleagues to ask us questions. We have a standard sort of information paper about the Treaty its historical context and so on, that we look to share with colleagues to help them understand what it is we're doing.

What we have also been trying to do more recently is bring those international colleagues when they come to New Zealand to meet with Māori. In the case of the Indian negotiations, for example, on the first day of the negotiation just before we started, we had a very good round table discussion with Māori representatives, including from some of the claimants who were able to speak then to their Indian colleagues about their interests. Those interests range from commercial through to the Treaty exception, explaining to the Indian counterparts what this is for, why it is needed, why it is must have. I must say, those are very important parts of our strategy to persuade colleagues of why this is important.

We have this quite active, they are sort of the formal negotiator to negotiator discussion. Then there is the elements where we try to bring the lawyers together so that there is a discussion about: “Okay, so what does this mean in legal sense this text?” And then we try to ensure that Māori voices are heard by the counterparts so that those counterparts really do hear directly from Māori about why this matters and why it must be in the agreement.

The representatives that spoke to the Indian colleagues, they were very impressive people with considerable mana. I do believe they helped us shift, not entirely, the Indian colleagues were tough cookies. But nevertheless, shifting the thinking that this wasn't just some attempt. So the suspicion is that what New Zealand is seeking is essentially a blank cheque to do whatever we like, whenever we like and what the presence of people with genuine mana were able to do is to explain why and the origins of what the Treaty was and provide them with an understanding of that. I found that a very powerful mechanism to help us as negotiators try to secure the outcome we were seeking.

We’ve also looked to set up meetings as we're trying to review the digital chapter in the UK agreement, which was being negotiated at the same time as the stage three inquiry came out, which found that there was a

problem with what we had done in CPTPP. We've tried to make sure that there are meetings between Māori representatives and the British team both in the High Commission but also the negotiators themselves to share material that Māori provide us directly with our counterparts. You know from some of the claimants we received material that we've shared. So in a way trying to shape the perspective so that they understand the fundamental nature of this exception.

Q. That's very good to hear that international colleagues are hearing directly from Māori as to Māori perspectives of the relationship and why this is important. I was going to ask you if part of the materials includes Moana Jackson's view of things but if they're hearing directly from Māori they're getting a really on the ground kind of view of things.

Just picking up on something that Ms Sykes raised and that was about the use of penalties as it were going to – I forget the name of the Tribunal – say there has been a breach and so on. Of course, that could be used against New Zealand as well as us using it against others. And you mentioned that in the forums that you're working what happens rather is that a discussion takes place and there are concerns raised. I'm wondering if that then has a flow-on effect to conversations with their own Ministers and our Ministers and that kind of – you know one of the things that Māori hope to use by going to the United Nations for instance is to say: "Well, you know, New Zealand lift your game because there's going to be reputational consequences," and then that might be a lead on to economic consequences or people not wanting to talk to us and so on. Is that the kind of consequence that you were looking at in terms of taking those conversations with others?

A. Yes, we certainly give Ministers the flavour of the discussion, including if there are challenges that certainly go to the reputational or the credibility of New Zealand whether it's in the negotiating space, in the trade space, or the climate change space. Yes, we certainly bring that forward and we certainly are alert to the reputational damage not just in its own right but because – you know I talked about the challenge of New Zealand as a small player offering very little. One of the things we do have is a reputation as a serious country that abides by its commitments and that

when we make a commitment it has meaning. We don't cheat on it. In our negotiations, we are fair and transparent.

While we're all working in our national interest, it becomes an important part of your reputation that you are credible in that process. That you're not asking for absurd things. Big countries often do that but they can get away with that. But a small country simply cannot behave in that fashion so it does need to be reasonably nuanced and a careful way of negotiating where your reputation is preserved, while at the same time ensuring Ministers are fully cited on risk.

We are very open with Ministers about risk. We give them the advice that they should get from us, based on our professional judgment as trade negotiators in the Trade and Economic Group. We really do take that obligation very seriously that we are properly advising them. It is of course their prerogative which way they want to go and the decisions they take, but I am confident they get good advice from us about some of the elements you've pointed out, including on reputation and accredibility.

Q. So there is a pressure on New Zealand to live up to its words. So where we're saying: "We want high environmental standards and so on," there is a pressure on New Zealand to comply.

A. Yes, that's a fair observation. It is I think very important for our reputation that we are as good as our word as well and that when we make an obligation we do live up to that. That's an important part of our credibility as a trading nation out there.

Q. All right. My last question is really about because we are a climate change inquiry and in some ways it could be seen that the trade aspect of things is it has relevance but it's a tangential kind relevance. But I think the concern where the rubber really hits the road is that issue of the extractive nature of some people might say is the capitalist economy in itself, some might say it's the corruption of the capitalist mode of an economy. Because you know Māori traded, they traded before Europeans got here. It's not that tikanga is against trade. So the concern is that extractive nature. I suppose I was thinking of Nauru and how at one point they were the most per head of population, the most wealthy people I think on the planet but what is left now is nothing and that's where

there's an intersection between climate change issues and trade issues that we're not opening ourselves and we're not causing others to be put into a position where companies can come in and, you know, rape and pillage basically. I am interested in how strong you think the trade agreements are to prevent that, because that is where the ISDS question comes in as well that we no longer have.

Yes, it's an interesting question. I think a really important part of being able to negotiate this agreement as social license and having a social license is sort of a critical part of the work that the group also does. By that I mean, ensuring that New Zealanders in general and Māori of course as well do see that on balance trade agreements are a good thing and that they're for them and that therefore these are worth negotiating. And to sustain that social license, and I say social license because we've always assumed it in New Zealand, but we lost it during the TPP negotiations. We lost it because there was no trust in us as negotiators. There was a concern about lack of transparency. There was a concern about a loss of sovereignty. The Investor-State Dispute Settlement was simply one example of the concerns. There were concerns about what was being proposed on medicines, on pharmaceuticals, and so on. And for the first time in our history, the two major parties did not support a trade agreement, so one of the two major parties. So I defined the social license as an expression of the electorate where the two major political parties will support an agreement.

Q. Yes.

A. So, all throughout our history, Labour and National, the two major political parties have indeed supported the trade agreements, including – what were often easy to forget – how controversial the China Free Trade Agreement was at the time, human rights, environment, labour rights; how controversial the ASEAN-Australia-New Zealand Free Trade Agreement was. We were negotiating with Burma which was a military dictatorship at the time so deeply controversial. But in each case a social license was sustained. The two major political parties were able to find a way to support the agreement through parliament.

That broke down during the TPP negotiations. That was a major driver for our group, the Trade and Economic Group in the Ministry to fundamentally reassess how we were doing this. That was a breakpoint in our history that I'll never forget and I never want to repeat. The sustaining of that social license so that there is trust and confidence by Māori but also by New Zealanders in general that on balance what we're trying to do internationally is good for them, is good for the economy and indeed, does take into account the concerns people have about declining fish stocks, for example, which is why we have the WTO Fisheries Subsidies Agreement.

What we can do about the climate change piece, which is of course the focus of this inquiry, again looking to make a contribution but not pretending that we can solve the problem but helping us sustain the social license so that people see: "The trade agreement can help us. It's not going to fix it but it is going to assist us." For example, seeking to reform fossil fuel subsidies. Those elements I think are really important to keep us and to reassure New Zealanders and Māori that what we're doing is legitimate, is something that on balance is in their and our shared collective interest.

Q. Thank you very much for that.

RE-EXAMINATION QUESTIONS FROM MR PREBBLE – NIL

MR PREBBLE ADDRESSES VANGELIS VITALIS – MIHI, ACKNOWLEDGEMENT (13:06:45)

JUDGE MILROY ADDRESSES VANGELIS VITALIS – MIHI, ACKNOWLEDGEMENT (13:07:01)

HEARING ADJOURNS: 1.07 PM

HEARING RESUMES: 1.59 PM

JUDGE MILROY ADDRESSES MR PREBBLE – QUESTIONS IN WRITING (13:59:50)

(14:00) PRUE KAPUA TO PROFESSOR JANE KELSEY:

Q. Kia ora Professor Kelsey. I might just ask you the same questions that I asked Mr Vitalis. Just to get your view on when he talked about ensuring treaty consistency and how in your view that might be achieved in this process, leaving aside the commitment who are involved, but whether you had a view as to how that could be achieved?

A. Kia ora. Thank you Ms Kapua. I suppose the first question is what the Crown understands is Treaty consistency and it comes back in part to that relationship of rangatiratanga to kāwanatanga but also to whether Māori concepts are to be slotted into what has been called a western model. I suppose quite a good example of that is when the review was done on the policy on environment and climate change and that was a part of the evidence that I gave that the inputs from Ngā Toki Whakarururanga about what a Tiriti based approach to dealing with trade environment and climate change might look like and then the Crown decided what the policy would look like which included basically very little of that.

In a way, it comes back to that question that was also being asked in cross-examination about who makes the decisions but also the question of the paradigm. Treaty consistency, I think, it was both Professor Barge and India Logan-Riley raised issues about things like blue carbon solutions and financialised ways of dealing with the climate crisis and so on, as opposed to how an approach from te ao Māori might address the climate issues. And that is especially relevant when a growing number of agreements are explicitly around environment and climate. MFAT has several of those underway at present, along the lines of what Mr Vitalis was talking about, his starting small normative which there is a lot of overlapping initiatives of that kind. But the agreement on Climate Change, Trade and Sustainability basically reflects that problem about Treaty consistency because one pillar is about reducing tariffs on environmental goods, one is about reducing regulations on about 160

environmental services, one on fossil fuel subsidies that are defined in a very narrow way, and one on voluntary ecolabelling. If you are looking at what a Tiriti consistent approach to an agreement on Climate Change, Trade and Sustainability might look like, it is not that.

Q. All right, okay. The other part was about the Treaty exclusion clause. There were two parts to that. I think that Mr Vitalis said that that was in, I think he said, every agreement since 2001, which I think there is probably some issues for a later witness about that. But from your point of view, the Treaty exception clause what is your view about its suitability as it is in its current form and practice in terms of ensuring Treaty compliance?

A. Just dealing first with "every agreement since 2001" that particular Treaty of Waitangi exception has been included in all of the trade agreements but not in some other agreements. It is not included in the bilateral investment Treaty with China or with Hong Kong. There is no reference to te Tiriti at all in there.

The Indo-Pacific Economic Framework negotiations which includes clean economy, which is climate chains and supply chains, the references to the Treaty that were included in there were a surprise when they were seen which was of some concern.

The Wai 2522 TPPA Inquiry the Issue 3, which was much later down the track for the Tribunal understanding what the issues were with this, found that the 2001 exception, plus a number of other protections, did not provide a necessary level of active protection of Māori rights and interests in the context and in that case digital. It was a very clear inference from that that therefore alone it wasn't enough but even alone with some other things it wasn't enough.

Then we had in the mediation agreement a commitment to have discussions around a new protection. That is the carve out that was concluded about six or nine months ago which removes many of the problems. It is actually what I would consider to be a gold standard. But the problem is that the 2001 one just keeps being rolled over and becomes the fallback position. That is what happened again in the

India Agreement because India basically said: “Why should we accept something that no one else has accepted?”

We do know in a recent decision that the US brought against Mexico which is the only case we know of where an indigenous protection has been argued. That was on GMOs and Mexico's restriction on the importation of GMOs for food products. Mexico pleaded the Treaty protection in that agreement or the indigenous protection in that agreement, which is a better version of the 2001 one but not as good as the one that we've recently agreed on, and that got rejected.

When the Crown has real confidence about this 2001 that is not borne out by a number of experiences but how we get it changed is problematic if it becomes more and more rolled over as a precedent.

Q. All right. So that's the evolved one.

A. Yes. It basically says: “The Crown can adopt measures it considers necessary to meet its Treaty obligation.” So, it is still in the hands of the Crown to decide but there is not more favourable treatment as what the measure has to be –

Q. All right.

A. – and there is not what we call the chapeau or the condition that it has to not be unjustified discrimination et cetera, yes.

Q. I guess it is something that comes up that we are yet to hear and so on, so it is still for the Crown to determine –

A. Yes.

Q. – whether there is a Māori interest –

A. Yes –

Q. – and whether it would apply.

A. – under the exception and it is also for the Crown to decide what it puts in a final version of an agreement.

Q. Right.

A. As I said, there have been a couple of occasions where, despite the confidentiality agreement, those of us who have that have been surprised to see what had been agreed to.

Q. All right, okay. Thank you for your evidence.

(14:11) PROFESSOR DAVID WILLIAMS TO PROFESSOR JANE KELSEY:

Q. Tēnā koe Professor Kelsey. Just for the record, you and I have been colleagues for some decades but we haven't worked together on international trade agreements and so I don't feel the need to declare a conflict of interest and to stop myself from asking you a question. Just one question and you've started the conversation with Ms Kapua. It is paragraph 67 of your most recent affidavit #A142 and that's talking about this agreed gold standard Tiriti o Waitangi protection for trade and investment agreements which you describe as belated but very positive.

A. Yes.

Q. This morning you talked about the broken world of the neoliberal TINA "there is no alternative" and I recollect you campaigning for a few decades against any free trade agreement or perhaps we could clarify that. Once we've heard all the evidence and heard all legal submissions, we need to sort of look at what sort of recommendations we might be asked to think about. Would you say that this new gold standard Tiriti o Waitangi protection is something that should be promoted in trade negotiations?

A. That is the expectation that it will be. I think that's actually the position of the Ministry at present. I'm not sure about Ministers but about the Ministry. The dilemma is what decisions are then made if it's rejected by those who the negotiations are with. Mr Vitalis referred to there being some discussions of a follow-up document to the mediation agreement and that is a part of that, which I think has largely been agreed now, of what the process would be for making those decisions. The expectation is that that gold standard is what would be expected as providing a genuine protection to be able to honour te Tiriti obligations. And if there's something less than that, what a Tiriti-based process would be for making those decisions.

As for your earlier comment about opposing all FTAs, it depends on what they are and the lack of protections that are in there, for example, around issues of climate and other matters and the inclusion of Investor-State Dispute Settlement. I'm talking here specifically about the protections for te Tiriti.

Q. If that particular protection that gold standard version which, as you say, is a carve-out, not an exception –

A. Yes.

Q. – a carve-out, that would satisfy you providing the remainder of the free trade agreement didn't have some other things you didn't like.

A. Provided there's a process around it. I presume as well that in the evidence from Ms Hallum, there may be a reference to the Investor-State Dispute Settlement Protocol for what should happen if there's a dispute that involves the Treaty exception in an investment dispute and part of the concerns, the problems expressed with that was that the Crown would make all the decisions. So it's how you have a process that is Treaty compliant not just that terminology or the provision.

Q. Good. Thank you very much Professor Kelsey. Thank you for your – is it four or five?

A. Five.

Q. – five briefs of evidence and how many thousand pages of attachments. So you have been competing with the Crown to get the stack bigger and that was all helped by the Official Information Act which you are very adept at using so thank you very much for your evidence.

A. Yes, we've got to do something in our retirement professor.

(14:15) JUDGE MILROY TO PROFESSOR JANE KELSEY:

Q. We're actually out of time and I've just got a couple of quick questions. One is we have got this document that was –

A. Yes.

Q. – just filed this morning about Australia is looking at and reviewing these bilateral investment treaties. My question is obviously the ones that we have got which are pretty bad from what I hear about – where was they going with us? Australia is a stronger country than us in these and you know people want what they have got and they don't necessarily want what we have got. How do you see us undertaking that kind of review?

A. The bilateral investment treaties, as I've mentioned before, are being withdrawn from all over the world, especially those old generation ones.

Q. Right.

A. And in this case, both the Hong Kong and the China ones, there is actually FTAs that have got those in as well. They can be withdrawn from unilaterally. It is more difficult with some of the later agreements and that is why working out how to do the reviews is important.

The ASEAN-Australia-New Zealand FTA, which is the one that Clive Palmer has got these multi-billions of disputes under, is the one that is under review now and there needs to be a very big push on that. My understanding is that there will be, especially in the climate context. And with the COP coming up that Australia and Tokyo are co-hosting, there is going to be a meeting in mid-October in Fiji around climate and there is going to be a big push there on ISDS and climate. And so in many ways, it is creating a context to add to the pressure for the more difficult to move agreements.

Q. I do understand what you're saying. It is that there's a tide running at the moment which we should try and catch.

A. And the tide has been running for quite some time. There are also important alternatives. I have done quite a bit of work internationally on the alternative. South Africa has a domestic law that deals with these issues but which is subject to the constitution of South Africa which came about because of challenges in ISDS to the Black Empowerment legislation and so on. Brazil has an Ombudsman-based approach. So there are different models that can be developed. We've never had a discussion around those here and it would be quite possible to try to work out what indigenous-based approaches to those might look like.

Q. If I could just ask one more question which arises a bit out of the Crown's cross. That is, one can have a particular philosophical view or a conceptual view of how a proper relationship between Crown and Māori, a proper Treaty relationship looks like and yet still operate in the world that we've got to try and make it, try and push it towards that sort of relationship and that's what I see you as trying to work towards. Yes, we have got to deal with your realities as they are.

A. We've certainly been doing that pushing the boundaries through a series of processes, including various Tribunals. I think we are at a different stage now. This system is in meltdown. It is. I'm not exaggerating the

system is in meltdown and it's not just going to change when Trump goes. It has been in meltdown for quite some time and there needs to be a rethinking of how we deal with those challenges and how we deal with them in the context of the climate crisis. Because we can't just keep shipping stuff all over the world and working in supply chain processes and so on in the commodity production lines that we have in the past. So, having that conversation, opening that conversation is really important and that is where that paradigm or worldview approach comes. And what I think Maria Barge and India Logan-Riley were saying: "When we look at climate let's not look at things like blue carbon and tradable credits and so on but let's look at how we can develop a holistic trade relationship that is fit for the future."

Q. All right, thank you very much. We've definitely run out of time now but thank you. You are always so vigorous and rigorous in your evidence to us to the Tribunal so thank you.

A. Thank you.

(14:22) MS SYKES TO PROFESSOR JANE KELSEY:

Q. One of the questions posited by my friend from the Crown this morning was about the sites of power and your answer. Can you elaborate for us what are the foundations of Treaty-making that you were referring to from the late Dr Moana Jackson?

A. The foundation stone for Moana Jackson's analysis was that every polity interacts with other polities and how it does so is underpinned by its conceptual framework. It is underpinned by the sites, like the institutional and other frameworks through which it pursues this and then the specifics. If we look at international or inter-national, including inter-hapū but beyond that Treaty-making by Māori or by hapū, it was underpinned by concepts of power but also tikanga and wairua and duties and responsibilities if we put them in the English sense. It was operated through various institutional mechanism, sites, of the exercise of that authority and then specifics about what the kind of trading relationships were, what the kind of obligations were of one to another, what the relationship to Papatūānuku was and so on.

He then contrasts that to the concepts and the sites and the specifics of the Crown in the way that the Crown goes about international Treaty-making. The concepts that are very much Western individualised sovereignty, hierarchical structures et cetera through parliamentary and executive decision-making processes and what Western trade relationships look like. Part of what he was trying to say was: “Let's not get stuck in the weeds without looking at what the power relationships and the conceptual relationships are that underpin them.”

Q. Just to clarify, because I want to follow on from her Honour's questions, he talks about sites of power and specific of power. Can you just elaborate on that, because I think the specifics of power as opposed to the conceptual framework within which those specifics operate.

A. Yes. If we're looking at his framework in terms of how the Crown operates, the Crown has, what I think has been referred to here, is largely Western capitalist, Christian, Patriarchal kind of values. That is what some of the evidence has put forward. The conceptual frameworks that you can exhaust the natural world. You have a hierarchical dominion over the natural domain. When you look at how that is implemented in sites of power, then it is the Crown's sovereign exclusive authority conducted in contemporary terms by the executive and to some extent the parliament depending on how the international Treaty process operates. And then if you're looking at the specifics, it's the kind of things that Mr Vitalis was talking about this morning about what's in the agreements, tariffs, the liberalisation of trade and commodities and so on for profit within a capitalist regime.

Q. My last question my friend from the Crown explored with you the notion of the legitimacy of the sovereign of the Crown. Could you elaborate, having regard to the question he posed, whether tikanga Māori is relevant in that discussion and how?

A. It goes back to the essence of mana and tikanga as an essential dimension of mana. If you have never ceded your mana, then you expect to continue to operate according to tikanga and you can't integrate your tikanga into a conceptual framework and a power relationship that's not actually consistent with mana.

Q. Following that, so what would be the precondition to integration or transformation of that? What would be the precondition?

A. It would be going back to what are the fundamentals of the relationship between rangatiratanga and kāwanatanga and finding out within that how the relationship between tikanga and common law work which are working on those two different conceptual frameworks. You can't just slot tikanga which is under the mana side into the Crown sovereignty side because it's not tikanga then.

Q. Okay, thank you.

HEARING ADJOURNS: 2.29 PM

HEARING RESUMES: 2.30 PM

(14:30) MR PREBBLE CALLS

VICTORIA LOUISE HALLUM (SWORN)

Q. Tēnā koe Ms Hallum. If you could please confirm your full name for the Tribunal?

A. Victoria Louise Hallum.

Q. Could you please confirm that you have signed a brief of evidence dated 29 September 2025 in this proceeding?

A. I do.

Q. Do you have a copy of that in front of you?

A. Yes I do.

Q. Just for the record, noting that is #A137 and the appendices are #A137(a). I understand you've also prepared a summary of your evidence for reading to the Tribunal today.

A. That is correct.

Q. For the record, that is #A137(b). Thank you Ms Hallum. If you could please read your summary out to the Tribunal now.

(14:31) VICTORIA HALLUM: (MIHI, #A137-(a), (b))

E ngā mana, e ngā reo, e rau rangatira mā tēnā koutou katoa. Kia ora. It's a great privilege to appear before this Tribunal. It's a first experience for me. I'm

like my colleague who you heard from this morning and I'm very grateful to have an opportunity to participate in the work of this very important and unique body.

A little bit about myself. I was born on the north shore of the great Gulf of St Lawrence and had an itinerant childhood that included some formative years in an Inuit settlement in Northern Canada where my parents both Kiwis were teaching. Within Aotearoa, I hail from Ōtautahi where I spent my teenage years, and I now live in Days Bay with my family. Kia ora.

REFERS TO #A137(b)

I've been Deputy Secretary of Multilateral and Legal Affairs at the Ministry of Foreign Affairs and Trade since 2022. Before that, I was the Chief International Legal Advisor for the Ministry and head of the Ministry's Legal Division from 2017 to 2022, covering international law, trade law, law of natural resources, oceans and environmental law.

In my current role as Deputy Secretary at MFAT, I oversee the Climate, Antarctica and Environment Division, which leads New Zealand's international climate engagement; the Legal Division, which is responsible for oversight of New Zealand's international treaty making process; and the United Nations, Human Rights and Commonwealth Division, which coordinates New Zealand's engagement with the United Nations and international human rights.

For completeness, I would add that I also oversee the Protocol Division, which manages official diplomatic protocol, and the Consular Division, which is responsible for ensuring that assistance and advice is available to New Zealanders overseas when they need it.

My evidence is structured around four themes:

- The role of sovereign States in multilateral processes and the rules of procedure that govern multilateral meetings.
- The prerogative power to enter into international treaties;
- The Treaty-making process in New Zealand and the ways in which Māori are engaged in that process;

- The role and purpose of the annual United Nations Climate Change Conference, including New Zealand's negotiating mandate, priorities and arrangements for participation.

I would like to begin by updating the Tribunal on paragraph 17 of my brief of evidence where I cited a sentence from the Summary of Conclusions on page 529 of the Wai 1040 report which said:

> The rangatira appear to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary.

I wish to take this opportunity to acknowledge that there is a more nuanced expression of this point in the Letter of Transmittal at page xxii of the report, which is as follows:

> Further, as part of the treaty agreement, the rangatira may well have consented to the Crown protecting them from foreign threats and representing them in international affairs where necessary. If so, however, the intention of signatory rangatira was that Britain would protect their independence, not that they would relinquish their sovereignty.

Starting with my first thematic area, I explain in my brief of evidence that under international law, sovereign States are the principal subjects and hold the exclusive right to negotiate and conclude treaties that are binding at international law. States have historically been, and continue to be, the primary actors in multilateral negotiations and in the functioning of international organisations.

The UN Charter affirms the sovereign equality of all its Member States, reinforcing the principal that States are the primary actors in international law and United Nations multilateral processes.

Multilateral meetings and conferences are typically convened by States or intergovernmental organisations on a particular subject matter. These meetings often aim to negotiate and conclude treaties which are binding under international law or other non-binding instruments such as resolutions or declarations that are non-binding but reflect political commitments.

Each meeting operates under its own rules of procedure in the conduct of its business. These rules govern representation, organisation of work, speaking rights, submission of proposals and decision-making processes. Any changes to these rules must follow the prescribed process to amend the rules of procedure. No single delegation has the authority to unilaterally amend the rules or established practices.

Non-State entities, including civil society organisations, academia, and other stakeholders may be able to participate in international meetings in their own right, usually as observers. Their involvement is governed by established rules of procedure that define the accreditation or registration process and scope of their participation, including which meetings they may attend and their speaking rights. It is customary that non-State entities do not have the right to introduce proposals or participate in voting or decision-making in international meetings.

New Zealand's general approach over decades has been to support greater participation of non-government representatives, including Indigenous Peoples representatives and civil society representatives in multilateral forums and meetings. The participation of non-government representatives can be controversial, however, as some Member States consider non-government participation as an encroachment on their sovereignty.

Turning now to the **prerogative power to enter into treaties**

I explain in my brief the treaties are the foundation of the international rules-based system and continue to be an important foreign policy and trade policy tool for New Zealand. In New Zealand, as in other common law countries, the power to negotiate and enter into treaties rests with the Executive branch of Government. This is because, historically, treaty making is part of

the Executive's foreign affairs prerogative, which I understand to be a core part of the Crown's kāwanatanga under Te Tiriti o Waitangi as acknowledged in the Wai 262 and the Wai 1040 reports.

In referring to these reports, my purpose is not to rehearse their detail but to acknowledge the Tribunal's articulation of the Crown's prerogative power. These reports are important because they explain how the Crown's authority to represent New Zealand internationally sits alongside its te Tiriti obligations to Māori. I therefore reference relevant passages from those reports in my brief of evidence, including the Tribunal's more recent findings in Wai 1040. To acknowledge the Tribunal's evolving jurisprudence and to respond to questions as to whether MFAT is taking those findings into account, and what they may mean for how negotiations of international treaties are approached.

I'll turn now to **the treaty-making process**

The Ministry's Legal Division oversees the process by which the New Zealand Government enters into, and withdraws from or denounces, agreements and treaties.

As already noted, in New Zealand, the power to take binding treaty action rests with the Executive. Within this context, the Executive has decided that certain international treaties will be presented to the House of Representatives for select committee consideration before the Executive takes binding treaty action. This is known as the parliamentary treaty examination process. The procedure for presenting treaties to the House is set out in the Cabinet Manual and in the Standing Orders of the House of Representatives.

The current Treaty-making process has been largely unchanged since parliamentary Treaty examination was introduced in 1998. MFAT is ultimately the policy lead related to Treaty-making and Treaty practice.

Just to run briefly through the key features of the Treaty-making process. It starts with:

- Negotiation: New Zealand officials negotiating treaties carry out the instructions of the Government, and in advising Ministers on Treaty negotiations, officials endeavour to consult with interested parties and stakeholders to ensure that Ministers are advised on, and able to take account of, New Zealand's wider interests involved in the Treaty negotiation

- Cabinet approval for Treaty action: Once the text of a Treaty is finalised, the appropriate Minister (in consultation, or jointly, with the Minister of Foreign Affairs) must seek Cabinet approval for the formal steps involved in taking the proposed Treaty action. Cabinet will be asked to approve a National Interest Analysis, which sets out the advantages and disadvantages for New Zealand in becoming or ceasing to be party to a Treaty.

- Signature: The Treaty-making process for some multilateral treaties requires signature before binding Treaty action (usually known as ratification) is taken. Signature may take place after Cabinet has approved the text of a Treaty. Signature of a Treaty is not normally a binding step, but does bring certain limited obligations, notably not to defeat the object and purpose of the Treaty.

- Minor bilateral treaties: Binding Treaty action can be taken on some treaties (at this point) once Cabinet approval is given. Only major bilateral treaties of particular significance and all multilateral treaties are required to be presented to the House.

- Presentation to the House: The parliamentary examination process, introduced in 1997 and made permanent in 2000, requires all multilateral treaties and major bilateral treaties of particular significance to be presented to the House before binding Treaty action is taken.

- Select Committee consideration: Once a Treaty has been presented, it stands referred to the Foreign Affairs, Defence and Trade Committee of the House. FADTC may inquire into the Treaty or may refer the Treaty to a more appropriate committee. Except in very rare and urgent circumstances, the government refrains from taking any binding Treaty action in relation to a Treaty that has been presented to the House until the relevant committee has reported, or 15 sitting days have elapsed from the date of the presentation, whichever is sooner. The select committee may indicate to the government that it needs more time to consider the Treaty, in which case the government may consider deferring taking binding Treaty action. The select committee may seek public submissions (and indeed usually does).

- Government response: The Minister of Foreign Affairs may wish to discuss the content of a select committee report on an international Treaty with his or her Cabinet colleagues before the Executive takes binding Treaty action. If the select committee report contains recommendations to the Government, a response to those recommendations must be tabled within 90 days of the report.

- Implementing legislation: Government will not take binding Treaty action until the necessary domestic law changes are in place. Legislation necessary to implement a treaty in New Zealand's domestic law should not be introduced into the House until the treaty has been presented to the house and the time for report back has expired.

- Binding treaty action: Formal treaty action (such as ratification or accession) binds New Zealand to the obligations of the treaty, usually a multilateral treaty. The Government completes the treaty making process by depositing the appropriate formal instrument with the treaty depository.

I will now move on to the **Government Strategy for Māori engagement in international Treaty-making**

Throughout the process that I've just described, there are a number of opportunities for engagement with interested parties, stakeholders, and Māori.

The *2001 Cabinet Strategy on Engagement with Māori and International Treaties* sets out the process for Māori engagement and international Treaty-making. Essentially, the Cabinet strategy requires the lead agencies to identify, at an early stage, treaties under preparation which would be of interest or relevance to Māori. Those agencies ensure appropriate engagement with Māori occurs, often in consultation with Te Puni Kōkiri.

If it is established that Māori involvement is required, the lead agency will be responsible for establishing the appropriate degree in nature of this involvement based on the nature, degree and strength of Māori interest. To ensure the most efficient use of resources for both government and Māori, the appropriate form of engagement is considered on a case-by-case basis for each international treaty where there is Māori interest. This engagement will range from raising awareness of the issues involved through the distribution of information papers, to full consultation with Māori.

The Cabinet strategy states that there will not be a need to involve Māori in discussions on all treaties but that the focus must be on ensuring that this occurs on international treaties concerning issues of relevance to Māori.

The Cabinet strategy identifies a number of areas as likely to be of interest to Māori, including foreign investment, indigenous rights, use of natural physical resources, national language, and New Zealand flora and fauna.

In general terms, Māori involvement could be expected on any treaty action affecting the control or engagement of Māori resources or taonga as protected under Te Tiriti o Waitangi. However, the Cabinet strategy and New Zealand's international treaty making guidance for agencies provides that government agencies should be aware that the scope of waters of relevance to Māori is increasing and it should not be assumed that there is not Māori interest in a

treaty solely on the basis that Māori have not been consulted on similar treaties in the past.

As the MFAT guidance for agencies sets out, opportunities for Māori involvement in international treaties arise at each stage of the process:

- On relevant issues in proposed new multilateral and bilateral treaties and agreements currently under consideration;
- When preparing mandates for the negotiation of treaties in which Māori have interests;
- On developments of likely relevance to Māori before and during the negotiation of treaties relevant to Māori, including efforts to protect Māori interests;
- On any legislation necessary to enable New Zealand to give effect to obligations assumed under a Treaty;
- On Cabinet papers, including the paper proposing ratification or accession to the treaty and any legislation needed to implement it;
- Through the parliamentary treaty examination process, including on the NIA which accompanies the treaty when it is tabled in the House; and
- On any aspects of the implementation of an international treaty that impact on Māori.

MFAT produces and distributes a six-monthly list of international treaties currently being negotiated or about to be negotiated as a means of ensuring that Māori are, wherever possible, kept informed of developments in the government's participation in international negotiations. I can talk more about what all this looks like in practice when we get to the questions.

I also have a few comments about **Māori engagement at MFAT** to supplement the remarks made my colleague earlier this morning.

MFAT supports the Crown in its relationships with Māori under the Treaty of Waitangi/Te Tiriti o Waitangi. It is committed to acting as a te Tiriti partner with

authenticity and integrity, and to meeting our obligations, including under the Public Service Act 2020.

MFAT has sought to ensure that the Ministry partners effectively with iwi and Māori, including to ensure that Māori perspectives, rights and priorities are reflected appropriately in our policy advice.

In 2021, the Ministry commissioned an internal report that assessed two key objectives. The first considered whether the right structures and systems were in place for the Ministry to deliver its strategic and operational objectives for Māori policy. It also assessed whether the Minister's mātauranga Māori capability was in line with the expectations of Ministers, the requirements of the Public Service Act, and the expectations of its SLT and staff.

The report acknowledged the progress made but also highlighted some gaps in the Ministry's capability. To address these, the report made recommendations to build the capability and competency of our people, systems, and frameworks to support this work.

Some of the changes that have resulted from the review include the creation of a new Māori division, Houtina. Houtina is a centralised business unit with four functions:

- Policy: Houtina leads work to incorporate Māori priorities, perspectives and interests appropriately into the Ministry policy advice and development.
- Engagement: Houtina is responsible for developing a coordinated and coherent approach to MFATs engagement with Māori.
- Protocol, customs and cultural support: Houtina provides expert leadership and guidance to develop and deliver appropriate protocol, customs, and cultural support for the Ministry and to support the engagement of senior Ministry stakeholders with Māori.

- Capability: Developing staff capability in mātauranga Māori and te reo Māori.

The Ministry's intention is to continue to improve its engagement practices and to broaden engagement with iwi and Māori groups. Stronger relationships will strengthen our understanding and awareness of Māori perspectives, priorities in interests. Some examples of how we have done this include:

- Working with Te Hurumanu, which is a partnership group created to work alongside the Chief Executive and the Senior Leadership Team.
- Signing a Memorandum of Understanding with the Federation of Māori Authorities. The memorandum sets out that MFAT and FOMA will work together on foreign policy issues of mutual interest, including climate change and environment.
- Partnering with Te Taumata which functions as a Māori Advisory Board that provides strategic advice and commentary to MFAT on trade policy. Te Taumata also facilitates regional hui where trade issues are discussed, creating opportunities for direct dialogue with iwi and hapū.
- Engaging with Ngā Toki Whakarururanga, the claimant representative group for Wai 2522, which works closely with our Trade and Economic Group, offering valuable insights that shape New Zealand's positions in trade agreement negotiations and inform broader trade policy.

I'd like to turn now to the **Review of New Zealand's Treaty-making Framework**

In 2018, the government established an independent Trade for All Advisory Board as part of the Trade for All Agenda. The Trade for All Advisory Board represented the various views and interests that New Zealanders have regarding trade, including Māori as the Crown's Treaty partner, regions, labour, business, and environmental groups. It was about the awareness that we needed to work more for social license that my colleague Mr Vitalis spoke about earlier this morning. The Trade for All Advisory Board presented its

recommendations in November 2019, which included some recommendations on international treaties.

As part of implementing the Government response to the Trade for All Advisory Board recommendations in 2021, Cabinet noted that there was broader pressure to consider changes beyond what was in the Trade for All Advisory Board report and directed MFAT to report back to the Minister of Foreign Affairs and other relevant Ministers on issues related to New Zealand's broader Treaty-making processes.

The direction acknowledge that some of the Trade for All Advisory Board recommendations raised issues connected with New Zealand's Treaty-making process that apply to policy areas beyond trade and that the Government's response to Wai 262 could also include aspects relating to international Treaty-making. In sum, that the discussion regarding the Treaty-making process required consideration beyond the immediate set of issues that Cabinet was considering following the Trade for All Advisory Board process.

Having received this directive, MFAT officials added this work on issues relating to New Zealand's broader Treaty-making process to their work programme.

In the course of policy development, various options and possibilities were identified and considered by officials, including looking at work already underway such as the Te Pae Tawhiti work programme. In June 2022, officials provided advice to the Minister of Foreign Affairs and other Ministers on a possible package of options in response to Cabinet’s direction to look at aspects of New Zealand's Treaty-making process.

At Ministerial direction, officials then preferred a draft Cabinet paper setting out a package of potential improvements to our treaty practice, including to respond to some of the Trade for All Advisory Board recommendations that could be implemented by the Executive (i.e., Cabinet decision and through the Standing Orders Review during that Parliamentary term).

The draft Cabinet paper set out proposals which could respond to the Trade for All Advisory Board report, form part of the Government's response to Wai 262 and provide greater openness and transparency in how New Zealand concludes international treaties, including facilitating more effective engagement with Māori. The potential changes were to be staged. There would first be a number of adjustments in response to the Trade for All Advisory Board recommendations, then further changes that were to align with Parliamentary processes, such as the upcoming Standing Orders Review, within the election cycle. The draft Cabinet paper did not seek to address fundamental issues regarding the constitutional balance of the Executive's role in negotiating in concluding treaties with Māori interests as te Tiriti partner, as it would have required a first principles review and was beyond the scope of what the paper sought to achieve.

This was a regular policy development process, where potential changes were first identified and framed by officials and the Minister would then decide whether to take the proposals to Cabinet for decision-making. Following Cabinet consideration, it was envisaged that the proposals would be consulted upon. The changes being proposed, while significant, were not considered sufficient to warrant a bespoke and standalone process.

It was specifically envisaged that this staged process would necessarily involve targeted stakeholder consultation and engagement with Māori as Tiriti partners. Public consultation (including with Māori) was envisaged as part of the Standing Orders Review process. In addition, previous public and Māori consultation or engagement that had occurred as part of the broader Trade for All Advisory Board process which had led to some of the recommendations being made in the first place was taken into account.

The draft paper was provided to the former Minister of Foreign Affairs but ultimately, the Minister decided not to progress the Cabinet paper before the change of government in October 2023, and so did not provide it to Cabinet for consideration. So the work did not proceed.

Separately, the Standing Orders Review, which is a Parliamentary process, took place in 2023 and the report from the review states that it received submissions from 69 people, organisations and select committees. The report contained various recommendations, including a recommendation that the Foreign Affairs, Defence and Trade Committee conduct an inquiry into the Treaty-making and parliamentary treaty examination process. FADTC instigated a “briefing” which is a way of gathering information to inform committee consideration of a topic, and FADTC asked MFAT to provide a briefing on the international Treaty-making and parliamentary treaty examination process. MFAT duly provided a written briefing, after consulting with the Minister of Foreign Affairs and officials spoke to the committee about the briefing in person. It is not unusual for MFAT to provide such briefings, which provide information and reflect the policies and perspectives of the government of the day.

I'll now move on to the **UN Climate Change Conference of the Parties**

In my evidence, I explain the nature of the UN Climate Change Conference of the Parties (COP), how it works, to what extent Māori are involved, and the rationale behind constraints on involvement.

A Conference of the Parties refers to a meeting of the governing body of an international treaty or framework convention, bringing together its members to review and consider the Treaty’s implementation. The Conference of the Parties to the UNFCC is the supreme governing body of the United Nations Framework Convention on Climate Change (known as the UNFCCC). The Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP) is the governing body of the Kyoto Protocol and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (known as the CMA) is the governing body of the Paris Agreement. So that is a long way of saying that what we know as the COP is actually technically three COPs kind of meeting in parallel covering three related meetings.

The three governing bodies (COP, CMP, and the CMA) are composed of sovereign States that are parties to each of the respective climate treaties, namely, the UNFCCC, the Kyoto Protocol, and the Paris Agreement.

COP, as it is often referred to – sorry, I think I will leave that point because I have just explained that. The three bodies meet in parallel within the same conference setting.

Over time, and I think this is a significant point, the principal focus of the conference has shifted from negotiating the legal frameworks and rules of the three agreements to adopting rules, guidelines, and processes to facilitate implementation of the treaties and promote transparency on how countries are meeting their commitments.

International climate treaties are not routinely negotiated at the COP, as the international treaty system for climate change agreements is relatively stable. The UNFCCC, the Kyoto Protocol, and the Paris Agreement remain the three key international instruments – the last of which was adopted in 2015. Over time, the Conference (COP) has evolved to serve an additional broader purpose of bringing together a wide range of stakeholders to discuss and share experience of climate action. The Conference now features significant exhibition-like elements, serving as an opportunity for relationship building, information exchange and promotion via side-events held in country, NGO and thematic pavilions. Indeed, it is interesting to note that most participations at the COP are not directly involved in the intergovernmental process and instead are focused on these broader elements of the Conference.

New Zealand is represented at the COP by an interagency delegation led by and approved by the Minister of Climate Change. The Minister of Foreign Affairs signs a Letter of Credentials authorising named individuals to represent New Zealand in the COP, CMP and CMA decision-making. This Letter of Credentials is required by the rules of procedure to be issued by a Party's Head of State, Head of Government, or Minister of Foreign Affairs. Credentials are a necessary element in diplomatic practice and international relations because

they provide assurance to States participating in negotiations of the authority and legitimacy of designated individuals as representatives of the State which issued the credentials.

MFAT coordinates the delegation and provides ministerial support. Mat also traditionally provides representation for workstreams on mitigation, just transition, rights-based issues, climate finance and loss and damage. Other agencies, such as MfE and MPI, join the delegation to represent New Zealand in discussion on technical agenda items that align with their policy responsibilities.

How New Zealand engages in the Conference is determined by Ministers and informed by New Zealand's priorities for international engagement on climate change. Participation and intergovernmental meetings is guided by a mandate. The current mandate was updated in 2024 by the Minister of Climate Change with concurrence from the Prime Minister and the Minister of Foreign Affairs. The broad direction of this mandate remained consistent with the earlier mandate, although the content was adjusted to be more high level and express the direction to the delegation in an enduring way, so as not to require revision ahead of every conference, aligned with the government's priorities, and reflect that some of the agenda items of the previous mandate had indeed been concluded.

There are three ways for New Zealand non-government participants to attend COP:

<u>Non-government participant on the official New Zealand delegation:</u> Under the 2000 Cabinet Office circular (CO0014), the Minister of Foreign Affairs may agree to include non-officials as part of the official New Zealand delegation to an international negotiation. In the past, this discretion has been applied to inclusion of opposition spokespeople, members of the Tokelau Government and also Māori representatives from the National Iwi Chairs Forum. Non-official representatives who form part of the delegation must comply with the procedures set out in the Cabinet Office guidelines.

Party Overflow: Parties can register participants as “Party Overflow”, which indicates they are not attending the Conference as official representatives of the relevant government. This type of registration ensures access to the Conference venue, and access to negotiations somewhere between a Party and an Observer participant.

Since 2023, in order to facilitate greater access to the COP (and partly driven by feedback obtained in the 2023 consultation on the COP), New Zealand has offered open stakeholder attendance at the Conference, using the Party Overflow badges offered by the Conference. Applications for New Zealand Party Overflow badges are conducted via an expression of interest process on the MFAT website.

Observer: Individuals can also access the Conference independently of the Parties to the climate treaties as representatives of admitted non-government organisations or intergovernmental organisations. A range of Indigenous Peoples organisations have observer status, and there is an observer constituency of Indigenous Peoples Organisations. The process for becoming an observer is set out on the UN Climate Change website.

The National Iwi Chairs Forum receives modest government funding to support attendance at the Conference. They are offered the choice to attend either as non-officials in the official delegation or as non-officials who are participating as New Zealand registered delegates but independent of the official delegation, which is by using the Party Overflow process that I described. Of the individuals registered as Party Overflow, only the National Iwi Chairs Forum representatives are offered this choice of the two different ways of attending COP.

The New Zealand delegation holds daily briefings at the Conference as an opportunity to share information with the New Zealand community attending the Conference, including Māori representatives. Individual New Zealanders can also seek individual discussions with members of the New Zealand official

delegation. Obviously, there are constraints on the information that can be shared by officials in these daily briefings, as some information is confidential.

Making changes to New Zealand's representation at the Conference to enable iwi Māori representatives to participate as authorised Party delegates alongside officials but independently of Government positions and priorities would be a decision for Ministers and Cabinet not MFAT officials.

However, I can say that to be effective as a party in climate treaties, the New Zealand delegation speaks with a single voice, grounded in the mandate that has been authorised by Ministers. Other delegations look to New Zealand delegates to signal clearly what the New Zealand Government's views are, and the bounds of our flexibility with respect to issues being decided.

Representing New Zealand's views effectively also requires a high level of technical subject matter expertise, and an understanding of the Government's ability to implement potential negotiation outcomes. The current mechanism for including non-officials in official New Zealand Government delegations does not contemplate them normally speaking on behalf of the New Zealand delegation. If the Head of Delegation approves them doing so, the individuals involved need to present agreed New Zealand positions in accordance with the mandate approved by Ministers, just as officials do.

In my brief of evidence, I also provide some context on how international law is informed and interpreted, as well as information on the New Zealand Government's position on some international instruments and bodies referred to in evidence. I offer this to assist the Tribunal in considering these matters, which I understand will also be addressed in the Crown's legal submissions.

With that, thank you for your patience over a long introduction. I look forward to engaging in questions with the Tribunal and counsel.

JUDGE MILROY ADDRESSES COUNSEL – TIMETABLE UPDATE (15:11:57)

(15:12) MS SYKES TO VICTORIA HALLUM:

Q. Kei te mihi atu au ki a koe. Kua mōhio ai au kei te haere atu koe i whai tūranga rangatira kei tētahi o ngā kaupapa kei te United Nations, i runga i taua tūāhuatanga kei te mihi atu au ki a koe.

It is pleasure to have you here today Ms Hallum. I have a number of questions. We provided them in writing earlier. If we don't get through mine in half an hour, then you have the unfortunate task of answering them and writing, I'm sorry, because they are important to my clients.

A. Yes, okay.

JUDGE MILROY TO MS SYKES – TIMING

Q. Okay, I'm down to 25 minutes. I better keep going, okay. I really want to explore in my questions with you, the role of states and multilateral processes, the claim prerogative power of the Crown to enter Treaties, the Treaty-making process and engagement of Māori in this process, and international court decisions if time permits. In paragraph 9, you say that sovereign states have the exclusive right to negotiate and conclude treaties and historically have been the primary actors in multilateral negotiations and international organisations. Has that been since the inception of Te Tiriti o Waitangi or what date has that assertion actually been in place?

A. I don't know that I have a precise answer for that. It's certainly been the case since the UN charter was established in 1945. But as I kind of think about your question now, it predates that considerably. We have a fairly rich practice of Treaty-making back in the previous centuries so I think it's been for a very long time.

Q. Did you secure the informed consents of the Māori rangatira o ngā hapū that signed te Tiriti to assume that position?

A. I think you are asking a question that is not one that I can answer. I can provide information about the current practice and understandings and frameworks that the Crown operates in concluding Treaties today. I'm

not a legal historian and I think those questions go beyond what it is my role to speak to here today.

Q. But would you agree they go to the Crown prerogative of Treaty-making at the heart of it?

A. I can talk about the Crown prerogative, as I understand it, and how it is derived from a range of documents that form New Zealand's unwritten constitution.

Q. Would you agree that historically ngā rangatira exercise their sovereignty on behalf of their hapū to treat with other polities whether they were other hapū, foreign states, or commercial interests, and that Te Tiriti o Waitangi is an example of that mana or sovereignty?

A. I think that's also really outside my expertise. I think there are many others better qualified, including in this room, to comment on those historical aspects.

Q. So you would defer to Professor Kelsey's opinion on those matters?

A. I would defer to – yes, I don't think it's a question that can usefully be put to me. These are big questions. Some of them will be in the scope of what the Tribunal is considering in this and other inquiries. I don't see I have much value to add.

Q. Did you read Professor Kelsey's brief of evidence that cited Moana Jackson's position on this?

A. I did.

Q. And did you note that ngā rangatira o Niu Tireni in Dr Jackson's view could never and never did cede their mana or sovereignty to treat with other nations to another state? Do you agree or disagree with the late Dr Moana Jackson?

A. Once again, I don't consider it is within my expertise to add anything of value to that question. I obviously respect Moana Jackson's expertise and mana.

Q. So you can't engage with the kaupapa Māori or tikanga Māori philosophies. So where do you say the Crown derives the exclusive prerogative power of Treaty-making?

A. Well, in New Zealand the power to make Treaties sits with the executive and that's because it's one of the Crown's traditional royal prerogative

powers. This comes from the common law understanding that foreign affairs, including Treaty-making, has always been a function of the sovereign. Essentially, the Crown has what we call a foreign affairs prerogative and that is the inherent power to conduct international relations and enter into treaties on behalf of the State. And by inherent, I mean it is not a power created by statute. In contemporary practice, it's the executive branch that exercises this on the sovereign's behalf. So in practice, it's Cabinet and Ministers who actually do the Treaty-making rather than the Governor-General personally.

The Cabinet Manual and parliamentary practice in New Zealand both confirm this and they explicitly describe Treaty-making as an executive prerogative power. Cabinet must approve before binding Treaty action is taken and parliamentary scrutiny is considered to be a constitutional convention not a requirement for validity. Even though it's a prerogative power, it can't be used in any way that conflicts with legislation. So if domestic law needs to change to implement a Treaty, parliament has to act first. Where changes to New Zealand laws are required, the prerogative powers yield to statute.

Q. So where tikanga asserts pre-existing rights and obligations that are inherited rights in the way the executive does, then wouldn't you have to yield to that pre-existing rights and obligations that ngā hapū, to use the first sentence of te Tiriti, ki ngā rangatira, ki ngā hapū o Niu Tireni possess? Because your argument is you have an assertion of prerogative power by dint of the establishment of an institution but you don't actually engage at all with the prerogative inherent powers that subsisted at the time of the arrival of the settlers and the Crown in 1840.

A. I'm sorry, can you repeat the question?

Q. I'm just asking you, would you accept – I'll break it down – that Māori had pre-existing rights and interests including their own inherent powers to make laws, to make the decisions about the distribution and allocation of resources, to enter into treaties with other nations or other hapū or other peoples that were located with their territorial sovereignty? Would you accept that?

A. It is definitely my understanding that that is a widely held view and I believe this Tribunal has made conclusions to that effect.

Q. So in your assertion of Crown prerogative power, you ignore that. How did you overcome that fact?

A. My understanding is that the frameworks that set up our written constitution enable those engaging in the foreign affairs prerogative to engage appropriately with Māori in a way that is consistent with the principles of the Treaty of Waitangi. And once again, I think this Tribunal has investigated how that can happen in considerable detail and provided a lot of useful guidance on that.

Q. Can I just take you to parts of your break because this is a very important matter for our claimants. In your evidence in summary this afternoon, you refer to the Waitangi Tribunal reports Wai 262 and Wai 1040 as acknowledging the executive's foreign affairs prerogative as part of kāwanatanga. Is that correct?

A. Yes.

Q. Have you actually read the entirety of both reports?

A. No, I have not. But I have referred to relevant parts on a number of occasions.

Q. I don't want to torment you, but I have got some relevant passages that I'd like to bring to your attention. If you don't want to answer it today, we would like it in writing. My friend will give you both booklets so that you will see if we follow them. In paragraph 17 of your evidence today, you quote from the Wai 1040 Te Paparahi o Te Raki: "The rangatira appear to have agreed that the Crown would protect them from foreign threats and represent them in international affairs where that was necessary." But that's not the complete quote, is it? If you look at the relevant quote which is in the tab we have just given to you, it says: "If, however, the intention of signatory rangatira was that Britain would protect their independence not that they would relinquish their sovereignty." It is quite a different nuance, would you accept?

A. Yes, I acknowledged in my summary that my quote was from one part of the report and that in other parts of the report there is a more nuanced

and more extensive quote which includes the material that you've just quoted.

Q. Do you now accept, having been taken to those passages, that the Tribunal in the Wai 1040 Paparahi o Te Raki report said: “There was not a transfer of independence or sovereignty to the Crown in the international domain?”

A. Yes, it is my understanding that that was the content of the Tribunal’s report.

Q. How do you reconcile that statement and the continued exercise of tino rangatiratanga in the international domain with the Crown's claim to exclusive prerogative powers to make international Treaties?

A. I'm not really able to assist on that. What I can explain is the current practice and understanding of the Executive’s Treaty-making powers and the Treaty-making process as set out in the parliamentary practice in New Zealand, the Cabinet Manual, and the Standing Orders. But put simply, my understanding is that the Crown speaks internationally on behalf of the State, but it should develop its position in a way that respects and upholds Māori authority and that this is what the Treaty relationship requires.

Q. I'll get to that later. I would just like to move to Wai 262. You would agree that the Wai 262 report was published in 2011, three years before the stage one report in Te Paparahi o Te Raki Wai 1040, that definitively found that Māori never ceded sovereignty to the Crown, including the above statement I have just taken you to. And we've got the Wai 262 quote there in those documents before you. Wai 262 did not have the benefit of that finding, did it?

A. That’s correct.

Q. Even setting that aside, your quotes from the Wai 262 report in paragraph 16, 18 and 19 again seemed to be selective and on extremely important caveat. Your footnote 10 says: “The Tribunal referred to the UNDRIP and CBD were examples where Māori interests were so central they required more than consultation.” And again. it's just me being pedantic here Ms Hallum. I’m not criticising. I'm just being pedantic. What the Tribunal actually said was: “There are times when the Crown's

position on that is of core importance to Māori must be developed by consensus and preferably by a negotiated agreement with Māori." And they added: "There may even be times when the Māori interest is so overwhelming and other interests by comparison so narrow or limited that the Crown should contemplate delegation of the decision-making powers or delegation of its role as New Zealand's one voice in international affairs." You would accept this is not just consultation but reversed power sharing, would you agree to that?

A. I acknowledge that the Tribunal in Chapter 8 of the Wai 262 report said that: "There will be occasions where the Māori interest is so central and compelling that engagement should go beyond consultation to negotiations aimed at achieving consensus." I also acknowledge that the Tribunal said: "There may be times when the Māori interest is so overwhelming and other interests by comparison so narrow or limited that the Crown should contemplate delegating its decision-making powers or delegating its role as New Zealand's one voice." And I believe the Tribunal gave an example, a potential example of negotiations over repatriation of taonga, which is incidentally something I have some experience with. When I was posted in France during the whole of the period when the French Government was considering changing its laws to enable repatriation of Māori Toi Moko and I was involved in some detail in that file. It strikes me as a very interesting example.

Q. Can we just pause there. Is that an example of transferal sharing of power or is that an example of the Crown facilitating the return of Māori taonga to a group of Māori?

A. Well, if I could go on because I think your questions really important and I've been thinking about this. I see the passages that you've quoted as reflecting and describing a sliding scale of engagement, depending on the nature and intensity of Māori interests, as those interests are balanced alongside the interests of other New Zealanders, and balanced against the international circumstances which may constrain what the Crown can achieve. I understand this to be really similar to the sliding scale of engagement that applies for Māori engagement on policy issues more broadly. And I am familiar with a very good Te Arawhiti resource,

including in an A3 format that sets out this sliding scale and something I've used on a number of occasions in my work.

Q. Would you pause there? Te Arawhiti is not Māori. They are a member of the Crown, aren't they?

A. Yes.

Q. So you're relying on another agency from the Crown to inform you about power sharing.

A. Te Arawhiti was established to help the Crown consider these issues. So yes, it's no surprise that as a public servant I would look to the resources they provide in how to apply this sliding scale in practice. But if I could continue, at one end of the scale Māori interests may be limited or not affected in any special way. In these cases, my understanding the Crown's responsibility is to inform. I believe the Tribunal itself acknowledged that some situations require little engagement.

And then I think there are situations where specific Māori interests exist alongside wider interests. In these cases, a general level of consultation is appropriate, along with feedback on how Māori input influenced the outcomes.

And then there will yet be other cases on this sliding scale where the interests of Māori are significantly affected. These cases require intensive consultation and discussion and the level of engagement that is appropriate is more accurately described as collaboration or even co-design.

And then finally, we get to the example that you're referring to, which is in the most exceptional cases where Māori interests are overwhelming and other interests are limited. The Tribunal could consider delegation.

The example of the Toi Moko in France was an interesting one because the French Government's starting position was that all artefacts within their museum system were as a matter of French law inalienable. Their starting position was that there was no possibility of returning these. However, there were a group of parliamentarians that wanted to change that situation.

I was involved at the Embassy in engaging in an appropriate way in diplomacy while that was going on. Of course, one of the things I needed

to take into account was that there is a well-accepted important principle that when you're in an Embassy you don't interfere in the domestic affairs of that country. A law change on how the French system considered these artefacts in their view, tipuna in the New Zealand view, was clearly a sensitive issue and we needed to be mindful of that. But we were able by engaging behind the scenes and by working with Te Papa's repatriation team to make sure that the French system but particularly the French legislators understood very well the New Zealand Government and the Māori perspective on the Toi Moko.

Q. Would you accept that Māori would accept that they have the inalienable right to determine where their dead are put, and in the context of climate change, they should have the decision-making for example to determine whether there should be managed retreat of their urupā, their bones, and their meeting houses, and they should have the exclusive authority for that? Do you accept that?

A. Well, if I could take the first part of that question. The preferred position of the New Zealand Government and as I understand the te ao Māori view was absolutely what you describe with respect to the Toi Moko but what was required was a French law change. And in the event that occurred, and all 21 tīpuna from across France were returned-

Q. Not to interrupt because I want to talk about New Zealand. Aren't I suggesting what is required is a shared sovereignty? I'm asking not the French just to change but MFAT and the constitutional mechanisms that permit that to change, to recognise the exclusive authority that is guaranteed by te Tiriti. They have to change.

A. The reason I raise that example is that it was an example that potentially fitted in with what the Tribunal thought might be a case where there should be a delegation to Māori to conclude negotiations and execute a Treaty. I'm sharing that in my one experience of dealing with this issue there wasn't even really the ability for the New Zealand State to negotiate. What led to the outcome that was sought was in fact quiet diplomacy behind the scenes and a law change. It wouldn't have been an example where the delegation referred to by the Tribunal was possible but that

doesn't mean there would not be another case in the future where such a thing could not happen.

I'm not aware of any case arising thus far where the Crown did consider delegation of the Treaty-making role. I think if a case did arise, there would be some novel practical and constitutional design questions that would need very careful consideration, including how it would operate within the Executive's foreign affairs powers how the responsibility for implementation could work and how this would be perceived by international partners. But I do acknowledge the parts of the report and think they have the description of the different levels of Māori interest and the different levels of engagement and consultation that should follow the different levels of Māori interest is an extremely important contribution to how we look at these issues and indeed, how we operate in practice when thinking about multilateral treaties.

JUDGE MILROY TO MS SYKES – TIMING

Q. I'm now moving to some of my questions under the Treaty-making process and engagement with Māori. The international Treaty process was introduced in 1997, made permanent in 2000 and according to your paragraph 28 has not been changed since 1998. But you would agree that the scope and impact of international trade and investment treaties and rules have expanded massively since then, as have their implications for domestic policy?

A. I think there's a number of ways to tackle that question. It's probably better that I speak not about trade treaties because you have had ample opportunity to engage with my colleague on that. My involvement in Treaties tends to be they are pure multilateral treaties in domains outside of trade. I would agree that the 1990s and the early 2000s did see an increase in large Treaty frameworks. However, I don't think that's necessarily where we are at the moment. The current geopolitical and geostrategic environment actually means that very few large new multilateral treaties are even being negotiated, let alone agreed. It has become much more difficult within the current environment to achieve the level of consensus that is necessary for new Treaty frameworks.

Q. Yes, but it would be wrong-

A. So that's partially agreed but I'm not sure that that will continue to be the case for the future or even as the case now.

Q. But you would be wrong to suggest that's not impacting. I think we heard several examples from the witness before yourself, Mr Vitalis, about for example the honey, mānuka honey. There are a whole range of issues now that perhaps weren't in the contemplation in 1998. We're talking about legacy obligations to protect intellectual property and cultural rights arising from whakapapa, the whakapapa of that particular gene.

My last question, because I'm going to allow others to have the opportunity, is you're familiar with the Cabinet Manual. You said that in your evidence today. Sir Kenneth Keith says in the Cabinet Manual that: "More and more law is made through international processes that are currently the prerogative of the Executive." Are you concerned by that? Do you see that as a problem in terms of the te Tiriti consistency and compliance and relationship standards that are obliged by virtue of that special covenant?

A. I think the piece by Sir Kenneth Keith that you're referring to is the preface to the Cabinet Manual. That was written in 1990 and has been updated several times, rather than the Cabinet Manual itself. I mean I've already said that I feel in many ways that the zenith of international Treaty-making may well be behind us, so I haven't got much to add to that. But I would note that the two times the parliament has had before it Bills that would've made changes to the international Treaty-making process and the role of parliament in that process, those Bills did not progress.

I would also reiterate the point that parliament has a role when implementing legislation is required. The more significant and the more onerous a Treaty is, the more likely there is to be implementing legislation I would think.

Q. Thank you. I see you are reading from some answers there, so I'm hoping it's to the questions I put at a suitable time. Could I get you to answer the remainder questions that we've provided and place them on the record of inquiry?

A. Yes, of course.

Q. Thank you.

JUDGE MILROY ADDRESSES MS BOATWRIGHT – TIMING (15:42:51)

(15:42) MS BOATWRIGHT TO VICTORIA HALLUM:

Q. I have already identified a number of questions that I'll put to you in writing, so I'll just get straight into it. In paragraph 25 of your main brief of evidence, you referenced the Cabinet strategy on engagement with Māori in international treaties, where it specifically requires agencies to identify early on any international treaties that may be of interest or relevance to Māori. Is the correct?

A. That is correct.

Q. And if Māori interests identified early on, then it falls on the responsibility of that relevant agency to determine the appropriate level of engagement and form, correct.

A. That is the responsibility of the lead agency, yes.

Q. How do officials determine what level of engagement is appropriate in any given situation?

A. Thank you. Perhaps I can answer that with an example from my own experience. I think this is an example that falls predominantly in the second category, a situation where engagement and consultation was required on specific Māori interests, as well as feedback on how those interests were being progressed in the negotiation. The example I'm going to use is a multilateral treaty in the environment and natural resources area known as the Biodiversity Beyond National Jurisdiction Agreement. It's an agreement that was concluded in 2023 and it sits under the Law of the Sea framework.

Your question was specifically: “How do officials go about determining the Māori interest?” The way it worked in that example, for which I was the lead negotiator in the latter stages of the negotiation (not for the whole process but I have familiarity for the whole process) is that MFAT identified from the outset that the subject matter, conservation and sustainable development of marine biological diversity in areas beyond national jurisdiction, which is a long way of saying in the high seas, was a topic that was likely to be of Māori interest because of its nature being about protection of the oceans and biological diversity.

With that in mind, MFAT worked first with advice from TPK and our internal Māori Division and compiled a contact list of organisations that we thought would be potentially interested. That then led to the holding of a preparatory hui to discuss the topic of Māori engagement. That involved all relevant agencies, TPK as an advisor, and Te Ohu kaimoana is an organisation that we had early identified had a natural interest in the subject matter of the Treaty. Following that preparatory meeting, a pānui was sent out to the list that had been compiled that explained the objectives of the agreement, identified what some potential interests might be, and then sought views. This was in addition to a broader public submissions process through the website.

A further pānui was sent out in 2019 and then in February 2020, around the time that the negotiations were starting to really get to a sort of serious stage, a not very elegantly named Māori working group on BBMJ was established. Invitations were sent out to the full list of over a hundred people with identified interests. This group then met; had five meetings over the rest of 202, which by this stage the negotiations had slow down because of COVID, but we were still able to do quite good work back at home in Aotearoa, particularly using virtual meetings which we all got used to. Those meetings worked through what the group considered the Māori interests were in that negotiation. Those Māori interests flowed through into the Cabinet paper that set the mandate for the negotiators in this negotiation.

In addition, during the course of the negotiations, different Māori representatives participated as members of the New Zealand delegation, either in person or remotely. We had different representatives of Te Ohu Kaimoana attending the first and second rounds in 2018 and 2019 and then members of the rather boringly named BBMJ working Māori working group participated as non-government participants in the fourth and the two parts of the fifth round.

As I noted, the input that we got from this group helped shape the Cabinet mandate for the negotiations. And in particular, the Cabinet mandate included the element that New Zealand in the negotiations should seek a treaty that: “Enables New Zealand to actively consider Māori interests in

areas beyond national jurisdiction, including kaitiakitanga and taonga species and the application of traditional knowledge and mātauranga Māori."

I looked back this morning at the text of the Treaty to see the extent to which that Cabinet mandate flowed through into the Treaty, and I did indeed could see elements of the final Treaty. Bear in mind, this is a Treaty concluded amongst the 194 members of the United Nations over a period of five years, but I could see references that connect to that mandate which came from the engagement and consultations we had on Māori interests in the Preamble, in Article 5, in Article 17, Article 13, Article 19, Article 21, Article 24, Article 48, and Article 49.

It is an example how on a situation, where there were a lot of other broader interests but there were also some specific Māori interests, officials, using the 2001 strategy as a foundation not a sealing, as my colleagues said, are able to use that to garner input around Māori interests, feed that into the negotiating mandate, and then eventually see that followed through to the text of the multilateral Treaty. I'm sorry that was a long answer but I thought it might be helpful to have something that was concrete.

Q. Of course, and thank you for that. Just one final point that also touches on a question that my learner friend Ms Sykes asked you before about the Wai 262 report in your evidence. Given that only credential members of the official delegation to any COP Conference are authorised to represent New Zealand in negotiations at these Conferences, would you agree that this structure reflects the principle you later referred to in your evidence of New Zealand must speak with one voice internationally?

A. Yes. I think if I understand your question, the way in which New Zealand engages in official conferences of the party is to reflect the one voice that is expected in these contexts. That is covered by the Cabinet guidelines on non-government participants in delegations. So that is why there is a requirement that if you join an official delegation as a non-government participant, you are required in effect to accept that you are part of that one voice. However, the good thing is there are other ways to engage in

international negotiations and conferences. I outlined what the different ways were for the climate COP.

It is not the only way to have a voice. Indeed, in my experience, Māori representatives and Māori groups often prefer to take an option where they are not constrained to speak as part of the Crown's one voice and can be free to pursue their interests. That indeed, has been my experience in another current international multilateral negotiation known as the Global Plastics Treaty, where there is a group called the Tangata Whenua Coalition on Plastics that prefers not to be part of the Crown delegation because it prefers to have its leeway to set its own role in the negotiations.

Now that's not the same as being a State Party. As I said, the international Treaty system is organised around sovereign States. But that's not to say that non-government groups who participate as official observers can't have impact, they can. I have seen that impact follow through in a number of settings.

Q. Thank you. Just one final point from me, before I put the rest to you in writing. In paragraph 16 of your evidence, you note that the Wai 262 report states: “We begin with some fundamental propositions. New Zealand must be with one voice internationally…,” as we’ve discussed: “…and that voice must be the Crown's except where – by agreement – the Crown is prepared to step aside.” In practice, has the Crown ever been prepared to step aside in that way, in the context of international Treaty negotiations?

A. I have not seen such an example. My colleague this morning Mr Vitalis talked about what was not a case of standing aside but a situation where he has seen very significant influence in negotiations coming from the Tiriti partner. No, for me, the idea of the Crown standing aside and authorising Māori to negotiate a Treaty is not something I've seen, but I could conceive of it in a hypothetical example. Although, as I said, because it's not been done before, it would need careful thought on how that was communicated, how that sat within existing documents of our constitutional framework. We have an unwritten constitution but we have

a lot of long documents that set out what those elements are. But I can certainly visualise it could work in a hypothetical example.

Q. Thank you for that and thank you for your time. I'm aware of my remaining time left, so we can put the rest of the questions to you and writing. Tēnā koe.

A. Tēnā koe.

JUDGE MILROY ADDRESSES MR SHARP – QUESTIONS IN WRITING (15:55:40)

TECHNICAL ISSUE – ONLINE CONNECTION

JUDGE MILROY ADDRESSES MS TE WHENUA, MS RONGO – QUESTIONS IN WRITING (15:56:47)

HEARING ADJOURNS: 3.57 PM

HEARING RESUMES: 4.24 PM

JUDGE MILROY ADDRESSES MS TE WHENUA – TECHNICAL ISSUE RESOLVED (16:24:47)

(16:25) MS TE WHENUA TO VICTORIA HALLUM:

Q. Tēnā koe Ms Hallum.

A. Tēnā koe.

Q. Tena koe. My name is Te Whenua. I represent two claimant groups within the inquiry today. On one hand, I represent claimant group, Ngāti Uepōhatu, who are based in Ruatōria in the Waiapu catchment, the Tairāwhiti region which is heavily impacted by climate change.

On the other hand, I represent Te Arawa Climate Change Committee. As part of the evidence provided by Te Arawa deponents, a Te Arawa descendant or uri Professor Claire Charters has provided evidence which I know that you are aware of. The appellation is #A081. She also provided a brief of evidence in reply to your brief which addressed some

aspects of the legally binding nature or otherwise of the United Nation's Indigenous Declaration. That reply evidence is appellation #A081(i).

I just pause for a moment and ensure that you have those before you, and if I could ask the register to have ready the reply evidence #A081(i).

MR PREBBLE TO MS TE WHENUA – DISPLAY DOCUMENTS

Ka pai. Ms Hallum, you'll be aware of Professor Charters. I don't need to introduce her or her qualifications to you, I'm sure. Although they are set out at paragraphs 2 to 7 of her first brief of evidence. Are you aware of Professor Charters and her area of expertise?

A. I am.

Q. Thank you. You would agree that she is an expert with respect to indigenous rights, human rights, and international law?

A. That's correct.

Q. Ka pai. Just for the benefit of yourself and the Tribunal, I would like to clarify from the outset that the two of you, yourselves and your expertise and Ms Charters in her expertise, differ in opinion on the legally binding nature and the extent to which the United Nations Indigenous Declaration is legally binding on the stake here in Aotearoa. Is that correct?

A. I think what I would say to that is I am able to provide information in context on the New Zealand Government's position on the legal status of UNDRIP because it is an issue on which the New Zealand Government has pronounced clear views.

Q. Thank you. And that came through nice and clear in your evidence. I guess I just wanted to differentiate what is not in contention is the degree to which the United Nations Indigenous Declaration. I'm referring to it specifically in that way, as it is the preference of Professor Charters is opposed to UNDRIP. She reminds me that it is not a DRIP. So it is important to us and to our claimant group that we do that. That the declaration is relevant to the Tribunal's interpretation of the principles of the Treaty. That's not in contention, is it? You agree and accept that, don't you?

A. Yes.

Q. Thank you. The extent to which the declaration is legally binding not only is fundamental toward the actions and the legal permissible actions of our

State with respect to their international obligations but it's also influential, isn't it, on the way that the Tribunal may interpret and apply the principles of the Treaty with respect to climate change. Would you agree to that?

A. I think I would have to make a more nuance comment. I'm not sure it's a sort of binary yes/no answer. The government, when it expressed its support and adherence to the Declaration on the Rights of Indigenous Peoples, made clear the basis on which it was doing so. Because of the way that international law is formed and connected to what States do and what States say about what they do, the Government's statements about the basis of which it was supporting the Declaration are indeed quite significant, especially when you are looking at a declaration that is on its face a non-binding UN General Assembly Declaration.

The only way I understand that it could become directly binding would be if it evolved to reflect or be an expression of international customary law and international customary law is formed by State practice and *Opinio jurisdiction*, so what States do and what they say about what they do. I would maintain that the Government's position at the time it adhered to the Declaration is significant and should be taken into account by this Tribunal.

Q. Thank you. If we touch on elements to start with of the declaration which are binding. First of all, would you agree with the proposition that international treaties, which New Zealand has ratified, are binding on the Crown?

A. Yes. I would also agree with the proposition that there are significant elements in the Declaration on the Rights of Indigenous Peoples that reflect extant international law, either extant Treaty law or extant customary law that those elements are binding. There are, however, other elements that are of an aspirational nature and are not considered by the Government to be binding.

Q. Thank you. Let's look at some of those binding elements. Would you care to express some of those legally binding elements of the Declaration which exist in international treaties to which New Zealanders is a party and which pertained to indigenous rights with respect to self-determination for example to culture and to the environment?

A. I hesitate to become too definite in the context of an oral question and answer. I will try to provide some examples but we are talking about issues that can also be well covered in legal submissions in a case of this nature. But I would say that clearly any references in UNDRIP to core human right treaties which New Zealand is party too are therefore binding on New Zealand. Examples of elements of UNDRIP that reflect international customary law, I think would include human rights around torture, genocide, and slavery. They are generally accepted by almost all States as being binding as a matter of custom, as well as a matter of treaty law.

Q. Do you accept that the international covenant on civil and political rights is a Treaty to which New Zealand is a party and therefore is binding upon the State?

A. The Treaty overall is binding but the international covenant – sorry, are we talking about the international covenant on economic, social, and cultural? I better check to make sure I heard the question correctly.

Q. I referred to the ICCPR but both of these treaties.

A. Yes. The civil and political covenant is a binding Treaty.

Q. Do you accept that under Article 1 of the ICCPR self-determination protects the right to manage natural resources of indigenous people?

A. I do not have the ICCPR in front of me, nor have I refreshed my knowledge of that in preparation for this hearing. I don't know what I can add to what you clearly have in front of you. It certainly sounds correct, but I hesitate to give evidence to that effect when I haven't been able to verify that.

Q. Thank you Ms Hallum. It's just that at paragraph 95 of your brief of evidence, you do make the point, which you've shared again today and reaffirmed, that the UN Indigenous Declaration re-states existing human rights obligations from international human rights treaties (which New Zealand is a party to). Therefore, you raise the point that there are treaties which are legally binding internationally on New Zealand which underpin human rights which we are a party to and the ICCPR is one of those. I raise a question because you've raised it in evidence and just to give you an opportunity to extrapolate out for the Tribunal what those

rights are. But if, as you say, you don't have knowledge of them offhand and you don't also have knowledge and opportunity to refresh yourself, I can put those in writing to you.

A. Yes, I'll be very happy to answer that question in writing.

Q. Thank you. My next line of questions is with respect to how – and you've pre-empted it in some ways – a non-binding declaration, such as the UN Indigenous Declaration can form or crystallise into customary international law. In the brief of evidence of Professor Charters from paragraphs 23 to 73, Professor Charters sets out quite a range of extensive State practices, *Opinio juris*, and other legal positions which she argues crystallise the declaration into binding customary international law. Have you had an opportunity to peruse those paragraphs?

A. Let me make sure I have the right document. I have in front of me two briefs of evidence of Claire Charters dated 6 May 2025…

Q. Sorry, this is the reply evidence which is appellation #A081(i) and that would be dated 26 February 2026. I'm looking at her paragraphs 23 to 73.

A. Okay, I would need to have that in front of me. I don't believe it is in the bundles that I have. But I'm happy to look at it.

Q. Okay. Am I right in presuming that you've not had an opportunity to peruse and to familiarise yourself with the reply evidence of Professor Charters at all?

A. I have seen the evidence and looked at it, so I'm happy to try and engage in the questions.

Q. Okay, thank you. Essentially, those paragraphs substantiate Professor Charters view at paragraph 14 of her reply evidence which states that: "The declaration constitutes customary international law…," that's her position: "…including the right to self-determination and consent and consultation duties. Such provisions are thus binding international legal norms." Do you accept that Professor Charters analysis raises a possibility that your position and the position of the New Zealand Government, as you've expressed that paragraph 95, is a conventional one and that there is an evolving position on this

internationally which tends to lean toward that of Ms Charters that it is crystallising the declaration into customary international law?

A. I think the subject of when norms and when international documents or emerging norms crystallise as customary international law is inevitably a subject on which there will be a lot of different views and a lot of academic debate. However, I also think that the views of States as primary actors in the international system need to bear particular weight. And in this case, I represent a State that has made its understanding of the document that it expressed support for very clear. So I don't accept the argumentation provided by Claire Charters. I accept it is an informed and expert view but it is not one that I share.

I think, even if a norm were crystallising in general, you would need to think carefully about the role of the persistent objector which is also a relevant concept for considering the application of so-called customary norms to a particular State. And in this case, where the New Zealand Government has been very clear that it supports the declaration but sees a distinction between those elements that reflect existing law and those elements which are aspirational and not of a binding nature. It is important to take account of those views. International law is fundamentally a system-based on consent. I consider as an international lawyer that we are seeing an increasing uncertainty in the extent to which States are willing to be bound, even by a very clear Treaty commitments. I would not glide over the views of a State in adhering to a document lightly in a world where we have much to gain by ensuring that States maintain the commitments they have made and should be cautious about allowing obligations to be interpreted through processes that are not firmly based in that crucial element of State consent.

JUDGE MILROY TO MS TE WHENUA – TIMING

Q. First of all, I just wanted to make the point in reply Ms Hallum that Professor Charters disputes your view that our State Aotearoa has been a persistent objector and that it has been clear on the position and the legality or legally binding nature of the declaration. The second point that

you made us that you represent a State. It is more than that, isn't it? You advise the Crown as well, don't you?

A. That is correct.

Q. Would you accept that if there is any doubt as to the legally binding nature of the Declaration that it is your obligation in accordance with Te Tiriti o Waitangi to advise Ministers accordingly?

A. I'm sorry, could you repeat that question?

Q. Sure. I will even rephrase it for you. In your answers to my learned friend Ms Sykes, you made the comment that in international fora the Crown speaks on behalf of the State and it should develop its position in a way that is consistent with the Treaty of Waitangi. As an advisor to the Crown, as the Deputy Secretary Legal of the Ministry of Foreign Affairs and Trade, do you think it incumbent on yourself to raise these types of arguments on the legally binding nature of the declaration with Ministers as (inaudible 16:46:24) with the Treaty?

A. As a public servant and as a Crown legal advisor, it is absolutely my duty to provide both free and frank advice and the best legal advice to my ability. So I have no disagreement with you there. But that doesn't necessarily mean canvasing every different view that are being raised by every expert. We provide advice on what we consider to be the best legal view.

Q. This is not just every legal view. This is a persuasive view, isn't it?

A. I think that's where, with all respect to Claire Charters, we have a different view.

Q. Would you agree that your view, the view that you are advising our government with, as expressed in paragraph 95 of your brief, is conventional?

A. I think I probably have to clarify here, my brief of evidence expresses the positions of the New Zealand Government that are on record when the Government expressed it support for the declaration. I haven't conveyed any information on what the content of my legal advice may or may not have been because indeed I would not be permitted to do so without specific waiver of legal privilege.

Q. Would you accept that it is your obligation as an advisor to our officials, to our Cabinet to stay on top of evolving legal jurisprudence in this area?

A. Yes. We remain current and ensure that our advice on policy matters and legal matters is fit for purpose and accurate.

Q. Would you accept that if that advice should evolve to one which is consistent with both the Treaty and informs of the binding legal international obligation with respect to the Declaration that it is your obligation to provide that to Ministers?

A. I don't really think that I'm comfortable with the premise of this question. Because, as I've acknowledged, there are a range of different views out there. I would note that Claire Charters refers to quite a number of things under the general umbrella of jurisprudence that in my opinion are not of a legal nature and are a range of different mechanisms operating in the wider multilateral system, each with its specific purpose but not a purpose that is intended to amount to jurisprudence or authoritative statements of international law. So I'm not wanting to be unnecessarily argumentative or disagreeable but I'm not sure I can respond in the affirmative to that question.

Q. Thank you very much Ms Hallum for your answers today.

A. Thank you for the questions.

(16:50) PRUE KAPUA TO VICTORIA HALLUM:

Q. Kia ora Ms Hallum. I just have a couple of questions. I was just wanting to clarify with you, are you able to say whether you have any expertise in relation to issues around mātauranga Māori, tikanga, and so on?

A. It is certainly not an area of deep expertise. As with many public servants of my generation, I've taken the opportunities that have come about to try and learn and understand and update. My tertiary education was in a time when many of the things we're discussing today were still evolving. I wouldn't claim expertise but I definitely would want to acknowledge a deep respect and interest in such topics and the implication they have for the Ministry's work.

Q. Thank you. When you need to make these decisions or give this advice about issues like Māori interests or what you think might comprise Māori

interests in relation to treaties and agreements, what do you rely on for the input for your advice?

A. I guess we have to sort of dissect. There are a range of different roles I've had over a long period of time. I'm currently a Deputy Secretary so responsible as a member of the senior leadership team for a large part of the Ministry's operations. I was previously leading a legal team.

The best example I would give in terms of where I get information to understand what Māori interests would be in a treaty negotiation would be the example I referred to earlier the BBMJ or the High Seas Biodiversity Treaty where I explained that the process sort of started with a feeling that a biodiversity Treaty about the oceans was likely to have significant interests. Then you consult your internal resources within the Ministry and I have conveyed my evidence how they have evolved over time. The next step was Te Arawhiti and now it is TPK again and through those processes we are helped to get into direct contact with those that are most interested.

I've also discussed the BBMJ agreement with the Ministry's partnership group, Te Hurumanu, which has been established to engage at a senior level on these issues and that was at a later stage in the negotiation. It was really more testing what had come through the working group that was established specifically for this purpose, to see whether the Te Hurumanu group, which is a senior group, felt we had missed anything or felt there was something more that should've been done. So in terms of understanding Māori interests in an issue, it is a question of using all the resources internal and then external to try and understand that.

I think it's a slightly separate issue when we talk about the art of giving legal advice which is always tricky because legal privilege is a very important principle that serves important purposes. But it does make lawyers like the awkward when talking about giving legal advice. I mean you use all the knowledge that you have at your disposal and then in doubt, the normal approach is to seek further views, including through Crown Law. At times when we have dealt with really difficult, gnarly legal issues, we will also engage a barrister to provide additional advice and through that process you test out the quality of the advice. Advice is also

usually not given by one person alone. We work in a very collaborative environment so you talk things through with colleagues and then you provide the best legal advice.

To two slightly different answers depending on whether it's about establishing the Māori interest in the context of a Treaty negotiation or whether it's a general question about providing advice.

Q. Thank you for that answer. I guess the issue would be here that it's your use of the terms internally, your use of the groups that you choose to negotiate with or to be involved in the process. I guess that would tend to lend itself to there being some criticism that you're not really taking an independent or objective view about determining Māori interests. Would that be a fair criticism? Can you understand that criticism?

A. I understand the criticism but I'm not sure that it really is accurate. If I think about some of the groups that I've spoken about, the Ministry's Te Hurumanu group was established through a very careful and considered process and has some really significant Māori leaders participating in it and providing their expertise and input. And then if I go to the working level group that was a self-identified group of those who were interested following our best endeavours effort to come up with a long list. I think there were maybe a hundred people on the list that was sent the invitation to participate in a group to discuss the High Seas Biodiversity Treaty. And then you have to respect those that self-identify as wanting to engage have something valuable to offer. And when that is also backed up by engagement with FOMA, engagement via National Iwi Chairs Forum, it seems as good a process as possible.

The other thing I would say is I'm conscious that many of the issues that I have been working on, or my team have been working on, are not necessarily the highest priorities for Māori and that's come through in engagement we've had with some of the Ministry's group. Māori need to make their choices about what matters most and it's not always some of the multilateral treaty areas I'm working on. But having said that, there often is a distinct and relevant Māori interest and in my experience, we do our best to try and identify that through this sort of engagement.

Q. I guess my concern in this and in your examples you have given is that doing your best when you get to make the decisions about who is involved in the process, I mean, there is an element of lottery in here, as to who you may or may not be talking to, who may or may not be involved in looking at the Māori interest. And if it is your desire to have the best practice, have you applied your mind as to how you can have a better practice that would give you better fuller more informed information about Māori interests?

A. For this specific treaty negotiations I've been responsible for, I haven't known of a better approach. that would also be feasible within the demands of delivering on the work we're required to do in accordance with the priorities of the government of the day. I guess one of the advantages of the current situation where we have a 2001 strategy that provides a foundation level of engagement, but then how different agencies implement that is informed by their understandings of what is required by the Treaty partnership, is you can have a level of creativity and different approaches and in a way that may actually achieve better results.

I know for example in the context of the Global Plastics Treaty, which is another one that I'm involved in, there were attempts by the Ministry for the Environment to actually go through a sort of open procurement process to try and procure some expert knowledge to inform the delegation. That didn't actually lead to that happening, as far as I know. This happened before I took on the leadership of that negotiation. So, you have officials working to try and ascertain the best information about Māori interests and often, it seems to me, that the quality of the input is actually quite good. Through the process of engagement, we are able to ascertain Māori interests, Māori perspectives on particular issues. That can then inform a mandate if the government of the day wants to prioritise and authorise those interests as being part of the negotiation mandate and then that can also eventually lead to parts of a Treaty that owe its origin partly to that process.

Of course, we're never negotiating alone. The environments I work in have in theory 194 participants. Not all countries are actively engaged in

every negotiation but I'm talking about rooms absolutely full of countries, 120 plus. We always work with others to try and pursue the priorities in our mandate. But I have definitely seen the interests identified by Māori flowing through into Treaty text.

Q. When you talk about the engagement with Ngā Toki Whakarururanga, you're talking about the engagement by virtue of the mediation agreement. Is that correct?

A. My understanding is that Ngā Toki Whakarururanga, as we know it in the Ministry, was established following the mediation agreement. So it's a creature in some ways of that. We also have other partnership forums to talk to and the tendency in my area, which is quite different from the trade area which my colleagues spoke to, has been that we haven't had the permanent standing bodies focused on the areas we cover. It has been a more bespoke process of going out and trying to find a group that is interested to contribute to the particular Treaty.

Q. Āe. I just wondered why in paragraph 38 of your evidence you don't refer to the mediation agreement when you've actually referred to the Memorandum of Understanding with FOMA and partnering with Te Taumata, but your reference there to Ngā Toki Whakarururanga is as a result of the mediation agreement. Is that correct?

A. Yes.

Q. Right, thank you.

A. I thought that was a known fact.

Q. Well, it just helps and you've included it in your evidence.

A. Yes.

Q. In paragraph 27 of your summary, you refer to the Ministry commissioning an internal report and you refer to assessing whether the Ministry's mātauranga Māori capability et cetera, et cetera. Do you think there might have been any difference had you commissioned an external or independent report?

A. I think a report is obviously influenced by those that had chosen to do it. The advantages of the internal report is we had two very senior staff members with deep knowledge of the issues we cover in the work so it was a very informed report. They were employees of the organisation so

that conceivably has an impact on the conclusions they came up with. My observations from engaging with the report is that they took the role extremely seriously and came up with some extremely valuable advice for the Ministry. So, yes.

Q. It could have been a different report if it had been done independently or externally.

A. If it had been done by a different group of authors it would have been a different report.

Q. It wasn't internal, thank you. Just a couple more. You were asked a number of questions about legal advice and to the questions from Ms Te Whenua, you did express your legal opinion in relation to some of the questions around the declaration. That was your legal opinion.

I'm just trying to run my mind over. I did. I tried to express my expert view on some of the issues she was presenting to me. My brief of evidence is more confined on sharing the formal positions which include legal elements of the Government. I was doing both things. What I was not doing is not talking about specific pieces of legal advice provided to the Government because that is not something I can do.

Q. Can you just qualify for me what their expertise in terms of your expertise in giving your legal opinion was, as compared for example to Professor Charters?

A. I am an international lawyer and indeed, a public lawyer, who has spent the large part of my career working on international legal issues. I have been posted as an international lawyer to the New Zealand mission to the United Nations. At an earlier stage in my career, I have spent a large part of my career but not exclusively working on international law for the New Zealand Government. I have a master's in international law from Victoria University and a master's international law from the London School of Economics and Political Science. It is that experience from working on these issues throughout my decades and informed by my professional training that is the basis of my expertise.

Q. Would it be fair to say that that expertise is largely working in the Crown or government area?

A. My professional experience working on international law has all been working either for the Crown or for a Crown entity that is correct.

Q. All right. Just finally, you qualified the quote I think from Sir Kenneth Keith as being the preface not the Cabinet Manual. I'm just interested in what weight you would put on that part of the preface that was read to you?

A. We as officials we seek to understand the requirements of good government in terms of what is appropriate and required of the Executive and how the Executive interacts with the legislature. We use the Cabinet Manual as one of the key elements to decide that. Ee will go to the Cabinet Manual and look and we will see that a particular article of the Cabinet Manual says a certain thing and that's quite influential.
The writing by Sir Kenneth Keith is a very useful explanatory preface that is designed to help the reader, I think, understand and contextualise the Cabinet Manual. It's different than being the Cabinet Manual itself. That was my point.

Q. So it adds to the context.

A. Yes.

Q. Okay, thank you.

(17:10) PROFESSOR DAVID WILLIAMS TO VICTORIA HALLUM:

Q. Tēnā koe Ms Hallum.

A. Tēnā koe.

Q. I just have one question relating to how the word partnership is used and I had alighted upon the same paragraph as my colleague Ms Kapua paragraph 38. And before I read your evidence, I was aware of what you call partnering with or engaging with FOMA and Te Taumata and Ngā Toki Whakarururanga. What I hadn't heard of before was Te Hurumanu which you have just mentioned in reply to Ms Kapua but I ticked on the link in your evidence and looked it up. I see that there are five rather distinguished people, of whom the chair is Ngahiwi Tomoana, and that the members' responsibility is to seek to include views and needs from mana whenua, iwi, Māori groups, and government in the spirit of partnership. Members should seek to act broadly in the interests of Māori and the New Zealand public. The group is described as a partnership

group created to work alongside the Chief Executive and Senior Leadership Team, and you're a member of the Senior Leadership Team. I have questions around what is meant by the word partnership here. This group was created by whom. How were they appointed. Who bestowed the name Hurumanu? What do you mean by the word partnership? Is it a Treaty partnership? Is it a Treaty principle partnership? Is it an MFAT version of what the partnership might look like? What sort of partnership are we talking about? How might this process be Treaty compliant, the process of getting this group?

A. I think I would have to seek more information to provide a fully considered answer to that. I am familiar with the group. I remember when it was established. I believe it was established following the internal report that we were talking about which is known as the Rata-Heslop report within the Ministry. I remember some of the discussions when it was set up. I may not have actually been a member of the Senior Leadership Team when it commenced. I have participated in meetings with the group which run on a roughly monthly basis.

I have had issues that have been carried out under my responsibility that we have taken with a paper to discuss with the group, including the High Seas Biodiversity Treaty. But we also I believe engaged with the group on some of our consular policies to test out the extent to which in providing a consular service to all New Zealanders we were taking on appropriately particular needs and requirements of consular clients who were Māori. I remember that discussion was very useful in informing my consular team in how they thought about some issues. For example, Tā Moko can be perceived in foreign jurisdictions in different ways and the interest of my consular team was trying to understand how they could appropriately advise Māori and provide support on that issue. But the questions around exactly how it was set up and how it is considered to be Treaty compliant, I would need to check.

Q. Could I ask you to give some written answers to that. I mean absolutely no disrespect to the five eminent people of some mana that you've got there. But what I'm seeking to tease out, to put it in blunt terms is, is the Crown picking their Māori that they're bringing in to advise them, rather

than some other wider more obviously Treaty compliant process? Who created it? How were the people appointed?

A. One thing I can say – it doesn't provide a full answer but is relevant – is that we do not conceive of Te Hurumanu as a full process for engaging with Māori done and dusted to kind of tick box our issues and tick something off. It is a trusted senior forum to engage at the exploration level to kind of start a process. It is not designed to be the whole element of Māori engagement but we have found, having such a group with the mana that it has, as a useful forum for senior rangatira discussions.

Q. Thank you. But I do look forward to some written answers please.

(17:16) JUDGE MILROY TO VICTORIA HALLUM:

Q. I've just got a couple of quick questions. The first is the report. The internal report referred to in paragraph 27 of your summary was done in 2021. I'm just wondering when the whole Houtina division was set up and how many people are in it, and whether they engage with every part of the Ministry.

A. My recollection is that Houtina was set up after the report that you refer to, although I would need to confirm that to be sure. The team do indeed engage both in terms of issues that are in their own programme and that are identified as a priority but they are also responsive to requests from different policy teams in the Ministry. I don't have information on the precise staffing but it is in Ministry terms a substantial division in terms of size.

Q. Alright. If I could have that information and also the total number of Ministry members or staff members in terms of comparison of numbers really.

A. One thing I can say that might be relevant to the question is that the different policy teams responsible for thematic areas or particular relationships, because the Ministry is primarily organised around geographical relationships and then my area and Vangelis' area is more thematic and some of the overseas development programme also has thematic areas. Those groups remain responsible for all aspects of their work, including engaging with Māori when that is required. We do not

expect Houtina to take on that load for the organisation but they are a resource on policy issues at a strategic policy level and also can help co-design and that's particularly the involved in the policy side and the engagement side.

Q. All right. I just see that they are responsible for developing a coordinated and coherent approach to MFATs engagement with Māori. We heard from Mr Vitalis this morning that he has a very deep set of engagements with various Māori groupings. I'm just wondering if that approach has been developed if there's a framework for it or a set of policy documents whether we could have those.

A. I can take the question and take that back and work with my colleagues on the Senior Leadership Team on the appropriate answer. I do not lead the Houtina group. My colleague the Deputy Chief Executive Policy is the Deputy Secretary with oversight over Houtina and that is Taha McPherson.

Q. All right, thank you. My other set of questions was just about the-

A. Global Plastic Treaty.

Q. – I'm sorry I got my name wrong the Global Plastic Treaty. I think you said that there was an independent Māori group that also attended the negotiations. I just wondered whether they received any funding from MFAT or from the Crown in some way or were supported in some way to attend.

A. I'm just trying to find my notes on this particular issue. This was an engagement process led by the Ministry for the Environment. MFAT and MfE in effect are co-leads of the negotiation but the Senior Negotiator has always been an MFAT lead. But this subject of plastic pollution is one that draws very heavily on MfE's expertise and their responsibilities for waste management in New Zealand. In practice, it is probably a shared responsibility.

I am informed about the engagement processes, many of which took place before I took on formal responsibility for this. My understanding is that funding was available but that the group concerned did not wish to take the funding and preferred to protect what was seen as their full independence. But I think what is interesting here is that there were

options being offered that did not involve coming in under the Cabinet guidelines on non-government participants in delegations. It was an alternate model but I think any provision of Crown funding from any government department comes with a funding agreement and my understanding is in that instance the Tangata Whenua Coalition preferred not to take up the option but they have indeed continued to attend the negotiations. The New Zealand delegation has had interactions with the Coalition in and around those negotiations.

Q. All right. I just ask that question really to see whether there has been an evolution in the practice of different Crown Ministries in terms of how they see independent Māori groups attending Treaty negotiations and so forth. Whether it is the Crown's prerogative: “Maybe we will talk to you but it is over to the Crown to decide how things are going to be,” to something more inclusive.

A. I think there's a rich range of different practices developed for different contexts and different international organisations and different international processes will have different options for how non-government representatives can participate. There will be some settings where the negotiations are very closed if you are not part of a formal government team and there will be other settings that are more inclusive. The amount of speaking time that is given in negotiating processes varies from process to process as well. It is a very diverse rich field with lots of different complex arrangements.

Q. All right.

RE-EXAMINATION QUESTIONS FROM MR PREBBLE – NIL

MR PREBBLE ADDRESSES VICTORIA HALLUM – MIHI, ACKNOWLEDGEMENT (17:25:14)

JUDGE MILROY ADDRESSES VICTORIA HALLUM – MIHI, ACKNOWLEDGEMENT (17:25:18)

MR VINCENT ADDRESSES JUDGE MILROY – FILE UPDATED QUESTIONS (17:25:43)

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING ADJOURNS: 5.26 PM

5

HEARING RESUMES ON THURSDAY 19 MARCH 2026 AT 8.29 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

(08:30) JUDGE MILROY: (MIHI)

Tēnā koe matua **greetings to you elder** Kevin, thank you for our karakia. Welcome back everybody. Now we are resuming with the cross-examination. It's over to you Mr Bennion.

MR BENNION ADDRESSES TRIBUNAL PANEL – MIHI, ACKNOWLEDGEMENT (08:30:42)

(08:30) MR BENNION TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Tēnā kōrua **greetings to you both**, to you Mr Smith and Mr Mandal-Johnson. I've got 30 minutes. I think that's what I'm allowed. I took five the other day. We could be here all day and I'm not going to be able to get into the wonkiness of the setting of auction prices and matters like that, and I apologise Mr Mandal-Johnson.

A. [Simon Mandal-Johnson] I'm delighted.

Q. There's a lot to cover and I'm trying to focus fairly carefully. But I guess the first area I want to deal with is about the price of units in the future and whether these forests are forever forests. That's the big set scene set here for my clients. Returning to something we discussed the other day. We've agreed that this is the pre-1990 forest land. It was Māori land that's often marginal. Settlers didn't want it. But it can grow forests. That was compulsory taken into the ETS in 2008, yes.

A. [Bryan Smith] If it was exotic forest that's correct.

Q. If it was exotic.

A. If it was indigenous or indigenous scrub no.

Q. Okay, so exotic. The broad intention is that polluters are to buy credits generated by these forests. The polluters are going to change their operations and go to a low emissions to try and reduce their cost and not have to buy credits. Ultimately, no one will need to buy credits because everybody will be operating on a low emissions basis and the price will

drop and we just won't need these forests. The idea is that people will then be free to exit and use the land again for exotic forestry in the future or whatever but the ETS price won't be there. That's the broad approach, isn't it?

A. [Simon Mandal-Johnson] I can try. There are elements of the broad approach which are correct, but there's definitely a few points I just need to clarify there. Firstly, you're painting a world of no carbon in the future. I don't know of any international evidence that says that's the most likely outcome for us to end up at. There is a significant portion of the economy which is hard to abate. That's technical jargon for there's no obvious solution to decarbonise it. I think most academic commentators and certainly most of our understanding would be that any future world, there is going to need to be a balance of both reduction activity to prevent carbon emissions from occurring and also removal activities.

The second point I just need to clarify and needs more clarification is if a piece of land has been afforested and has entered the ETS – sorry, is forest and is in the ETS, it is in the ETS for the duration of the scheme and the scheme is indefinite. That's really important because the point is that the land is responsible for sequestering the carbon which is sitting in the trees, the land owner holds the liability to maintain the forest and to maintain that sequestration of carbon. There would never be a world where somebody who owned a piece of land which was in the ETS could then deforest it without penalty, because that would then undo the carbon storage that it was trying to create.

Q. Alright. No, thank you for that. That's very helpful. So this means that for that land, those owners are restricted somewhat in their future uses. It's marginal and commercial forestry might be one of the few uses but there are other uses. So there is some opportunity cost issue, isn't there, in having it in forest and it looks like you're suggesting that might be indefinite.

A. [Bryan Smith] There is no restriction on use but that comes at a cost if you're going to change use and release carbon. The cost has reduced significantly because of the offsetting regime the actual material because you can effectively plant another area of forest elsewhere but it still comes

at some cost. I wouldn't characterise it as saying “you're looked in forever” but I would say that if you do want to change land use, it will come at some cost.

Q. I'm looking at paragraph 131 of your evidence and you talk about the ETS Review Committee of 2008-2009 you're discussing their work and at 131 you say, there was this issue about flexible land-use and there was that effort to get offsetting in place.

A. [Bryan Smith] Yes.

Q. So I understand the government understands that issue, that need for flexibility for the owners and that's also reflected, isn't it, in the recent law change where the law now says: “We want to prevent the conversion of high LUC land, high classification land to commercial forest but we're not going to require that for Māori freehold land.” That reflects the idea of there needs to be more choices for Māori. Is that fair?

A. [Simon Mandal-Johnson] I mean I think that's essentially fair. It's only a component of why the LUC changes were introduced. Clearly, opportunity cost for Māori is part and there were other reasons as well.

Q. Okay. Given that principle and that law change, it's curious, isn't it, that in 1990 there wasn't the option for Māori owners of pre-1990 commercial forest to come into the ETS because you’re now presenting that option in a way in these latest law changes but didn't back then.

A. [Bryan Smith] I'm not sure that the latest law changes are quite the same situation as what the government, the Crown was presented with for pre-1990 forests going into the first commitment period of the Kyoto Protocol. I think it is documented in the evidence, the government of the day had two choices was to essentially say: “Our international obligations create liabilities for New Zealand if you deforest. We can either pass those on or we can retain them to the Crown.” The original proposal for the tax, by the way, was to retain them all to the Crown and only address the issue if it became clear that deforestation was going to accelerate at a much higher rate than had traditionally been the case. But for that proposal the proposal was to retain all the credits and all the liabilities. In other words, the Crown socialises both the upside and the downside of Kyoto. That didn't survive and there was a lot of objection to

devolving the credits to not devolving the upside, if you like. In the end, the Crown was presented with that proposal and it treated all land owners in the same way because the potential liabilities were/are potentially really significant.

Q. Okay. No, thank you for that. I'm just rounding this part out. Looking at the Emissions Reduction Report 2 of the Climate Change Commission the 2025 report, it summarises and it says: "The current structure of the ETS is likely to deliver mostly forest removals and insufficient incentives for most gross emissions reductions. That's its summary of the current situation. Let's put it this way, that is disappointing, isn't it, after I think 18 years of the ETS. That reflects a very uneven application of the ETS over those 18 years. That's pretty big point.

A. [Simon Mandal-Johnson] Yes.

Q. Yes.

A. Yes, so there's quite a lot to say in response to that. Firstly, just to clarify, I think you're talking about the Commission's monitoring report of 2024, is that right?

Q. I'm just checking what we were looking at.

A. I remember the quotation you're referring to.

Q. It does in either report, yes.

A. I think it would be fair to say that in that monitoring report the Commission did assert that there was insufficient growth reduction occurring.

Q. Yes.

A. There's a few points I would say here by, firstly, and to clarify, this step is a little bit outside of ETS policy and more into general overall climate response so there are limits as to how far I could credibly be an expert witness on some of this. But within the constraints of what I can say, we have a net based target. Our legislation, our international obligations are constructed around the point that the offsetting is a necessary part of our response. There is no legislated growth reduction expectation. That was back at the point when the Zero Carbon Act was passed in 2019. That was a contested point. There was debate about whether that should be the case and many people don't accept that it should be, and I'm sure there are many, many people who would have said we should have a

gross reduction target. It was not the government's policy position at the time and it's not the government's policy position today that there is a growth target. There is a net based target.

Given that, I don't believe our response to the commission's report is in our evidence but I'm sure we could find it. I believe the government's response at the time was around, whilst gross reductions will occur, we can talk more about the fact that there are going to be gross reductions even under the current system, the point of the climate response is a strategic one around net based reductions not growth. So I don't think it's fair to characterise this scheme as having failed to deliver gross reductions. If you wish the schemes to deliver growth reductions. there are different policies I think you could have reasonably made.

Q. Alright. Can I come to 135 of your evidence and you're still talking about there at the ETS Review Committee. And you've got this comment: "Accordingly, and among other things, it recommended the government implement a 'targeted communication and engagement strategy to achieve maximum involvement of Māori in climate change policy, including the Emissions Trading Scheme and to ensure they are not unduly exposed to risk'." Now I want to suggest to you that the subsequent history is that has not happened at all and it's actually been quite a profound disappointment in terms of engagement and I want to put you three points around that. In December 2024 the government announced five pillars of its climate strategy going forward. You notice those five pillars. Are you aware of those?

A. I actually personally wrote that document –

Q. Yes.

A. – in a previous role with this, yes.

Q. There was no engagement with iwi around those five pillars.

A. You're asking me a factual question there, but I don't recall that there was any public consultation at the time on that document.

Q. Yes. And in that announcement of December 2024, I think it's the same document, the government dropped 41 policies from the Emissions Reduction Plan 1 without consultation.

A. So that's not the case. And you are you are asking frankly to comment to my previous job rather than my current role as ETS Policy Manager. But just to be clear, I think I can clarify, the Emissions Reduction Plan 2 was published at the end of the year. There was at that point, as you say, a significant number of ERP1 policies were formally discontinued. Prior to that, there was several months' worth of consultation exercise. Other people would have to give you the details of the nature that was exercise. But there was through the period of 2024 extensive consultation on a Draft ERP2, including the discontinuation of the policies you talk about. I accept that wasn't consultation on the five pillars document that you're refer to.

Q. No, okay. To be clear, on the dropping of the 41 policies from ERP1, there was no consultation before the government statement that it intended to drop them. What it did was it subsequently said in the ERP2 consultation: "We just want you to know that these are policies we're going to drop and how should we think about that going and forward into the ERP2."

A. The ERP2 consultation was in June or July of 2024. It was prior to the announcement of the final ERP2 at the end of the year. It was prior to the decision to drop those policies. I think it would be fairer to say that in the middle of the year, the government put out a discussion document it called the ERP2 discussion document which summarised the intent to discontinue several policies ERP1. It invited consultation on that. I was at several hui around that and I can remember there was quite some disagreement with that. The government clearly chose not to do so, but I would not accept that there was no consultation on that.

Q. But, for example, one of the policies dropped 13.1.1 was an emissions pricing mechanism is developed and agricultural emissions are priced by 1 January 2025. Yes, you remember that ERP1 policy.

A. I'm going to have to get my (inaudible 08:45:12).

Q. Okay, we might bring-

A. I'd assume that's true.

Q. We'll bring a page up. But to be clear, if agricultural emissions were going to be priced by the 1st of January 2025 and that decision changed, that

would have a big impact on the price of NZUs and the prices in the ETS Scheme, and I think it did.

A. As a point or theory you're completely right. Of course, if we are going to price agricultural emissions inside the ETS that will have a significant bearing on the ETS price. That is clearly true.

Q. All right. Just to finally clarify on this point, the government decided to drop 41 part policies from the ERP1 and then said to people in its consultation on ERP2: "What do you think about the idea that we are going to drop these and how should we think about that decision in the EP2 settings," isn't that the way they went about it?

A. I don't think would be a fair characterisation of it. I think I would say that in the previous election in 2023 the government obviously had campaigned on the manifesto which had very components to it. In the middle of 2024 there was a consultation. That consultation, my recollection of it and I'd have to go back and check, but my recollection of it was explicitly around to seek people's views on the overall approach and the discontinuation of those policies.

Q. Okay. Let me just bring up lastly on this one page from the ERP2 consultation document and the precise question that was asked in that document. Do you see 2.2 there? Chapter 2, consultation questions 2.2: "What, if any, are the long term impacts from the changes to the first Emissions Reduction Plan on…," so that presumes they're happening: "…meeting future emissions budgets that should be considered through the development of the second Emissions Plan?" That was the consultation question that was asked.

A. That is clearly the question that was asked.

Q. Yes.

A. Yes.

Q. I'll leave it there. I mean, you may be aware that some of this issues around this are in the High Court currently.

A. I am aware.

Q. You are aware, okay. Well, we'll make our submissions on that. The other area where I'm going to suggest you that this idea of close consultation engagement with Māori because of the ETS and its

sensitivities et cetera is around something that you mention at 302. I think this is what you're referring to, the very last paragraph of your evidence you say: “Governments will continue to monitor forest outcomes through an adaptive management approach. New policies to support forestry may be introduced through future emissions reduction plans.” I'm interested in those words “adaptive management approach”. The government has been – and I see a possible smile there – the government internally was looking at what it called, I think, an adaptive management approach to how it would respond to recommendations from the Climate Change Commission, yes, and it was looking at that I think in ’24 but certainly in 2025.

A. To a degree that's correct. That's not the full picture. The point I would say – and again we're straying (inaudible 08:49:04) outside of the ETS itself here – the adaptive management approach was an approach set by the government for how we will respond to climate change in the general. It is a philosophy and a practical approach more than anything else which is we cannot predict the future fully. There are lots of uncertainties. We don't know many, many things about how the world will evolve. It is, therefore, very silly to say we will just continue this path and expect it to say stay the same for the next 25 years.

The adaptive management approach that was set out in the ERP2 (that you were just looking at and we developed before that) was explicitly an attempt to try and institutionalise a logic of continued review and refresh of the government's climate response in light of the changing science, the change in technologies, that change in economics. That's what is being referred to in paragraph 302.

Q. Yes, and I just want to be clear about this. The adaptive measurement approach that you're referring to inside of government –

A. Yes.

Q. – is that actually being instituted or was it recommended but not taken up? I’m unclear about that.

A. It was absolutely government policy.

Q. Okay.

A. In the ERP2 it was a substantive component of that.

Q. And that includes something called a Climate Change Chief Executive's Board. Is that running?

A. There is such a thing as a Climate Change Chief Executive's Board.

Q. Okay. Who are the executives on that?

A. I'm afraid we really are straying here from the ETS –

Q. Okay.

A. – (i.e., there are other people in the Ministry who look after this).

Q. Okay.

A. I couldn't give you a definitive list.

Q. I'll come back to that. Here is my question is around forests and risks. It's fair to say, isn't it, that the Climate Change Response Act and the processes that the Independent Climate Change Commission goes through is an adaptive management approach?

A. I would say that the Climate Change Response Act sets up the requirements. It requires us to have an adaptive approach and I would say the commission provides an input to that approach.

Q. No, but doesn't the commission independently say: "Here's where we are in the climate situation. Here are some things government should do. Government thinks about what's being recommended –

A. Yes.

Q. – and adapts." Changes the ERP1 et cetera. That's fair.

A. Yes, that is correct. That is how the scheme is meant to work.

Q. My concern is this, haven't you essentially nested an adaptive management scheme inside an adaptive management scheme? Isn't that essentially what you've done? Arising from that, haven't you just doubled the government's appetite for risk in missing its emissions targets?

A. So I definitely don't accept the last point. I am thinking about this notion of an adaptive management approach inside an adaptive management approach, I think the way I would characterise it is the legislation through its emissions budget, through its requirements on the ETS is actually quite prescriptive. It binds us to outcome based emissions budgets. It binds us to various requirements for how the ETS must operate in order to achieve those budgets.

The Act was deliberately flexible in how the government should respond, recognising if I talk to my moment to go on certainties of the future. I think it is fairer to say that the government's adaptive management approach responds to the hard constraints imposed by the Act, imposed by science, imposed by economics and I would characterise the adaptive management scheme as reflecting and adjusting to those over time.

Q. Okay, let me give you an example and we'll have to come back to the particular reference but there's a bundle of papers about the adaptive management approach which are up on the commission's website, on the MFE website.

A. I probably wrote some of them.

Q. Yes, you're possibly right so let me take you to an example. I think this is describing the approach internally. It says: "Standard risk assessment tools will be used to support this phase. The tools have been designed to support judgment based approach and be agile to respond to different circumstances within the Emissions Budget 2 period," and it's the last sentence there: "For example, an abatement impact of 0.5 megatons in 2025 may be deemed minor but towards the end of EB2 likely to be rated higher." So you're getting advice from the commission which uses phrases like 'significant risk' and 'moderate risk' and then you're inside of that deciding how far you can go towards not meeting that target, and the government's going to go, in a sense, sort of play chicken with the target and see how close it can get before it actually has to act on it, rather than simply saying: "The commission says it's a moderate risk. It says it's a significant risk for lots of things as well. We need to act."

MR PREBBLE TO JUDGE MILROY – CLARIFY DOCUMENT/REFERENCE

Q. We'll just go to the top of the document and give you a number: "DIA briefing implementing the adaptive management approach, 10 July 2025." Is that a document you're familiar with Mr Mandal-Johnson?

A. I'm afraid not. I know the people involved but I'm afraid that document-

Q. Okay, we'll come to the provenance of it but let me put it to you as a hypothetical. If that is the approach being taken, isn't it a problem because what you're doing is you're increasing the chance of missing the

target because you're now trying to go: “How close can we get to missing the target before we need to actually do anything,” but the commission's already told you you need to act?

A. So I think the way I would characterise situation is that the commission offers their assessment as to the progress against targets and budgets which is their statutory obligation. The ministry provides the government advice on how far it agrees with the commission's recommendations. As a general premise, the commission are deeply experts. They are highly knowledgeable but they are not omniscient and they have no more certainty of the future than we do and there are reasonable scopes for disagreement within these pieces. You'll note in many places in various pieces of advice we extensively agree with the commission. Of course, not on all points.

Q. All right. I assume that this adaptive management approach, you haven’t consulted with Māori about this and particular pre-forest owners and what might be occurring to the recommendations of the Climate Commission and how they're being processed internally and how this might alter how that processing occurs.

A. So we absolutely will/did consult on the adaptive management approach. I'm afraid you'd have to ask me for a written response to be able to keep the precise details.

Q. Okay.

A. But it was absolutely in the consultation for ERP2 in the middle of 2024. It was a component of that.

Q. But who is on this Climate Board? You were going to give us that in a written response as well.

A. I am aware it's the Chief Executives of most major agencies with climate change responsibility. I would not want to give you an exact list. We’d have to that.

Q. Okay, we'll come back to that. Going back to this paragraph about what the ETS Review Committee said and the need to be sensitive, I'm going to put this proposition to you, isn't there an urgent need for statutorily separated advice from Māori? I don't know what that might look like. But some statutory separate Māori advice component that the government is

required to take into account or recognise and provide for? It's just not enough, isn't it, to have the current situation where the Māori issue is bundled with everything else and there's no absolutely separate requirement to think about the impacts of government proposals in its approach to these targets on Māori. That's a pretty big question, I appreciate.

A. Also, I don't think that's a fair characterisation of statutory scheme. If I just start with Emission Reduction Plan that we were just looking at the second ago, there is an explicit obligation in that, as part of preparing that plan to understand the impacts of the policy on Māori and to have strategies to respond to that. There is consultation. There is a statutory requirement to consult on that plan. I believe there is a statutory requirement to consult with Māori specifically. I'd have to check that. Similarly, when we come to the annual technical process of making ETS decisions, we have statutory requirements about consultation which we take seriously. It is an arguable proposition. You could argue that there should be more consultation. That is always a political positive that could be taken. I don't have an opinion on that but I can say that it clearly is in the statutory scheme. It's there already.

Q. There's no particular moment in the statutory scheme where it says: "In terms of pre-1990 forests on Māori land particular regard must be given to impacts of change in government policy." That's not in the current scheme.

A. So as far as I'm aware no that's correct.

Q. Okay. So then just lastly, and this is going back to some of your first answers today. The Climate Change Commission says: "It gets interesting after 2030 what occurs with particularly the ETS price," and that's where we could get very wonky, but I'm straying away for them, sorry. But in general terms all of the discussion to date is around the idea that the world is going to try and stay within 1.5 degrees or 2 degrees. Is that fair? Like, have we had a discussion about what happens to the ETS price and the approach to it if 1.5 degrees is gone and we're now in a period where we're in overshoot? I don't know how forest fit with an

overshoot and go back. Is that overshoot discussion and its impacts on the ETS and forests happened yet anywhere?

A. So a narrow and then a broad answer. The narrow island through is I'm not aware of any piece of paper that says: "This is the implication of the ETS in light of 1.5 or 1.6 degrees of change." The reason for that though and the broad answer is in the international schemer, the below 2 and efforts towards 1.5 which is quite a broad range, is translated into domestic law via the emissions budgets which are themselves then translated into ETS requirements via section 30GC and GB of the Climate Change Response Act.

I'm being deliberately a bit wonky here but it's quite important. We have very strict statutory constraints on how the scheme must run which is set out there. It is set in order to achieve the emissions budgets that parliament set ourselves for us.

It would be a hypothetical for me to say how we should best incorporate an overshoot scenario but the answer would be under our current scheme the place that would happen is in the budget setting process as opposed to in the design of the ETS itself. If you then change your (inaudible 09:01:17), then you would logically then look again at the ETS' role.

Q. All right. No, thank you. Those are my questions. Thank you.

MS CHERRINGTON ADDRESSES JUDGE MILROY – TUKAU LAW APPEARANCES (09:02:00)

(09:02) MS CHERRINGTON TO SIMON MANDAL-JOHNSON, BRYAN SMITH:

Q. Tēnā kōrua. Moving now to my cross examination. Counsel's name is Ms Cherrington and I'm here on behalf of Tūkau Law, as I said. We represent three claimant groups in this inquiry, Te Rūnanga o Ngāti Hine and Te Kapotai who are rural and iwi-based hapū and iwi in Te Tai Tokerau. We also represent the Ngāti Hine Forestry Trust who is a participant in the Emissions Trading Scheme also based in Te Tai Tokerau. So it's from their perspective that I asked my questions today.

MS CHERRINGTON TO JUDGE MILROY – INTERNET CONNECTION

I have three themes that I would like to discuss with you both today. Those are around the Crown's engagement with Māori in relation to the ETS, the development of the axed Treaty Clause, and I also have a few questions around the education and support that was rolled out alongside the ETS. I preface my questions by noting that you touch on some of these themes during your discussion with Mr Mahuika on Tuesday and to so extent with Mr Bennion this morning but if you can just bear with me while we tease through the edges a little bit.

With that, we'll move to your evidence and start with some questions around engagement, focusing particularly on that early period of development. You mention at paragraph 36 of your evidence that in late 2001 the government undertook consultation on the development and implementation of New Zealand's Climate Action Programme under the Kyoto Protocol. And you mention at paragraphs 38 and 39 of your evidence, and you're welcome to go there, that Māori raised concerns at that stage in relation to the Crown's proposal and those concerns are recorded in the Policy Package Cabinet Paper which is at footnote 14 of your evidence. One of the concerns raised was in relation to land use options, specifically the distinction between pre and post-1990 forests and that pre-1990 forests may have a deforestation liability that would restrict future land use options which you discussed quite extensively. But another issue, which is not outlined in your evidence but is in the Cabinet paper that you reference there, is in relation to the ownership of sync credits. I'll just read the passage to you but for the record the reference there is MFE.009.3377 paragraph 66. The passage there reads: "DIA widely held view amongst Māori is that the ownership of sync credits is intrinsically linked to the ownership of the forest and that they are therefore covered by Article II of the Treaty." So right from the outset you have concerns from Māori around the restrictions that the ETS might impose in terms of Māori land use ownership. Do you accept that?

A. [Bryan Smith] Yes.

Q. My clients would characterise those concerns as concerns relating to their ability to exercise authority over there whenua. Would you accept that characterisation?

A. Yes that's the general message that we heard.

Q. Thank you. If we jump ahead to late 2006 early 2007, you discuss at paragraph 45 of your evidence the concerns raised by Māori around te Tiriti and the need for Māori input into policy development. My question is were any steps taken or any policies implemented at that stage to ensure that Māori could influence the direction of the ETS rather than simply provide perspectives on it?

A. Yes, I think I was involved in all of these processes. They are nearly quarter of a century ago so my memory is not quite as sharp as it used to be. But there was extensive engagement right throughout the development of both this initial set of proposals which didn't go forward in this timeframe that we're talking about here. This was the initial proposal when the government was proposing to retain credits. I'm sorry, we've jumped ahead into the 2007 timeframe, sorry.

There was extensive engagement. Obviously, there were a range of hui and from hui there was the formation of a Māori Reference Group with representatives nominated from each of those hui to remain engaged with the Crown, in a way that the Crown and Māori could engage more directly with. At times, it was close to negotiation but it was certainly a deep and close engagement right throughout the development of this process.

Q. Thank you. I understand there was engagement but I'm really looking for where that engagement turns into influence. The ability to actually impact and have some influence over the direction of the ETS there.

A. It's hard to put a single point on it because the influence of the discussions, engagement with Māori, both rangatira to rangatira and with officials really formed what turned out to be the ETS. Particularly, there was a point in this early process going into late 2026 [*sic*] early 2027[*sic*] when the government of the day was still considering to retain all of the credits from post-1989 forests that were generated between 1990 and 2006 or 2008. Obviously that was deeply upsetting not only to Māori but to the forestry sector but it was the view and voice of Māori that was highly

influential, in my view, in my experience, that led to the Crown saying: "No, we can't do that. We're going to have to give everybody the option to take units going right back to the very first start of when they could start earning those credits."

The government was acutely aware of the impact of the ETS on the concerns around the fishing sector. You'll see that in subsequent decisions the government moved to provide additional units, additional offsetting or, sorry, compensation if you like or industrial allocation to the fishing sector. In doing so, the government was very conscious who to allocate that compensation to. It was allocated to the holders of quota, not to the people who were necessarily doing the fishing, the distribution of units or compensation units and the redistribution of the units. The fact that the Crown ultimately made the decision not to retain units that it had previously chosen or proposed to retain to itself for CFL lands which were subsequently transferred. I mean that was hugely influenced by engagement with Māori, both at the officials level and rangatira to rangatira.

I could go on, you know, agriculture. The government was acutely aware of agriculture and how important agriculture was to the Māori economy and that was a core part of the consideration as to why agriculture wasn't brought in initially responding to the concerns of many but most definitely to the concerns of Māori. I think that's probably enough.

Q. Yes, and I suppose that's what you're talking to at paragraph 57 of your evidence. If I take you there, you note at that time that the government undertook that that climate change policy development would continue to take account of the views expressed by Māori as Treaty partners through consultation, engagement, and submission processes. Is that your view, that's what you're talking about there that process of taking into account and those outcomes that you've just mentioned?

A. Yes. It was something that was done throughout this development process regardless of the government of the day. There's a range of evidence here to show how engaged Ministers were of any of the government of the day with Māori and consideration of Māori views.

Q. Yes. Like I mean using terms like highly influential, engaged, taking account of Māori views, you accept though that that doesn't necessarily amount to influence and that it doesn't give Māori any surety that their perspectives or views will be accepted by the Crown firstly and then reflected and ETS policy and implemented. You accept that proposition.

A. Well, I would just reiterate that in my experience, having been engaged in this process during this time, Māori were highly influential in the settings. That does not mean the Crown agreed with everything, particularly the split between pre-1990 and post-1989 forests. The Crown certainly understood the concerns of Māori but was kind of constrained and felt that it was constrained by the international agreements and the purpose of the ETS which was to reflect those international agreements because its primary purpose was to help New Zealand meet those international agreements. There were points where the Crown or the government of the day decided not to or heard those views and made a different decision. But in my experience, where the Crown had room to move if you like or clear room to move, the views of Māori were highly influential in the final settings.

Q. Thank you. I suppose you actually said it there in that answer that at the end of the day the government of the day made that decision. If you move through to paragraph 80 of your evidence, that's at the time where the Bill is introduced, you say that ‘the explanatory note that accompanied the Bill acknowledged that the Bill was being introduced with some criticisms and that there are some validity in these criticisms, specifically with respect to the level of assistance provided to owners of pre-1990 forest land. Yes, do you have a comment of that in terms of the engagement process that the Crown conducted and the Bill being implemented with unresolved criticisms from Māori?

A. Yes, and it's probably a reiteration of what I just said. What we heard in we continue to hear to this day, I suspect, is that the division between pre and post-1990 forest somewhat is arbitrary. That Māori have preserved their forest that are forests at are much higher rate than non-Māori and that ETS doesn't reward that. That there are still restrictions on Māori changing land use driven by the ETS. I guess probably as well that the

ETS is quite hard to understand. I mean it's a complex thing to do. No other country in the world has devolved credits for post-1989 forest to my knowledge. Obviously, we were the first but we also did it early. So there are some validity to that.

And when the Crown compensated for the effect of imposing emissions liabilities when you deforest exotic forest, in a perfect world you would've been able to discover exactly who was intending to deforest and give them the compensation because they're the ones that would wear the most effect. That simply wasn't possible and we thought about that quite extensively. So that's another one of those criticisms that you can say 'in a perfect world you could've done it better.' But with the problems that we were presented and the complexities of the problems I think through deep discussion with Māori, I think, we ended up with quite a reasonable landing zone.

Q. Okay, thank you. Well, I just want to put that to you, in light of our client the Ngāti Hine Forestry Trust evidence in this inquiry, and that bounces off what you've just said, but their position is that they were not engaged in the development of the ETS, so where that landed it ultimately wasn't up to them. In particular, one of the trust witnesses Mr Pita Tipene gave evidence earlier in the inquiry, and for the record that's #A019 paragraphs 51 and 52, and I just want to read that to you for your comment if you just give me one minute. His evidence said: "The ETS does not align with the trust, and that can be attributed to the fact that the trust had no involvement in the development of the ETS or the discussions around the Kyoto Protocol or any of the other international agreements the Crown has committed to. The trust have been completely excluded from climate change legislation and policy development. If the trust had been engaged, we would have suggested a scheme which is entirely different – one which recognises our right to rangatiratanga over our whenua, encompasses our views and strategies relating to the environment, and provides for our own responses to climate change." So in light of that just discussion that we've just had, do you have a comment on the Crown's engagement with Māori in light of Mr Tipene's evidence?

A. So there were multiple hui in Te Tai Tokerau and there were multiple hui in Tai Rāwhiti and there were multiple hui across New Zealand. It is incredibly difficult to, you know, get people along. I know people are amazingly busy and consultation doesn't always feel like it's worth doing. Did we consult with this individual trust, look, I can't comment on that. I can't say whether or not letters were sent or we attempted to. We wouldn't normally attempt to consult every trust across the country. But we would normally attempt to consult with FOMA and FOMA were part of the consultation process throughout this period. They were part of the expert advisory group or the consultation group that the Crown set up. You know it's incredibly difficult to consult with individuals but we certainly consulted with representatives or people who do represent trusts and land owners.

Q. Okay. Well, that takes me back to the earlier question though. When we're looking at the Bill being introduced, would you accept that the engagement process might be viewed as inadequate or even perhaps tick-box, for lack of a better phrase, when a Bill is consulted on and introduced without having reconciled issues that were raised as part of the engagement process and where some Māori groups were not engaged in that process?

A. In this particular case, no, I wouldn't accept that. There were issues that were unresolved. Some of them were always going to be unresolved. In other words, the Crown had heard the views of many Māori and had reached a view that it was, in this particular case, constrained by international obligations for which meeting those international obligations was the purpose of the policy instrument it was developing. In terms of some of the other outstanding issues and concerns, while the Bill was in the House, we continued to engage directly and deeply with Māori about how to resolve those issues. The Bill was introduced into the House, with for example the allocation to the pre-1990 forest owners expected to be prorated at 39 units per person per hectare and that was changed profoundly and the Crown was going to retain units to itself as well. That was changed profoundly during the early passage of the Bill – during and

in the Select Committee process, as was discussions were ongoing about pre-1990 forests, indigenous forests as well.

Q. Okay. I'll move along now to the development of the Act's Treaty clause and I start at the 2008 amendments and the consultation period that took place ahead of that. You discuss that paragraph 99 of your evidence that the proposal made by submitters was to include a Treaty of Waitangi clause, given that Māori have been explicitly recognised as a key stakeholder during the development of the ETS. You mention in the paragraphs that follow that officials advised against the Treaty clause on the basis that the engagement that had taken place and the ETS itself was Treaty consistent. The report that you reference there at footnote 80 of your evidence is one prepared by the Emissions Trading Group and the Ministry of Economic Development. That's correct, isn't it?

A. Correct.

Q. I just want to confirm who provided the measure of Treaty consistency that you're referring to there? Who determined at that stage that the ETS and the associated engagement was Treaty consistent?

A. That would've been officials view. I can't give you individuals names but that would've been a view of individuals. Almost certainly though, I can't be explicit. Almost certainly, we would've engaged to Te Puni Kōkiri in that process as the kind of lead Crown agency at that time.

Q. Ka pai. But just to confirm, it was measured by the Crown.

A. It would've been, I'm sure, yes.

MS CHERRINGTON TO REGISTRAR – ONLINE SCREEN SHARE

Q. I want to screen share the report that you refer to there. For the record, it's document MFE.009.0024 at page 384. Can you see that there?

A. Yes.

Q. The middle section here is the section that you provide in your evidence but I just want to read the highlighted sections above and below it where it says: "DIA generic undefined Treaty clause to be inserted in the Bill, the task of interpreting it would inevitably fall on the courts. Potential legal challenges to government policies and decisions for example on allocation could cause delay and uncertainty that could undermine the integrity of the ETS." And then below that the second highlighted

paragraph: “Adhering to Treaty principles is therefore not dependent on inclusion of a Treaty of Waitangi clause in the Bill, but inclusion of a general clause could cause interpretation difficulties that could necessitate intervention of the court leading to uncertainty and delay in the implementation of the ETS.” That's a correct reading, is it not?

A. Correct.

Q. Perfect. Now that paragraph reads to me that it's not so much a matter of Treaty consistency at that point, but rather perhaps to avoid a situation where Treaty consistency might be questioned and the Crown's policy progression delayed. Would you accept that? Do you have a comment on that?

A. Yes, I think my comment is that meeting the obligations under the Treaty and meeting the principles of the Treaty is not dependent on a Treaty clause as such, it's dependent on the actions of the Crown.

Q. But if we read that paragraph, there's clearly some considerations that the Crown's thinking about and that's basically the intervention of the court and the delay and the implementation of the ETS.

A. Well, the Crown was certainly-

Q. That is what is stopping the Crown at that point.

A. Well, the Crown was certainly conscious of the need to, at this point, move quickly to establish a legal framework before the start of the first commitment period of the Kyoto Protocol. So, yes, the Crown was definitely conscious of the need to have policies in place that were effective with some urgency.

Q. And the insertion of a Treaty clause might have prevented that.

A. Well, you can read the advice. So that was considered a risk, yes.

Q. Okay, moving along. With respect to the claimants evidence in this inquiry, and I'm taking you now to your summary of evidence at paragraph 6, you say there that: “The issues being raised are not new. They have been subject to long-standing debates, advocacy by competing interest groups, which have been conscientiously traversed by decision-makers with Māori interests and perspectives deliberately considered at each stage of the process.” I have a few questions in relation to that sentence. The first is that Māori interests and perspectives

are deliberately considered. What does deliberately considered mean there?

A. [Simon Mandal-Johnson] I think in the general sense “deliberately there” means it is a systematic part of how policy advice is given to government. As in, it is a, in many cases, explicit statutory requirement and, in other cases, a part of our operating model of work that a better, consistent engagement of those questions every time a decision of greater or lesser magnitude is brought up for discussion.

Q. Thank you. But the phrase “deliberately considered”, again, it doesn't require consequence though, does it? It doesn't require resolution.

A. [Bryan Smith] No, it's not a guarantee that the parties will agree.
[Simon Mandal-Johnson] Yes, that’s right.

Q. Well, it doesn't guarantee either that Māori will have impact on the decision. It just says that they'll be considered.

A. It guarantees that Māori will have impact on the decision because it guarantees that officials will engage with these questions extensively and closely and will provide Ministers with the best evidence that we can do so on those questions. That is impact on the process. It is a statutory requirement and an operating model of ensuring that Māori voices, Māori perspectives are integral to the decision-making process. But clearly, as Mr Smith is saying, it is not an articulation of guarantee of agreement.

Q. Thank you. And then I suppose that leads to the contention that we've been discussing all week with Crown witnesses, including in your discussion with Mr Mahuika on Tuesday, that Māori rights and interests in relation to climate change and the ETS have to be balanced really by Crown officials and the Ministers and that they have to be balanced in the other interests of the Crown. You would accept that? You agree with me?

A. [Bryan Smith] Yes.
[Simon Mandal-Johnson] Yes.

Q. If we go to paragraph 30 of your evidence, and you don't need you to, but I can read it you, you make the overarching comment that the ETS has benefited Māori who are key stakeholders in the ETS and in the ETS

forestry. But do you accept that there have also been negative impacts on Māori by the ETS?

A. [Bryan Smith] Yes, I think that's well established, both in terms of land use, you know, pre-1990 exotic forest in particular, and I think we've traversed that at considerable length. I do think the Crown made reasonable and genuine and I think reasonably effective efforts to mitigate that. And ultimately, the Crown and Māori work together in the international context to find what is not a perfect solution but is an awful lot better solution than we had before we could establish that international arrangement. But I would accept that, yes.

Q. Thank you. And I just want to then, you would also accept that for Māori balancing of their Treaty rights is a negative impact?

A. I don't think I can comment on that.

Q. Thank you. I'll leave that there and I'll move along. This is my last line of questioning. It just relates to the education and support rolled out alongside the ETS and its subsequent amendments. You raise the need to support Māori and understanding and navigating the ETS at its various stages in paragraph 201 and 233. But I just want to confirm, is this something that you can speak to the education and support that was rolled out alongside the ETS?

A. This is probably a question that's better put to our colleague Julie Collins from MPI when she presents in April. It's not something I could talk to personally, no.

[Simon Mandal-Johnson] If it’s of relevance I can talk to very, very recent parts of this. But to do sweep of the question, yes, it’s a question for Ms Collins.

Q. Ka pai. In that case then, I will leave it for Ms Collins and I'll put it to her. I suppose our questions come from that earlier period as well and moving through so I'll leave that there. But, yes, I just want to thank you again to both of you for reappearing this morning and taking the time to answer make questions. Anei rā te mihi ki a kourua.

MS CHERRINGTON ADDRESSES JUDGE MILROY – LEAVE GRANTED (09:33:51)

HEARING ADJOURNS: 9.34 AM

HEARING RESUMES: 9.36 AM

(09:37) MS ARABELA BOATWRIGHT TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Tēnā kōrua. Ko Ms Boatwright tōku ingoa. **Greetings to you both. My name is Ms Boatwright.** I appear for several claimants within this inquiry, alongside my learned senior Mr Kuddus, ranging all over Te Ika-a-Māui but predominantly in Te Tai Tokerau to give you a little bit of context.

Now before we begin, a lot of my questions have already been answered in relation to engagement. However, there was just one comment that came out of my learned friend's Ms Cherrington's line of questioning when you said, I believe it was Mr Smith, you said: "Rangatira to rangatira and officials engagement effectively turned into what we now know as the ETS scheme." I just want to seek some clarity on what you mean by the two different levels of rangatira to rangatira engagement and official level engagement. If you could provide some clarity on that please.

A. [Bryan Smith] Certainly. When there is major policy development, of which the ETS was certainly considered one, it's not uncommon, in fact, it's very common for Ministers in particular to hear directly from the voice of iwi and Māori leadership. I think in more recent times, it is fair to say, that iwi leaders are a cornerstone of that engagement but not exclusively by any stretch the imagination. In my experience, Ministers generally are quite clear that they want to hear a range of Māori voices not just the iwi leadership voices. So that might be FOMA for example or it might be a range of other leaders. And in this particular case, a lot of that sort of structure hadn't quite been set up yet, and in fact, some of it evolved out of this process from memory. But there were regular meetings with Māori leaders between Ministers. Then officials tended to work more with technicians and Māori technicians, technical experts and of course, with the Māori Reference Group who were representatives who came out of the hui from around the country.

Q. And to confirm that the amount of hui that were held was over 150, is that correct? That is at paragraph 58 and 59 of your brief.

A. If that's what it is, then I'm sure it's correct.

Q. Of course, okay. I just want to turn to some discussion about the history and the reluctance of Māori to sell whenua within their rohe. Do you accept that, given this history between Māori and the Crown, once Māori regain their whenua, they are quite reluctant to (inaudible 09:40:27) resell or shift that whenua into other purposes for the economic gain?

A. Yes, as I said yesterday, some Māori groups, particularly more commercial entities of Māori groups, may well sell land or commercial assets. But what we were told very clearly throughout multiple iwi throughout many years is once Māori receive land back, they are very reluctant to sell that land.

Q. This is a significant factor that needs to be taken into consideration in considering policy impacts on whenua Māori. Is that correct?

A. Correct.

Q. Thank you. I just want to take you both to paragraph 136 of your brief of evidence where the committee referenced in that paragraph observed that Māori communities may be particularly vulnerable to the economic impacts of climate policy. Is that correct?

A. That was certainly the assessment at the time. From memory that was the view of the Review Committee and I think this is referring to the 2009 Review Committee. So that was certainly their view, yes.

[Simon Mandal-Johnson] It has also been a view that's been followed in later reports. I'm thinking for example of the National Adaptation Plan that was published a couple years ago. The Emissions Reduction Plan we looked at earlier. I don't think that point would be controversial.

Q. Of course and I thank you for that. Now just moving further, we're going to do a little bit of a big jump to paragraph 249 where back to later Emission Trading Scheme Reforms there has been quite a bit of an engagement that you discuss with Māori and iwi during these later reforms, including these regional hui. Is it correct to say that these engagements were intended to strengthen relationships between the Crown and iwi Māori in climate policy development?

A. I am very sorry because, unlike the Smith, I wasn't actually personally involved in these hui. I can tell you what the papers said and I can see what it says there. But I'm afraid, I couldn't talk to you with firsthand experience the underlying intent of the conversation.

Q. Is there any other Crown witnesses that may be appearing in the April hearing week that you would know that we could possibly pose that question to?

A. I would need to take that question and come back to you. It is also possible there will be other officials elsewhere in government who we could speak to about the question. I would have to come back to you on that point.

Q. Of course. I can put that to you in writing if that is easier.

A. Yes, that might be the best way. That way as well, we could possibly look up at additional files from that time.

Q. Of course. No, thank you. Within the Emissions Trading Scheme, we know that there are incentives. Do these incentives that are part of the ETS influence the decisions or any decisions made around afforestation and land use change within Aotearoa, particularly for Māori?

A. As a general principle, yes, I would say that the ETS is considered a central part of any structural policy decision on land use changes and the intersection. Even if it is not the policy under question, such as the land use change restrictions in 2025, even if it's not the core pointed issue, it will necessarily be a factor which is considered as part of that.

Q. Okay. No, thank you. Now one of our claimant's, Mr Whata, – and for the record, he filed the brief of evidence with the appellation #A027 – I won't take you to it, I'll just briefly summarise what he says. He explains in his brief of evidence that as intergenerational Māori landowners, an equitable outcome in climate policy includes retaining flexibility over how their whenua can be used across generations. The trust that Mr Whata is on has explored a range of diversified land uses, including redwood forestry, eco-tourism, honey production, hemp, medicinal crops and fresh water kōura farming, rather than relying on a single land use. Now from this, from a policy perspective, would you accept that if the ETS

primarily rewards carbon sequestration through forestry, it may influence landowners towards that option over other diversified land uses?

A. [Bryan Smith] Well, I mean it is always the choice of the landowner to decide what they want to do with their land. And what looks to be perhaps an attractive 'from an economic perspective' investment at any given point in time, people will recognise that this is a policy instrument and they should be factoring the fact that it is a policy instrument into their decision-making. I can't really comment on this situation. But it seems very sensible to diversify your interest in exactly the way that you just described.

Q. Yes, no, of course. No, thank you. I'm sorry, I'm just also mindful that a lot of my questions have been answered by a learned colleagues. Do you consider the current ETS framework adequately recognises the unique characteristics of whenua Māori ownership and land management?

A. [Simon Mandal-Johnson] I think at the core, I'm afraid you might be asking me to form the judgment here that falls somewhat outside my area of expertise. I think I can say quite fairly that the scheme through its history and through its policy development has structurally wrestled with some of these challenges that we have traversed through this morning. I reiterate what we say in our summary at paragraph 6 where we talk about the genuine deliberateness of our engagement where these are issues through its development. As to whether it is effective, I feel that's where the judgment possibly sits outside of where we could go.

Q. Of course. No, thank you for that. I have no further questions for you both. However, my learned senior Mr Kuddus does who will use our remaining time. Thank you.

JUDGE MILROY ADDRESSES MR KUDDUS – CONNECTION ISSUES (09:50:34)

(09:50) MR KUDDUS TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Good morning. Can you hear me all right now?

A. [Bryan Smith] Yes.

[Simon Mandal-Johnson] We can't see you but we can hear you.

Q. You can't see me?

A. But we can hear you.

Q. Okay. Now I just want to look at paragraph 30 of your evidence. You explain that the ETS uses price mechanisms to incentivise emissions productions whilst minimising economic-

TECHNICAL ISSUE FROM 09:51:36 TO 09:51:51

JUDGE MILROY TO MR KUDDUS – REPEAT QUESTION

Looking at paragraph 30 of your evidence, you explain that the ETS uses price mechanism to incentivise emissions reductions whilst minimising economic cost. Is that a correct characterisation of your evidence there?

A. [Simon Mandal-Johnson] Yes, that is correct.

Q. Because that price mechanism operates through the creation and trading off emission units commonly referred to NZUs, yes.

A. Yes.

Q. And the underlying premise is that placing a cost on emissions will encourage businesses and landowners to adjust the activities in ways that reduces emissions, yes.

A. I would say that the underlying logic is to encourage landowners and participant emitters to take the least cost approach to themselves which will often involve either changing land use in the case of landowners or changing their practice and behaviours or changing their technologies or changing their operating models. But the underlying point is that the ETS is incentivising any participant in it to find the least cost approach to the transition to a low carbon economy.

Q. How is that price mechanism intended to influence behaviour across sectors such as forestry, agriculture, and energy?

A. Maybe I could take energy because it's probably the cleanest example of those three and we can talk about the other second. The core logic is if I'm in the energy sector, let's take an electricity company, I have choices about how I generate electricity. I have got high carbon options and I've got lower carbon options. For example, I can have cold in winter or I could build another dam in South Island and increase the total hydro production. The point of the ETS in the jargon of economics is the price

in the externality. To ensure that when an electricity company is making a choice about what it invests in, it considers the cost to the environment of the carbon involved in that process. That's what I mean by pricing in the externality the external cost of carbon becomes a feature of the decision.

Now in a trading market such as this, clearly there are other options that an electricity company could do. It does not need to pick a hydro dam. It could also purchase forestry offsetting and that's the gross net conversation we have before. But the core logic is a power company will have a strong incentive to minimise its cost and will therefore pick the option which has the least cost to it. In doing so, it will either changes business practice and move itself towards low carbon technologies or it will purchase offsetting to the extent that it is both economic and practical to do so.

Q. Excellent. Thank you. Now I'd just like to take you to your paragraphs 42 and 43 where you discuss consultation processes undertaken during the development of the ETS. You explained that there were over 3,000 submissions received and that a series public meetings and consultation hui with Māori were held as part of that process. You also state that 13 regional consultation hui with Māori were held across the country. Why was engagement with Māori considered important during the development of climate change policy at that time?

A. [Bryan Smith] Yes, I mean I think we've largely traversed this so I'll be brief. It was recognised by the Crown that Māori are large owners of land with diverse uses and clearly the ETS was going to impact those. Settlements over forestry were still ongoing and were kind of coming to a conclusion and clearly that was going to be a significant issue and that Māori were unfortunately overrepresented in parts of society that would be more exposed to an electricity or to rising costs associated with putting a price on carbon. It was considered very important to engage with Māori.

Q. Okay. Turning to 44 and 45 of your evidence, you refer to feedback receive during those consultations indicating that Māori perspective should be reflected in climate policy development. What specific concerns or issues did Māori raise during those consultation processes?

A. Again, I think we've probably traversed this, so I'll just sort of summarise. The effect on the ability to change land use from having emissions from pre-1990 forests. The fact that forestry Māori had retained many of their indigenous forests at a disproportionately high rate and that they couldn't earn credits and they weren't going to be kind of rewarded. But might, at that point anyway, actually receive potential liabilities if they wish to change land use around those. Concerns around agriculture and in particular and exposure to agriculture and the effect that an emissions price might have on the viability of the agriculture sector. There was a concern around fishing, fisheries and the effect of pricing of say particularly fuel and the affect that could potentially have on the profitability of the fishing sector. There were a wide range of concerns.

Q. Thank you. I've got no further questions.

(09:58) MS RONGO TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Tēnā koe. My name is Eve Rongo. I represent Ngāti Kōata who are small iwi at the top of the South Island in the Marlborough Sounds. Now your evidence notes that Māori have diverse perspectives and aspirations regarding the ETS, correct.

A. [Bryan Smith] Correct.

[Simon Mandal-Johnson] Yes, correct.

Q. I agree, and I would even go further to say that even within individual iwi, they would have for example forestry aspirations and benefit from the ETS scheme for some of their whenua. But then at the same time, with no contradictions involved, prioritise biodiversity, protection, taonga species and cultural landscapes, you will agree.

A. [Bryan Smith] Totally.

Q. Now have you had the chance to read the evidence of Mr Toia on behalf of Ngāti Kōata?

A. [Simon Mandal-Johnson] Would you mind telling me the reference? I believe I've read several of these.

Q. Okay. His evidence is a #A092.

A. I'm sorry, I don't believe we have seen that.

Q. No, that's alright. Now, Mr Toia spoke about how Ngāti Kōata were able to purchase some significant whenua in Elaine Bay. Now, have you ever heard of Te Rauparaha?

A. [Bryan Smith] Yes.

Q. I'm very happy to hear. He was a chief of Ngāti Toa and Mr Toia's evidence actually shared how back in the 1830s Te Rauparaha was on his way to "wreak havoc" in his words at Whakatū Nelson. But the Ngāti Kōata Chief Whakatari stopped him in French Pass and that's the waterway between D'Urville Island and the mainland. Whakatari refused to let him through. Te Rauparaha then had to go around and find another way and he arrived at Elaine Bay, they hauled their waka overland and continued on their way. So that exchange signifies the mana that Ngāti Kōata had to be able to hold off a chief such as Te Rauparaha.

Now Ngāti Kōata were very recently able to acquire that whenua back, that historically culturally significant whenua. It is the aspirations of Ngāti Kōata to return that whenua to its original state with permanent native species, coastal shrubland, mixed habitats, and eventually papakāinga when they can get there. The problem is that that whenua grows exotic species and as part of the ETS scheme. This exact situation was raised as a concern by Māori at the very beginning of the development of the ETS Scheme, wasn't it?

A. Yes, sometimes erroneously, and I can explain that.

Q. Yes please.

A. There was a concern, and we heard this, that many owners of whenua wanted to restore the whenua to a more natural state and that it was covered by exotic forest. The erroneous part was that converting particularly a pre-1990 exotic forest to indigenous forest didn't receive any liabilities.

Q. Yes.

A. The ETS does not restrict you from doing that, so long as you're not deforesting. You can lose a lot of carbon but so long as you're replanting and you're slowly regenerating native forest, then that doesn't create liabilities.

Q. Absolutely. But in this instance where they're looking to have shrubs, perhaps papakāinga as well in open coastal areas, that would take on a liability, wouldn't it?

A. Potentially it could, I suppose, yes.

Q. And that that ability for Ngāti Kōata to use land that they've recently acquired that are under the ETS Scheme and achieve their aspirations that's not expressly provided for in their ETS and for areas that are open that are not permanent indigenous forests they would be penalised in that instance, wouldn't they?

A. They could potentially be. But forgive me, they surely would've factored that in when they purchased the land.

Q. Yes. But for cultural purposes, like those cultural purchases, the ETS doesn't assist them in any way, even though these were concerns that were raised by Māori from the development of the scheme.

A. No, the ETS follows the amount of carbon and the amount of carbon that's going into the atmosphere.

Q. Yes.

A. Not exactly in this case, as I said, because you can lose a lot of carbon so long as you're replanting the forest, then you can do that. But no, the ETS follows the carbon that's right.

Q. That's right. Okay, excellent. Those were all my questions. Thank you.

A. Thank you.

MR SHARP ADDRESSES JUDGE MILROY – LEAD COUNSEL (10:04:33)

(10:05) MR SHARP TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Tēnā kōrua **greetings** Mr Smith and Mr Mandal-Johnson. Can you hear me, I'm just checking?

A. [Simon Mandal-Johnson] Yes, perfectly.

Q. Yes. My name is Michael Sharp and I represent a number of clients, including the New Zealand Māori Council and some Māori forest trusts. The questions I want to speak to you about with regard to part of your evidence from paragraph 284 where you discuss the proposals by the Commissioner for the Environment in 2025 *Alt-F Reset* report for changes

to be made to the ETS. You discuss that in detail and in the end you reject the proposals so I just want to discuss that with you. I'm going to refer to some of the evidence by one of our expert witnesses economist Geoff Bertram. I have referred your counsel to parts of his evidence that we may refer to so you can be familiar with it.

A. [Simon Mandal-Johnson] I have great familiarity-

Q. I also flagged that it is a relatively complex area. I haven't got time to cover all these areas. I'll give you some questions in writing later on. Firstly, just looking at the concern raised by the Commission for the Environment. So there, they are summarised that paragraph 286 of your brief of evidence.

A. Yes that is correct.

Q. Yes. So fair point, over-reliance on forestry removal to offset gross emissions is unsustainable, delays gross emission reduction, vulnerability of forest to disease and fire, raise concerns about the performance of stored carbon and financial liability for landowners and the government, NZ ETS encourages fast-growing species like radiata pine, which offer quick carbon returns pose environmental risk and native afforestation and sustainable forestry models are not adequately incentivised.

A. Yes.

Q. Now the similar concerns, and I think you discuss it perhaps with Mr Bennion, were raised by the Climate Change Commission in his advice on ETS limits and price settings in 2024. Is that correct?

A. I would have to go back and double-check that. But I'm almost certain that's correct.

Q. Yes.

A. The comments that Mr Upton makes here about the ETS which I've summarised in 286 they're not new.

Q. Yes, no. And I also note that the Climate Change Commission in December 2024 is an advice on the fourth Emission Budget raised similar concerns and warned that if the first three budgets proceed as forecast, relying on forestry the minimum gross reductions in further budgets will be unachievable. Were you aware of that advice?

A. I don't have that document on front of me. But I do recall having where that advice in the past, yes.

Q. Yes. We've had experts raise similar concerns in this inquiry, Mr Bertram, one of my witness and also there was another witness James Avery Palmer has raised concerns. I also note that there has been some evidence that similar concerns have been raised through international radar agencies like Climate Tracker, Action Tracker and Germanwatch. As you said, it is not new. These are quite wide-held concerns about the integrity of the ETS. That's correct.

A. If I'm just allowed a technical quibble.

Q. Yes.

A. Integrity in my language has a very particular meaning around the stability of the operation of the scheme itself. The stability of the unit. The trading architecture of actually moving a unit between account holders. When we talk quite integrity risks, we talk about for example the risk fraud or the risk of computer software failure, and so on. That I don't think is the core of what's being argued here.

Q. (inaudible 10:10:22).

A. I would not categorise these as integrity concerns. I would categorise these as challenges to some of the policy decisions that have been made through the development of the ETS.

Q. Yes, okay. (inaudible 10:10:34) as summarised by the Commission for the Environment.

A. Yes.

Q. I think those concerns are (inaudible 10:10:41) held, okay. If I just look at the basic concern, now I'll just see if I've got right, that what it comes down to is the marginal cost of forestry in which forest (inaudible 10:10:57) NZUs –

A. Yes.

Q. – tend to be less than ETS auction prices and we just prefer to just buy NZUs at a cheaper price. Is that sort of an underlying issue?

A. I would say that is a factually true statement. I wouldn't describe that as being in particular a material point in the grand scheme of things but it is true. The current auction reserve price is in its mid-60s. We estimate the

long run marginal cost of forestry to be in the realm of about $50. The volume of units being auctioned or available to auction sorry is not particularly significant in the grand scheme of things and it's getting smaller quite rapidly. Whilst it is a high profile part of the scheme, it is increasingly marginal to the running of the scheme which is increasingly driven by an exchange between foresters and emitters.

Q. Yes, case and point.

A. Yes.

Q. One of the byproducts is that the ETS price is less able to manipulate behaviour in the market because of the influence of forests and forest NZUs.

A. In economic language, I think, it would be fair to say that the forest over time will become the price setter in the long run for this scheme.

Q. Yes.

A. Clearly in the short run, and I mean a short run here can be quite long. It could be several years. In the relatively short run, there are other factors as well as forestry that will make a difference. In the long run of the scheme, and that's the projections that we've published and I've said publicly for some time, the forestry under its current policy constrains will set the price.

Q. Yes. Because there is also a large amount held over or banked NZUs that are being held that affect the market as well but we're not discussing that here.

A. I'd be delighted to discuss that.

Q. Yes, but we're discussing forestry.

A. Yes, okay, I'll be guided by you.

Q. Yes. At your paragraph 293, you accept the basic if you call it a problem that is raised by the commission in that what you say the forestry price that there is some reduction and technology is driven in the renewable energy sector that transport and industrial emissions –

A. Yes.

Q. – tend to require higher carbon prices so additionally policy support is required. So you're saying with regard to what our Commission of Environment is saying that's at least partly true at least with regards to

industrial and transport emissions that you need to something else but forestry prices won't drive. Technology will change to reduce emissions.

A. That's a bit too sweeping a conclusion. There is some quite important subtlety in that. Within both the transport and industrial sectors, there are significant opportunities to de-carbonise below the price of forestry. There are clearly opportunities which are significantly more expensive than the long run marginal cost of forestry. To the extent that the policy setting remain unchanged, the ETS would not by itself drive those things to be stopped. It would drive emitters to purchase offsetting units.

I think the core of what we are trying to say here though is – and I come back to a point I made in the first set of a questions earlier – New Zealand follows a net based logic. We do not have a gross target. We have a net target. In the absence of a gross target, gross reductions play a role and it is a choice for the government how far it wishes to incentivise gross reductions but the legal requirements and the statutory scheme we used to operate the ETS within is fundamentally around incentivising net reductions.

Q. Yes. Can I just stop you.

A. Yes.

Q. We've got short on time. I'm not talking about legal requirements, I'm talking about the incentives driven by forestry prices. Can I just take you back to 293 additional policy support –

A. Yes.

Q. – and you say: "This is provided by ERP2 –

A. Yes.

Q. – as contained in the evidence of Mr Smiler.

A. Yes.

Q. You said that.

A. Yes.

Q. Mr Smiler, at paragraph 147 of his evidence, refers to transport and industrial process mitigation ERP2. When I turn to ERP2 what he refers to at page 48 of the ERP2 so it's in regard to facilitating and co-investing private investment and a net worth of 10,000 EVs from the present 1250 which is forecast to reduce emissions by 0.01 megatonnes between 26

and 30. Also in the report, relaxing clean vehicle standards which will disincentivise emission reductions. RUCs on EVs abolished which once again a disincentive. And also the (inaudible 10:17:10) in the EVs. It's not mentioned here that's been abolished also. And also you have $27.5 million fund to promote clean tech for heavy vehicles. Now I just want you to look at that broadly. It doesn't seem to be overall a great incentive for driving down admissions in transport, would you agree with that?

A. I'm not a policy expert in transport reductions so there are limits to how far I can go on that. What are my draw you too though is – and it was referenced in your witness statement by Mr Bertram, I'd have to find it in a second – he does point out and he quotes our own analysis from the ERP saying that we do expect ongoing decarbonisation in the transport sector, especially in the light transport sector (that's cars) due to the changing underlying economics of EVs and the increasing cheapness of EVs relative to petrol alternatives globally.

Q. Can I just stop you there. I'm not talking about the broader economic changes. I'm talking about the changes driven by ERP2 which you said is additional policy drivers to drive down emissions in transport. It doesn't seem much in the ERP2 in transport which I think you were involved with drafting ERP. So I don't think there's much in there to drive down emissions in transport from a policy perspective. Would that be a fair comment?

A. Like I'm going to straying outside the area of my expertise. If I form a view as to the viability of this package of transport measures, what I would say is that the predominant driver of emissions reduction in transport is driven by both the Emissions Trading Scheme, which obviously does price the carbon, and the global economics. Clearly, there are other measures of the sort you refer to.

Q. Okay. So if you can't answer the question that's fine. Investing in industrial emissions, then what we would have in the ERP2 is a vesting in carbon capture and storage. Intention to invest in sequestering maybe (inaudible 10:19:35) fields to be advised. And in that regard, I do note that there was a proposal for Methanex. It didn't proceed. It's not

economic. Just once again, I struggled to see in the ERP2 what policies outside the ETS will drive down emissions in the industrial sector.

A. I would reiterate the starting premise that the government sees the ETS as its primary instrument for doing so.

Q. Yes, but your evidence says that it wouldn't be sufficient to drive down substantial emissions in transport and industrial sector. That's your evidence.

A. Yes, it does.

Q. So we're looking at other policies. (inaudible 10:20:20) policies that you refer to.

A. There's a few things there. I reiterate my starting premise which is gross reduction is a choice that the government can choose to make legally. The obligation is on net reductions not gross reductions. Secondly, I stand by that sentence which is many of the opportunities to de-industrialise an industrial process in particular do sit above the long run marginal cost of forestry. If the government chose to pursue efforts to substantively reduce industrial process heat for example, which sits well above $50 a tonne at the current price, other policy sets would be needed.

Q. Right. Outside of ERP2. There's nothing in ERP2 along those lines but you say something in addition to ERP2.

A. If that was a choice that the government had made to substantively pursue the most expensive emission reductions it could, (i.e., the very expensive industrial, yes, that would be needed).

Q. Okay.

A. My point is that's not what the ETS is trying to incentivise. The ETS is trying to achieve the transition in the least cost way.

Q. Well, you do keep coming back to that and that's not one of my questions Mr Mandal-Johnson so I'll go on.

A. Okay. I'm sorry, I'm trying to be helpful.

Q. Thank you. But if we look at ERP2 the model and forecast between, and Mr Bertram has referred this in his evidence – 2020 and 2050 and forecasting 12%, decrease in transport emissions, 17% in other energy emissions. Even in ERP2 there's not going to be a great amount of

reductions in those emissions in those sectors over the next 30 years anyway. Is that right?

A. You're referring to paragraph 2.9 in document 5A.

Q. Yes.

A. I looked at this table quite extensively last night and thank you for giving me notice that it was coming. Yes, I take some issue with the final column he refers to there: "Total percentage reduction of 10." I would actually draw your attention to the column on its left: "Percentage change 2020 to 2050." What that is showing is that in the period 2020 through 2050 transport is forecast to de-carbonise by 5,800 megatonnes that is 44% based on versus 2020. Similarly, the non-transport energy 45% reduction. That column there, the column I'm referring to, talks to the fact that there is expected to be de-carbonisation in these sectors over the forecast period through the policy settings we currently have.

Q. Yes. And does it also say that the 44% of the reductions and emissions are going to come from forestry? Is that correct?

A. To be fair, I'd have to ask him how he calculated 10 because it isn't a number that we typically use. I read that number the 44% in the final column, I read that to be of a 47 million net removals of that approximately 44% would come from forestry. Just as a point of mathematics that looks correct.

Q. Thank you. Look, thank you Mr Mandal-Johnson. Look, I've run out of time and I've still got a lot of questions for you. I'll put in writing. But just with those sort of figures, I just want to emphasise that the future that the Commissioner for Environment and others have warned that under current policy settings going into large increases in forestry we'll have to continually increase on a permanent basis to offset gross emissions –

A. Yes.

Q. – which will be producing at a fairly modest rate. The overall point is that it's not only economically but environmentally and socially unsustainable. Is that a concern that you have with the current settings?

A. I've read the commissioner's report. I've spoken to both him and his staff extensively about it and I've spoken to the commissioner as well. There's two levels of my answer. I won't repeat my statutory scheme point. I've

made that point. But my second point would be there are multiple trade-offs that governments have to wrestle with when they try to engage with the question about how far to incentivise gross versus net reduction. And clearly, as the commissioner points out and as Geoff points out in his evidence here, there are risks to this approach. As I point out in our evidence, there are risks to the counter approach and there are costs to the counter approach. Governments of all stripes have to find that balance and then make choices about how to do so. This government has taken a different approach to its predecessor that's absolutely true and if you look at the 2023 review in our evidence that was taken on a different premise. I absolutely think the concerns raised by the PCM were reasonable; they are sensible. Of course, I would say that there are cost benefits to the current approach as well. The choice of trade-off between those is the political process.

Q. Okay. Just as a final comment, I noticed in your evidence you didn't agree with the changes that the Commission for Environment made (inaudible 10:26:41) basis that it would require a major reset of our ETS system and Climate Change Policy system. I just pose this to you that's not a necessary reason in itself. It's a matter of cost and benefit, isn't it, of retaining the current system as opposed to the other approaches that the Commission for Environment and the Climate Change Commission are suggesting?

A. I don't want to underplay those constraints because they are real and serious. But yes I take your fundamental point there.

Q. Yes, thank you. I'll put some further questions in writing to you.

MR LYALL ADDRESSES JUDGE MILROY – QUESTIONS IN WRITING, ADJOURN (10:27:31)

HEARING ADJOURNS: 10.28 AM

HEARING RESUMES: 10.56 AM

(10:57) MR LYALL TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Tēnā kōrua **greetings to you both**. My name is Lyall. I represent some of the claimant parties before the Tribunal. The particular claimant group that my questions are focused on are Ngāti Porou ki Hauraki who hold whenua which has various uses, including forestry, native, and exotic. I think, like Mr Sharp, I've been overly ambitious in plotting my questions given the time that we have, so I may have to follow-up in writing but we'll see where we get to today. First of all, and I don't think this is controversial, the Emissions Trading Scheme is the main tool under the current government to reduce (inaudible 10:58:26) emissions.

A. [Simon Mandal-Johnson] The government use that terminology itself when describing it, yes.

Q. Broadly, I mean we live and die or the policy approach lives and dies, or perhaps we do too, based on the effectiveness of that particular tool.

A. I mean that's a slightly emotive way of putting it, of course. But yes, it is the single most important part of our response towards meeting our legally binding budgets and targets.

Q. Now we've had some to and fro on gross emissions reductions versus net emissions reductions issues of that sort. But broadly, to cap emissions full stop the ETS isn't going to achieve that. Reductions of the source are going to be required as well, aren't they?

A. The ETS under its current policy design will not achieve. It does not have a cap on gross reductions or on gross levels of any sort. The impact that would run quite counter to the point of the market which would be price discovery of the cheapest mechanism. If the government wanted to incentivise additional gross reductions, there is a spectrum of how it could do so. Within the ETS caps would be one at the most extreme end and there wud be many other things as well it could do.

Q. Putting aside the question of gross or net emissions, if we did want to cap those reductions at source are required. There is just no way around that, is there?

A. If you want to reduce gross emissions, you would need to do something about its reductions at source. I wouldn't agree that a cap is the only mechanism you could use if you want to do that. There a clearly other

mechanisms. You could incentivise them but fundamentally you would need to reduce the source emissions.

Q. Again, I'm dealing in fairly broad brush strokes partly because of the time. But in effect the ETS as it stands provides a financial reward which encourages forestry rather than encourages any emissions at source.

A. I don't accept the second part of that. Over the long run, we forecast that the ETS price will converge at about $50 a tonne which is a long run marginal cost of forestry based on our best understanding. There are multiple forms of removal activity (i.e., reductions at source) which could happen below that price point. The evidence in fact which we discussed in the previous claimant in the technical appendix to ERP2, I can take us there if it helps, shows –

Q. (inaudible 11:01:16).

A. – that we expect to see those reductions in transport and industry and energy.

Q. So we'll turn to that in a moment. But if we could just focus in on, at the moment at this point in time, the financial reward encourages forestry rather than reduction of emissions at source.

A. I don't accept-

Q. The rest is speculative in the future.

A. No, I don't accept it's not either, or. I think at the moment right now forestry is being incentivised. But in addition, there is an economic incentive to do options that cost less than the current marginal cost of forestry. Again, this is in our evidence pack, but the Ministry publish something called a MACC Curve which shows the range of removal options available and that shows that there are multiple options that exist below the current price of forestry. My point is, yes, the ETS is driving afforestation but it does nothing to prohibit cheaper forms of reductions as well. It's both, and.

Q. Well, rather than doing anything to prohibit cheaper forms, isn't that planting of new forest or afforestation masking a real lack of progress or ambition in reducing emissions at present?

A. Well, no, for two reasons. One, I reiterate my previous point about gross versus net targets. I won't repeat myself. But secondly, as technology

prices are changing over time, the fact that the sexes are exposed to the ETS price provides an incentive to decarbonise. If I can just take the example of transport, as the marginal cost of EVs decreases, as better technology, better batteries et cetera, the ETS in its current design without any changes is incentivising that shift.

Q. That's something I think we'll need to return to in written questions on transport because it's a whole topic in and of itself. But I think given time, as a broad point, the current structure of the ETS is such that, even if we were to achieve net zero at 2050 that couldn't be sustained on our current approach, could it, because it relies so much on land conversion into forests and we're just going to run out of room?

A. I accept that at some theoretical point in the future, yes, it will stop working. Eventually, New Zealand will not have enough land to afforest. We did look into that question because the government has an obligation to meet and sustain its 2050 target. We are confident that that parameter, it doesn't come into play for a very, very long time scale well beyond any reasonable policy (inaudible 11:01:41) cycle.

Q. One of the policies that has been built into the ERP2 is the afforestation of Crown land. Here, if I'm able to share my screen just to speed things along. Hopefully, you can see document with the heading *NZ ETS Settings* –

A. Yes, I can.

Q. – I'm highlighting.

A. Yes.

Q. This is the technical annex paper that you referred to at the start of our kōrero.

JUDGE MILROY TO MR LYALL – ENLARGE DOCUMENT

We are on page 40 of that. I think I'll come back to that in written questions. The point I want to raise on afforestation, the first page I will turn to is page 91 which is this table here. This is part of the assumptions taken into account in developing the various policy proposals in the ERP2 and I've highlighted at the bottom of this table the "Crown-Owned Land Afforestation Policy".

A. Yes.

Q. At the far right column there, so that's the rational for chosen scenario column –

A. Yes.

Q. – and so they've flipped the page around, this is a large scale programme of afforestation of Crown land, which I understand is mostly in the Canterbury West Coast region, but the rationale given is that it's to produce the emissions removals needed to offset the estimated emissions protected to be outstanding in 2050.

A. Yes.

Q. So, but for this large scale afforestation, there is going to be a significant gap there and doesn't that point to a real lack of ambition on the reduction of emissions at source front now to require such a huge and ambitious planting programme right up to 2050 to plug that gap?

A. There are elements to this point I can talk to and I'm sorry, if my answer is unsatisfactory. There was a separate team that worked on, we called this AOCL. It is a separate team who worked on this, so I have some knowledge from my work in the ETS. But if this gets more detailed, I will have to take a written question on the point.

There is a few things I'd say here. Firstly, under the current design of the policy, the ETS have what we call a legacy problem of there is some level of emissions which ETS will not in its current design offset. That is what is being referred to there where it is projected to be outstanding. That is not particularly an artfully worded sentence but what it means is long-lived emissions. It's not referring to biological emissions.

That is relatively small in the grand scheme of things. You could characterise it as large-scale planting that's a judgment. But in the scheme of the ETS, it is a relatively small offsetting problem at the end. It comes down to our industrial allocation policy having given away free credits through the period up to 2050 and finding a way to offset those.

Q. Well, we would say – please, go ahead.

A. No, I think I'll stop.

Q. Well, we say it's a judgment call but we're talking 320,000 hectares of Crown land, that's an area larger than Samoa, which is going to be planted to make up for this gap and there is lots of difficulties built into the

assumption that that will all be able to be planted and will still be there at the time via being one, water use being another, and then the very effects of climate change being a third with storms and so forth.

A. Yes.

Q. I mean there is a staggering level of uncertainty built into this policy and the assumptions which underpin being able to fill this legacy gap, aren't there?

A. I think as a general principal, I actually agree with much of what you're saying. There is significant uncertainty in projections, especially when they extend out 25-30 years in the future. There is significant degrees of uncertainty in the nature and level of risk in the future that is absolutely true. Those arguments are often used, as you are doing, to suggest that a different policy should be approached. The only other thing I would say by way of broader perspective to that is there are costs and benefits to other approaches as well. Whilst there are challenges to the policy you're articulating there, other policies that achieve the same goal would themselves have cost and benefits.

The choice governments have to make when making climate policy is, amongst other things, how to discount that future uncertainty, how to balance near term and short term intergenerational considerations, how to deal with the genuine lack of knowledge they've got, and that there is no painless options. I've never seen a solution which sits here and says: "Actually. that would be really easy, cheap, and could be done," because if that existed we would probably have done it.

Q. And as time passes, it is likely to be more painful. But just over the page here, I've just done this for easy of flicking, this is page 46 of that technical annex –

A. Yes.

Q. – and really this is – I may have the wrong end of the stick, so I'm really just after your explanation or opinion here – but down above the Table 17 the paragraph there: "The estimated emissions and removals," includes the emissions impact from displaced stock, sheep and beef farming on Crown-owned land.

A. Yes.

Q. If we've said that the gap that this afforestation is meant to be plugging is those long life emissions is it that we're then helping ourselves to future offset on that because of those agricultural emissions there or when it is saying: “The emissions impact from displaced stock,” is that the land use value rather than the agricultural emissions from the sheep and beef farming?

A. I would need to give you a definitive answer in writing on that point. I didn't write this particular policy. I wasn't involved in development of this particular policy. My understanding is that it refers to the soil displacement involved in planting a forest. When you plant a forest you have to remove the existing point on the land that have carbon emissions attached to it. It is before the forest becomes a carbon sync over time. I believe that is what is being referred to there in that sentence but I would need to check that.

Q. Well, let’s get to the bottom of it over a (inaudible 11:09:34) question.

JUDGE MILROY TO MR LYALL – TIMING

The other issue that my claimants see with the ETS is that, in encouraging steps to be taken like afforestation, there is a relative permanence gap between that kind of carbon sequestration and emissions of carbon.

A. Yes, that is factually true.

Q. I think in relying on the Emissions Trading Scheme as the policy lever which is being pulled, rather than also supporting it with robust and ambitious policies, are we not placing too many eggs in the non-permanent basket? (inaudible 11:10:48) simplify that question in terms of timing.

A. Yes, I understand the question perfectly. I would ultimately say that that is a choice which the political process is the best place to make. I absolutely accept that there is the facts of what you say. There is a temporal difference between the life cycle of a tree and the life cycle of CO_2 in the atmosphere that is absolutely correct. Choices about what to prioritise, as in whether to prioritise doing more now or more later, can I think legitimately be made a multiple different ways.

Just as an example, a very, very quick example there. If you were to believe that technology in the future would quickly become cheaper and

all you really needed to do was hold on for a little while until that cheap technology was ready, it would actually be quite silly to spend lots and lots of money now to decarbonise in a very expensive way when a technology solution might come up in the future. That is a very simplified example but it is a sort of question that decision-makers have to wrestle with when they make these choices is to try to understand what they think their future options might be as well as their present. I think it would be absolutely fair to say that there are multiple different ways you can make that judgment. As we discussed in the previous evidence, the Commission of the Environment and the Climate Commission make it a different way to the government.

Q. Thank you.

(11:12) KEVIN PRIME TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Tēnā kōrua **greetings to you both**. Mr Lyall has sort of led into some of the things I wanted to do cover, but I suppose my first question is what is the current balance sheet if that is a better word of emissions over offsets at the moment in New Zealand? Are we in debt? Are we owing or ahead or behind?

A. [Simon Mandal-Johnson] There is a lot in that question. It is a very simple question but it is a complicated one. I'd say three things. I'd say, firstly, that we are currently on track to meet our emissions budgets as we are required to be and we are on track to meet our 2050 target as we are legally required to be. I don't have off memory our absolute latest numbers in terms of how much emissions we produce. Off memory, it's in the realm of about 70 megatonnes a year but the near term varies quite a lot based on for example to state to the economy. I could come back to you with where we currently are. If that is of benefit, we can do that. And then thirdly, but to the broader judgment of: “Are we on or off track,” I think that is fundamentally a question which at one level is legal as in: “Are we meeting the targets set down by parliament,” and then there is another more, I would say, political question around whether it makes sense to go further and faster, and that is the issues we were getting to in that last question. I can tell you that the government is comfortable

with its current position. There are multiple people who would suggest to the contrary but there are some choices in that.

Q. Okay, thank you. You covered exactly what I was trying to get at. The next question is has the ETS resulted in a sort of perverse outcome where people are now planting forests and then just leaving them unattended? Can you comment on that?

A. [Bryan Smith] I think, yes, the ETS is people are making the choice to plant forests and not to harvest those forests. Is that a perverse outcome, it depends on how you see the trajectory, particularly if you're planting exotics like radiata pine. We have examples all over the country where radiata pine as a pioneer species, which it is, tends to become senescent at about age 100 or more. By that stage, you've got quite comprehensive understory et cetera. There is nothing in my knowledge and we know we hear these criticisms, but there is nothing in my knowledge to suggest that radiata pine won't ultimately produce quite a long-term stable forest with quite a high indigenous content to that forest, depending on whether or not you are close to seed sources.

Q. So, in your view, that's okay.

A. I think the question is entirely valid that I think these forests are going to require some management and some intervention over time in order to ensure they do in fact create stable long-term conversion into a long-term stable forest, probably with a high degree of indigenous but an ongoing mix of exotic. Yes, I think what you're getting at is a legitimate concern but I do think they are manageable and I do think they're manageable into a stable regime.

Q. Okay, thank you. I suppose the other concern I've got is that there has been a lot of expense in creating legislation, setting up committees, setting up panels, having many, many reviews over time all at great expense and has it been worth it? I mean we've spent so much money on this and I'm not sure if we're getting, like your response to my first question is we're on target roughly and basically, but I just want to invite your comment on that.

A. If I could start, I think it is fair to say that the ETS has a hard gestation. That it started out in one spot nested within the Kyoto Protocol a global

system, we were going to have global caps, those caps were going to expand to developing countries and we connected to that, our ETS connected to that world. Maybe it's naïve. I think looking back at that, at the hopes at that point. The United States pulled out, at that point, the developing countries felt no real pressure to extend to join the capped system. I think it was pretty apparent in 2010 when I was still involved in those international negotiations. That had resulted in a hiatus I think of the effectiveness of the ETS probably right through until about 2015 or ‘16 when the new ETS in a new environment with a new paradigm kicked off. I'll probably hand over to Simon.

[Simon Mandal-Johnson] Yes, I’ll pick up that narrative and then just make one broader point. I would say that the legal reform in 2016 and 2020 quite fundamentally evolved the nature of the ETS. Whilst not everything changed, many of her component parts did. And in particular, in 2019 the introduction of an emissions budget, the requirement that our ETS must be set to meet that budget. They are very big structural reforms that were made there.

I think your question is getting at the question of is it worth it. Ultimately, that is a judgment decision-makers make. Not me, I only can advise them. What I would say, and I think this has been a theme in some of my other answers, is we know what the costs of this approach are because we've done it, we can see the costs. Every other approach we could've taken would've had costs too, but those costs are harder for us to see because we didn't do them. It is genuinely hard because decision-makers at a certain point don't know in particular how technology in the economy will evolve in the future. Yes, so it is very hard for me to answer the question: “Is this the best pathway we could have ever pursued,” because I would be answering it in 2025 when the question was proposed in 2005 and that is genuinely hard.

Q. Kia ora. Thank you very much and much appreciated.

A. Kia ora.

(11:20) BASIL MORRISON TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Thank you most sincerely for your evidence and comments and responses to the multitude of questions to you. I just have an interest, and following on from matua Kevin, in regard to slope, stability, soil type et cetera for planting. I note in Tai Rāwhiti in particular, there has been quite a debate about, shall we say, major pastoral blocks going into radiata that is on, shall we say, land that you could driver a tractor on as it were and not steep hill country stuff that you might think is going to happen. The point being that is impacting on the freezing works, on stocking rates, and all of those things in that part of the world, right. That is leading to perhaps the closure, as has happened in Timaru, of a meat works. Question is, is there any work being done to see what has been the offset of pastoral farming, methane from stock et cetera, the benefit from the ETS scheme? Has there been any mix of that to see whether we are going too far with ETS and not enough for the other? Is there any comparisons being done? I'm sorry that is a bit convoluted but if you can see where I'm getting at.

A. [Simon Mandal-Johnson] No.

Q. The changing dynamics of the use of land in an area that is changing from one to the other. ETS I think is driving it. And on the other side is what is happening to that and is that losing a benefit or is that adding to the benefit of ETS?

A. Yes.

Q. Thank you.

A. It's a very good question. I don't have a definitive answer but I can make a few points. I think there would be growing, if not universal, consensus that not all places that could be planted should be planted. The one in particular of course is the restrictions this government introduced on land use change for highly productive farm land. I know that's not example you're talking about, but I think one thing is government was quite clear on is it wanted to restrict the ETS from incentivising the production from farm land to forestry and so introduced these restrictions. I use that to

illustrate the broader point that I think decision-makers in general are very alive to that challenge.

Q. The second problem of course is, whilst the ETS Scheme has implications of the sort you're talking about on meat works, on rural unemployment, it has also got positive benefits for the people who own the land and provides the revenue stream. The constant trade-off that is being made is the extent to which the government or a decision-maker wants to impose on that choice. I also don't think that answer is fixed permanently and I think what we are seeing is the willingness to intervene on that margin has changed over time. I don't feel I'm in a position to speculate on where it might go. But it would certainly be an area I suspect is going to be of continued interest, especially in the sort of (inaudible 11:24:39) you're discussing and especially in marginal country where there is extensive risk of some slash from unmanaged forestries but also from rural communities who don't want extensive pine forest. I can absolutely see future governments may want to do more in that area.

Q. Okay, thank you for that. It is just really the shifting from fibre production, I guess, to food production and just the trade-off benefits between the two –

A. Yes.

Q. – and how that impacts locally. DIA forest, generally radiata 25-28 years more or less, and just what that does to a community and how that's measured versus, I'll just use the term, the local freezing works as it were in production of food and how the offsets are met or not, identified but whatever. Thank you.

A. [Bryan Smith] If I could just add one more comment because I recall this discussion obviously. In the past, governments have taken the view that if there are to be land use restrictions because the community has a particular aspiration, then that should be done through the local planning process rather than the ETS itself. I think what we've seen more recently is those processes are slow and difficult and don't always go the way that you expect, so the government has chosen to intervene more directly because of that.

Q. Yes, that's right. I won't complicate the questions or the comments to much by saying it is of interest of course with the Resource Management Act and proposed changes to that and just what that brings into the mix as well, whether that is being considered and how that is going to affect the Crown's responsibility to iwi which are large landowners and involved in those activities. Thank you.

(11:26) PROFESSOR DAVID WILLIAMS TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Tēnā kōrua **greetings to you both**. David Williams, son of hill country sheet farmer, but disappointed my dad greatly by not following him on the hill country farm finished up doing quite a lot of Treaty settlement work. So that's what I want to focus on. Mr Smith I heard your response to counsel for Ngāti Kōata and I fear that I may be one of the mistaken people so if I am mistaken, you'll point it out and we'll be all the better for me being corrected. By definition, because the date was 1989, all the Crown Forestry Licence lands were pre-1990 forests and after the government introduced the comprehensive Treaty settlement schemes that were developed between 1992 and 1994 for claimant groups settling acquiring those Crown Forestry land became an absolute no brainer for reasons that had very little to do with anything other than accumulated rentals in the Crown Forestry Rental Trust. Because most people aren't aware that the Crown redress quantum has to be used to purchase land for the settling group. The land is not just given. It has to be purchased. There has to be evaluation. Are we going to take a police station or the Landcorp farm or a forest? And if you choose a forest, you get all this extra money from the accumulated rentals which go back to 1989 and are many, many millions of dollars in addition to the redress quantum from the Crown. So we've had evidence in earlier hearings about post-governance settlement entities feeling that that was the right choice to make at the time but with the ETS system and so on and penalties for deforestation they are tied in to keep on replanting. And almost always, if they're going to give a return to their ownership group, then they have

to replant in pine, even if from a tikanga point of view they might prefer native planting.

So I've got two questions. One is, and I have absolutely no idea what the answer is, who actually holds the New Zealand Units of Crown-owned land under this Crown Forestry Assets Act? I mean for land for whenua the Land Information New Zealand on behalf of Te Tari Whakatau, what used to be OTS, holds land banked lands but there is a whole lot of NZUs floating around there that are owned by the Crown. Are they sequestered somewhere? Is there are a place where those NZUs are?

A. [Bryan Smith] Can you answer that?

[Simon Mandal-Johnson] I would need to come back to you in writing and double-check. But I am almost certain that they're held by the EPA.

Q. By the.

A. The Environmental Protection Agency. They also run the ETS operation. They maintain the register of units. If you buy or sell a unit, they are the mechanics of selling it to you. I understand they hold a significant portion of the Crown's NZUs inside their system obviously on behalf of its end users. I'd have to double-check that scheme because-

Q. It would be interesting to know whether there is some constraints on whether the Crown can use those units anyway while it is still Crown land before a Treaty settlement.

A. [Bryan Smith] Yes, I'm also not clear how many units the Crown would hold in relation to Crown land. The only units to my understanding would be if it is established post-1989 forest and decided to take units and decided to join the ETS. I recall vaguely, this is going back many years now, some issues with the Crown joining the ETS but I'm sorry I can't.

Q. Well, I just wanted last a question because I had no idea what the answer was.

A. [Simon Mandal-Johnson] I'm sorry to find your experts don't know either.

Q. I mean normally lawyers like to ask questions when they know what the answer is but in this case I have no idea. My focus is actually on the encouragement of native afforestation following clear felling of exotic plantations. At the end of your evidence, you refer to Julie Collins giving some evidence on that and I think you have been just asked some

questions by Mr Lyall on the Crown-owned land which might be afforested with natives. Is there any way within the current ETS system that native replanting or regrowth can be incentivised in a way that doesn't leave the landowners out of pocket?

A. Well, the simple answer is can there be, yes, there could be. Are there currently, no, within the ETS itself. There are mechanisms outside of the ETS which Ms Collins could speak to much more than I can, which have been pursued by this government and previous governments around native re-afforestation. The ETS original design principle is to achieve the target at least cost and also to issue credits on the basis of scientific accuracy around sequestration. The original design choice was we will only get the unit for carbon sequestration. We won't give a premium or a discount because of a certain sort of sequestration.

Q. Right.

A. Of course, you could change that principle and that principle is not an act of God. It is how we designed the scheme. So that could be changed but it would be a very significant departure.

Q. Right. But at the moment, it is just because the native trees grow more slowly than the pine trees.

A. Yes.

A. [Bryan Smith] Yes, that's right. It is worth noting that, every time you issue a credit, you go and burn fossil fuels. So while it could change, in an environmental sense if you're issuing credits that don't exist because the carbon hasn't been sequestered, you're then having an emission that's been backed by carbon that hasn't been removed from the atmosphere. So there is a real environmental integrity issue between those two things.

The ETS doesn't get in the way if you choose to replace a pre-1990 exotic forest with an indigenous forest. It doesn't create liabilities for you to do that so long as you replace it. If you change the land use, it would.

Q. Right.

A. It may well be that, if you gathered credits out of a post-1989 exotic forest, you would struggle then to regain those credits fast enough from a slow

growing indigenous, so that could create a handbrake on being able to replace a post-1989 exotic forest with an indigenous forest.

Q. Right. Okay, good. No, thank you very much.

(11:34) JUDGE MILROY TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Thank you for those answers to Professor Williams because I was going to ask a similar thing. Because that's one of the complaints that we've heard from our claimants that they do have a real ambition to recloak Papatūānuku in indigenous forest and it is a barrier to them doing that that. That the amount of carbon that will be sequestered is slower for the first part of the growth of indigenous forest. But is it right, I think you had evidence that after that initial quite long period indigenous forest then take up more carbon than an exotic forest?

A. [Bryan Smith] It's a bit tricky to say.

Q. Yes.

A. It depends on the exotic forest. If you were to plant say, Douglas fir, it will permanently store and continue to store carbon for hundreds of years as would Redwood and various other exotics. Pine forests are usually harvested at age 28 but if you let them grow they'll continue to store carbon at a progressively slower rate but perhaps for another 30, 40, 50 years. The end point between exotic and indigenous is usually pretty similar but it takes a lot longer for the indigenous to get to that end point, perhaps 300, 400, 500 years to finally store as much carbon as maybe an exotic forest would do in 50 or 60 years.

Q. We have got the problem of the urgency of taking it carbon as quickly as possible to avoid the worst effects of climate change.

A. Yes. There are new techniques that are being developed though which are really quite interesting. There are new techniques for establishing particularly kānuka and mānuka as a nurse crop which can also produce honey production as an interim income stream and then plant within lightwells. Now that is much cheaper to establish than some of the other more traditional planting and it also sequesters carbon a lot faster. This is driven in the main by Māori but the whole interest in how do we access

the opportunity of generating income without having to cut down trees and generating income but do it faster is an area of kind of active work.

[Simon Mandal-Johnson] I might just add there, it is paragraph 297 in our brief of evidence and the associated footnote. This is an area where there is active ongoing both scientific work and policy work. So, we are constantly improving our knowledge of how native trees store carbon. It is relatively a new area of science compared to other areas. In particular, we talk care about what we call the carbon max programme, which has been a fundamental scientific review of the science of how native forests store carbon. That is work that Julie Collins who you will speak to in week 8, her Ministry was responsible for leading that.

I would say what that is trying to do is make sure that the ETS is as scientifically valid as it can be. I don't like the term the ETS as a barrier. What I would try to say is that the ETS is mutual between a tonne of carbon from one forest to another. And if it turns out that native forest can sequester carbon differently, which the research is investigating, that is clearly something that will be updated. That just follows from that.

Q. Thank you. That's good to know. Just going back to the question, I have forgotten who has asked it now, it might've been Mr Lyall, but it was in relation to those forests which have been planted perhaps by overseas investment funds or superannuation funds and you mentioned they have got less interest in what is happening in New Zealand as opposed to what they are receiving in the way of carbon credits and so on. You mentioned that those forests will require management and possibly intervention and I'm just wondering who is going to manage and who is going to intervene.

A. [Bryan Smith] Yes, look, it's a very good question. I think those are still open questions. I don't think we have an answer to those forests. I don’t think we fully understand how they are all going to evolve over time and how stable they may or may not be, what the level of intervention may or may not be needed. But I do think that is an area that a government, and probably has some time, is going to have to do some work on to understand those questions.

[Simon Mandal-Johnson] I would agree with that. I would just add, the statutory regime is relatively clear on the point that the landowner has an

ongoing liability to maintain the stored carbon through its forest or will face a penalty against it. As the framework sets out, at present the owner of the land would be responsible for the maintenance but clearly that is challenge in various business models. Having said it is an old scheme, it is also a new scheme and some of these challenges will play our gradually over time.

Q. I asked partly because in the South Island where I am a resident judge in the Māori Land Court, we have had trusts in court who have leased their land and granted a forestry right to an overseas company and then when the market falls the forest has been left there to rot in the end and the Māori trust itself is not a position to do any of the things which might ameliorate their position. So that is part of the interest.

My next question is there's a mention I think – because the pre-1990 forest thing has been a thorn for Māori since the beginning of the whole situation – at paragraph 27 you mention that there might be biodiversity credits available for those pre-1990 forest that I think are in indigenous forest which are mainly held by Māori. Can you tell me about those.

A. To give you a proper answer to this, there is other people in the Ministry, I'm very sorry, who are the true experts on this question. This question of biodiversity credits alongside the ETS is one which multiple governments have revisited at various points. The fundamental logic is something like: “Is there a market for a premium NZU or an NZU which sequesters carbon plus a biodiversity benefit,” and there are multiple design choices you can make within that, there are multiple ways you could do it. The fundamental tension of course is that more expensive than a standard one and whether such a market exists.

It was an option canvassed in the ETS Review in 2023 was to integrate that more closely. That review was obviously discontinued but it was something considered there. There is still work ongoing around it. I'm afraid it's a while since I've looked at that question and I would have to come back on exactly where it's currently up to.

[Bryan Smith] And maybe I could pick up that narrative just a little bit, which I'm not an expert in this area, but I have been a little bit across where things are going. Maybe a little bit of history, we thought that there

would be a market for a particularly high quality NZU that could be tradeable. We established the Permanent Forest Sink Initiative which was the very first time a government had ever devolved credits and it was for native forest or permanent forest restoration. Unfortunately, the market was very difficult for those to find a premium. I know there were some paid. I know there were some trades. But people had tried extensively to try and find that premium.

Overseas where that premium really has existed is when you've got sort of regulated markets. Or, if you're going to do a development and it is going to have an impact on biodiversity, then you need to find some sort of offset in order to offset that. Those are kind of regulated either through central government or through local government.

Markets do generate or have generated value that you can pick up through these biodiversity credits. At this stage in the development process, I think it's true to say that the government is active and the government is trying to look at what kind of frameworks it would put in place. So that if people wanted to buy one, they could be assured that it was of high quality. Obviously, that is the first key step that you have to go through in any of these things is to make sure that the buyers are confident that this thing really is a biodiversity credit. It's additional, you know, they are paying for something meaningful. And it is that, it is establishing what that would look like and maybe the Crown intervenes in that and to set that up is the kind of work that is going on at the moment.

Q. Well that is good to know to that that hasn't been lost. Because I wasn't aware that that was a possibility for Māori trusts or other Māori groups. There is still work going on is what-

A. There is still work going on. The market is difficult though without some sort of regulatory framework around it and relying solely on a voluntary market has proved very difficult in the past.

Q. Alright, thank you. My last question is you've been asked a lot of questions about consultation and so on and it's an important question for the Tribunal. If I can put it this way, during the period in which particularly you Mr Smith were working, I think it is accepted that there was a political consensus in terms of recognition of Treaty principles, recognition of the

need for taking a more active approach to Treaty compliance and so on. So we got the position where there were Treaty clauses put into provisions and a lot of activity in ministries and so forth to try and adopt approaches which would fulfil those statutory requirements but also more generally, the requirements under the Treaty. I think it was Mr Mandal-Johnson who said that it was not thought necessary to put a Treaty clause, or it might be you.

A. That was in my evidence.

Q. Yes. I think there is certainly a sense amongst Māori that that political consensus has broken down and that we need more protection that a statutory clause would provide, even though we're going to be going to standardise statutory clauses. Do you have any comments to make about that?

A. It feels like it is well outside my area of expertise and more like a question for the Tribunal than for us. But what I would say is there is Treaty clauses in the CCRA, the Climate Change Response Act. After the 2009 review, the government of the day needed the Māori Party to vote for the legislation and I mean this isn't purely a political process but there was a political process as well and that political process resulted in a Treaty clause being incorporated. So that evidence you're talking about was in the first version and very quickly thereafter within two years the next version had Treaty clauses incorporated in it.

[Simon Mandal-Johnson] Yes, I also recall that I believe it was in the 2020 legislative change. I believe the main Treaty clause for the whole CCRA was strengthened as well. Now that is a general clause but it drives obviously down into the decisions where making under the Act.

Q. All right, thank you for those answers. I was wondering if you were going to say something like: “You might very well say that but I couldn't possibly comment.” I'm waiting for an official to say that to me at some point. But anyway, thank you very much for your answers to us.

(11:49) MR FONG TO BRYAN SMITH, SIMON MANDAL-JOHNSON:

Q. Just very brief questions. But before I do so, just to save Mr Mandal-Johnson one job, there was a question about the composition

of the Climate Change Chief Executives Board. That question has already been answered in the evidence of Mr Hemi Smiler. Can I just the Tribunal a reference in case that question is thought to be relevant. The evidence of Mr Hemi Smiler the appellation number is #A148 and the details of the board are set out at footnote 127 which the panel can find on page 47 of that evidence

MR FONG TO JUDGE MILROY – #A148 FOOTNOTE 127 PAGE 47

The re-examination will be directed to Mr Mandal-Johnson. Now in the course of cross-examination, you were asked questions about the extent or the absence or otherwise of consultation of the amendments to the ERP1. Do you recall that line of questioning?

A. Yes I do.

Q. In the course of that questioning, it was also mentioned that there is currently litigation in the High Court about those amendments –

A. Yes.

Q. – and I recall you saying that you are aware of that active litigation.

A. Yes.

Q. My question is do you know if the adequacy of consultation on those amendments whether that issue is a live issue in that parallel litigation?

A. My understanding is it is a live issue in the context of litigation.

Q. Thank you. Now just putting aside the sort of precise wording about the questions that were framed in the consultation, do you recall if the Ministry received any submissions from the public on the merits or otherwise of amending the ERP1?

A. I was not responsible for the ERP1 amendment. I was responsible for the new ERP2 policies so my knowledge here is a little bit hazy. But my understanding is, yes, we would have received extensive feedback on that. It is also by way of nature of these consultations, we ask these quite narrow questions and we get back very broad answers, often people go into the areas they are concerned about. At that point, the removal of the ERP1 policy was a very live topic of political debate and I think it would be very reasonable to assume we had lots of feedback on that.

Q. To the best of your recollection, do you remember whether on receipt of those submissions about amendments of ERP1 were they summarised and conveyed to the Minister?

A. Yes, I remember that particular briefing.

Q. Thank you.

JUDGE MILROY ADDRESSES BRYAN SMITH, SIMON MANDAL-JOHNSON – MIHI, ACKNOWLEDGEMENT (11:52:01)

HEARING ADJOURNS: 11.52 AM

HEARING RESUMES: 11.56 AM

JUDGE MILROY ADDRESSES MR PREBLLE – TIMETABLE UPDATE (11:56:58)

(11:58) MR PREBBLE CALLS

PAUL STEVEN BARKER (SWORN)

Q. Tēnā koe Mr Barker. If you could please confirm your full name for the Tribunal.

A. Kia ora koutou. My full name is Paul Steven Barker.

Q. Thank you. Can you confirm please that you have signed a brief of evidence dated 30 September 2025 in this proceeding.

A. I can confirm that.

Q. Do you have that in front of you today?

A. I do.

Q. For the record, just noting that is at #A136 and the appendices are #A136(a). I understand you have also prepared some talking points of your evidence for reading to the Tribunal today.

A. I have.

Q. For the record that is at #A136(b). If you could please read those out now to the Tribunal and introduce yourself. Thank you Mr Barker.

(11:58) PAUL BARKER: (#A136-(a),(b))

REFERS TO #A136(b)

I'm Paul Steven Barker. I am one of four Partnership Directors in the Local Government Policy, Partnerships, and Operation branch which is a part of the Policy and Te Tiriti Branch at the Department of Internal Affairs. So I'll just refer to the department as DIA from here on.

The role of the partnership directors is to lead DIAs engagement and relationships with the local government sector and across government agencies. We also provide leadership across strategic issues and system challenges within the local government sector. It is in that capacity I have had experience working with councils on natural hazards and climate change issues.

The purpose of my evidence is to address claimant evidence with a focus on local government.

I will also provide information about DIA, its function and DIAs place in central and local government climate change responses.

Firstly, just a bit of context about DIAs role with local government.

DIA is a public sector department that provides policy advice and administers legislation for the local government portfolio.

We also provide advice to the Minister of Local Government who is responsible for the overall system of local government.

The Minister has powers to assist or intervene in local government decisions and actions, but there is normally a very high threshold for this.

DIA administers local government related legislation, including the Local Government Act (generally referred to as the LGA). The other key one,

which I've pointed out in my evidence, is the Local Government Official Information and Meetings Act the LGOMA. The LGA in particular provides a framework and powers for local authorities to manage their activities.

There are links to natural hazard management in the local government legislation that DIA administers. However, most legislation concerning natural hazards, climate change and adaptation is administered by other agencies, primarily Ministry for the Environment, which you will have heard a lot about this in their evidence, and the National Emergency Management Agency.

While DIA is the steward of the overall local government system, local authorities are standalone bodies with statutory powers, responsibilities, and democratic accountability to their communities.

In response to problems that can arise with local authorities, DIA will provide the Minister advice on their intervention powers under the LGA.

Other agencies that have oversight of local authorities, include:

- the Ombudsman, which handles and investigates complaints about local authorities;
- the courts, particularly if the public take legal action particularly by way of things like judicial reviews; and
- the Office of the Auditor-General, which audits local authorities and particularly, some of the key planning and accountability documents for councils which include their long-term plans and their annual plans.

DIAs current work programmes do not focus explicitly on climate change.

Notwithstanding that, DIA led a Community Resilience work programme from 2018 to 2022. This was the most significant programme delivered by DIA to support local government response to natural hazard and climate change risk in recent years, and I was directly involved with that.

The programme developed a framework to guide the role of central government in improving community resilience. It aimed to build resilience, and the particular focus was on flood risk.

The budget for the programme was significantly reduced in 2022 and much of this work was largely transferred to MfE as part of the climate adaptation work programme.

DIA plays a part in the wider government response to climate change, providing input and advice to other agencies' work programmes, such as in regard to flood resilience.

The DIA Chief Executive is also a member of the Climate Change Chief Executives Board. I note there was a mention of that. That is an interdepartmental Executive Board which was set up under the Public Sector Act.

I'll just move now to talk about the local government sector and their role in responding to climate change

Local authorities have primary responsibility for engaging with their communities on natural hazard management and climate change impacts – this includes with iwi, hapū, and whānau.

As explained, DIA has a role in supporting local authorities to carry out their statutory functions and responsibilities and works closely for local government sector representative organisations.

The LGA sets out principles and requirements for local authorities to facilitate participation by Māori and local government decision-making processes, and this is covered in my evidence.

Local authorities undertake planning it different levels and across different times scales. This includes having regard to the effects of climate change as they undertake planning activities. A couple of examples:

- Local authorities' planning documents under the Resource Management Act must have regard to the National Adaptation Plan and New Zealand's emissions reduction plan.
- Under the Civil Defence Emergency Management Act local authorities required to manage local hazards and prepare for local emergencies.
- Local authorities in themselves are owners of significant number of assets. Ensuring resilient infrastructure such as roads, bridges, water infrastructure is one of the ways that local government can and needs to respond to climate change.

A number of local authorities are undertaking significant adaptation work under the current settings and some of that we've been involved with directly.

DIA supports such initiatives on an ad-hoc basis. A couple of examples, after flooding in Westport in July 2021 and again February 2022, DIA worked with the West Coast Regional Council, Buller District Council, and local iwi (that is Ngāti Waewae) to develop a business case for Crown co-investment in flood resilience.

However, on an ongoing basis, the Ministry for the Environment is the agency leading work to support local government undertake adaptation planning. And again, I refer to the evidence my colleague Catherine Wilson provided the Tribunal earlier this week.

I've moved now just to talk about *DIAs role in climate change and natural hazards* more specifically.

DIA regularly engages with local authorities on a range of matters, including policy matters, such as natural hazards and the effects of climate change.

DIA is currently supporting a Resource Management Reform and the emergency management reform by providing advice to the respective Ministries, the Ministry for the Environment and the National Emergency Management Agency on the role of the local government system and how it could interact with the policies they are developing.

We contribute to cross-agency work to support regions after natural disasters, including whether Government decisions on additional funding and legislative changes to support local authorities.

This work is somewhat reactive and in response generally to exceptional circumstance. A couple of examples:

- the North Island severe weather events in early 2023;
- the Westport Flooding events in 2021 and 2022 which I've mentioned;
- we were also involved as the Crown agency working with the Whakatāne District Council and the Bay of Plenty Regional Council for the managed retreats at Matatā.
- supporting the Kaikoura District Council after the 2016 earthquake.

DIA has worked with local government and other agencies to support Crown co-investment in flood protection. Since 2022 Government has invested over half a billion dollars in flood resilience and that includes:

- $210 million from the COVID-19 Response and Recovery Fund for climate and flood resilience projects which was extended from 2020 to 2022;
- Almost $23 million for Westport following the flooding in 2021 and 2022;
- $100 million from Budget 2023 for co-investment and flood resilience following *Cyclone Gabrielle*; and
- $200 million from the Regional Infrastructure Fund for flood resilience projects that was allocated in Budget 2024 and that's for projects throughout the country.

DIA has also led work to address long-standing water infrastructure challenges. This will be addressed in more detail in the evidence of my colleague Richard Ward who will be giving his evidence to the Tribunal tomorrow.

DIA has recently completed work on amendments to the Local Government Official Information and Meetings Act. These changes aimed to improve how natural hazard information is shared to property buyers in land information memoranda. That is Lim's which are a form of disclosure of natural hazards to potential property buyers.

DIA supports and advises the Minister on intervention powers if there are significant concerns including any problems related to emergency management or natural hazards.

- A recent example of that is in Wairoa, after disagreement between the regional council and the district council, the Minister of Local Government appointed a Crown Manager to direct the two councils on delivering flood protection and to help facilitate relationship management between the two councils.

The final bit of my presentation is since the submission in my evidence in 2025, there have been several quite significant updates to the local government work programme.

- In late 2025 Ministers announced the Simplifying Local Government programme to reform the structure of local government. DIA is leading this work, working alongside MfE.
- This work is still in the early day stages with Government yet to take decisions on this.
- There was a consultation proposal that went out publicly which closed in late February and over a thousand submissions were received on that. That consultation included presenting and discussing the proposals with a number of post-settlement governance entities either in person or online across New Zealand.

- This reform proposes to change the governance of regional councils, giving regions the opportunity to consider what structure will work best moving forward and how region regional functions can best be delivered.
- Local government will continue to have the same roles in natural resource management and resilience to climate change and natural hazards. The Government's intentions that Treaty settlements and all their arrangements that underpin them, such as joint management agreements, will continue to be upheld.
- Regions will have to consider any existing arrangements iwi Māori have with regional councils and how these will translate into any new arrangements proposed. The intention is to ensure that any change to existing arrangements does not diminish the role of iwi Māori.
- Officials are considering options for the involvement of iwi Māori in the development of regional reorganisation plans.

The next significant area that government has announced reform on is work on rates capping to help councils keep rates increases under control and reduce the pressure on ratepayer budgets.

- This work is still at the detailed policy design stage. The proposals to have a target range of something between 2-4% where rates will need to be managed. It is a range and areas such as water infrastructure and user charges would be exempt and there is to be exemptions in a number of areas including natural disasters.
- The Government's intention is to introduce legislation this year and to pass it after the election. The proposal is to come into full effect by July 2029 so there is a transition period
- Rates scapping may relieve some of the rates-based financial pressures that some of the claimants raised in their evidence.

The Local Government Systems Improvement Bill is currently before the House and it is awaiting its third reading. It includes proposals that redefine the purpose of Local Government. Of particular note here is the addition of

Civil Defence and Emergency Management as a core purpose which will reinforce local government's responsibilities for natural hazard management.

(12:15) JUDGE MILROY TO PAUL BARKER:

Q. Mr Barker, I hate to interrupt you here. But in your summary you have said: "The Local Government Systems Improvement Bill is awaiting its second reading."

A. Its second reading. That is a correction. It is waiting its third reading.

Q. Yes, all right. Thank you.

A. My apologies, I should've made that clear.

(12:15) PAUL BAKER: (CONTINUES)

CONTINUES #A136(b)

Finally, I just note that DIA does not generally provide funding directly for local government in the case of natural emergencies (except under some of the exceptional circumstances, which I've described earlier). However, as a system steward, DIA has a role in ensuring that the settings for infrastructure funding and financing a fit for purpose.

- There are a number of pieces of work again, which have been announced since my evidence was submitted in September. DIA is leading work to replace development contributions that councils currently receive with a new development levy system. This work is intended to ensure councils can recover more growth-related infrastructure costs directly from developers, freeing up rates revenue for other local government services.
- The Government still making decisions on this work. There was consultation on draft bill which ended in February and it is working to introduce legislation this term of Government.

That is the end of my introductory comments.

(12:17) MR SONTIER TO PAUL BARKER:

Q. Tēnā koe **greetings** Mr Barker. Ko Justice Sonia tōku ingoa **Justice Sontier is my name**. I hope you are doing well today.

A. Thank you.

Q. I'm representing three claimants in this inquiry which is Ms Mereana Peka, Mr Thomas Henry, and Ms Rita Beckmannflay. Ms Peka and Mr Henry's claims concern the roles of Māori wardens in responding to climate change, and in Ms Peka's case specifically wahine Māori wardens. Ms Beckmannflay's claim concerns the cultural, economic, and spiritual wellbeing of Matauri Bay under the escalating climate threat. Before I just move to my questions, I just wanted to ask, are you familiar with the Māori wardens and the role they often play in communities during emergencies and civil event defence events?

A. I am aware of their broad role but not directly familiar. I haven't interacted with them directly.

Q. Thank you. So just to looking at your original evidence that you provided, at paragraph 75.5 of your brief, you identified a limited capacity and capability across councils to effectively manage natural hazard risks and the effects of climate change. Is that correct?

A. That's correct. That is at 75.5.

Q. And then to going backwards a little bit to 61 and 62, you describe the requirements under sections 81 and 82 of the LGA, and that councils must establish and maintain processes for Māori participation in decision-making. Is that also correct?

A. That is correct.

Q. So I was just wondering what steps the DIA has taken to support councils to meet any obligations to Māori under sections 81 and 82 of the LGA in the context of climate adaptation.

A. I'll answer that question at a couple of levels. Councils are, as I pointed out in my evidence earlier, autonomous boards responsible for their own decision-making processes. I've covered in my evidence the range of authorities that do have direct accountability and reporting, notably the Office of the Auditor-General.

Our role is particularly to support and facilitate councils. We do not require them to report directly to us but, particularly in terms of the administration of accords for which the department's responsible, we regularly interact with councils.

The answer to your question is there isn't a direct reporting requirement but where there are issues arising, and sometimes these are raised directly with councils or they may come up in the administration of their cords, we will work directly with councils and iwi Māori. The nature of that is to provide support and assistance and sometimes facilitation.

Q. Thank you. Do you know whether the DIA has issued any guidance to councils generally on how to engage with iwi and hapū specifically on climate change adaptation distinct from their obligations under the LGA?

A. I'm not aware of any recent guidance on climate adaptation as it may pertain to working with iwi Māori that we have issued.

Q. Thank you. And then moving on to, I think, paragraph 107.2. I think you refer to NEMA's roadmap, including developing agreements and partnerships with iwi Māori to enhance local readiness. Is that correct?

A. Yes, I'm reading that section. It is referring to the focus areas that came from the government inquiry.

Q. Yes. Has the DIA provided any advice on what role local government should play in supporting Māori wardens or any other similar community-based networks within those partnerships?

A. I'm not aware of anything specifically for Māori wardens in respect to the set of issues that are raised in this area.

Q. Has this been something that's been in consideration in developing these sort of report?

A. Are you referring to the report of the government inquiry?

Q. Yes or an advice to NEMA, the NEMA report.

A. I mean that was an independent inquiry so I can't comment on that part. We have been involved in the implementation of the findings of that work, so my comments would only be in respect to that work not the inquiry itself.

Q. Yes, that was sort of what I was meaning. I'm sorry, I didn't explain particularly well.

A. Sorry, could you repeat the question or that clarification?

Q. Are you aware of whether there was sort of consideration of any advice or implementation of supporting Māori wardens or similar community-based networks in that sort of advice that you gave?

A. Not specifically Māori wardens. But one of the significant areas which has come out of that is provisions in the Emergency Management Bill before the House around the role of Māori in emergency management and I understand that NEMA will be presenting or have evidence for the Tribunal. But those provisions are in a Bill currently before the House.

Q. I see, thank you. And then finally, just on that, are you aware of whether Māori wardens have been formally recognised as part of any emergency management response structure?

A. I'm not aware personally. That is not an area of our responsibility so I simply don't know the answer to that question. I would suggest you would need to talk to the appropriate authority which in this case would be NEMA.

Q. I see, thank you for that. And then finally, you identified at paragraph 75.1 the limited funding and financing tools for adaptation is a systemic challenge for local government. Is that correct?

A. That is correct. That's at 75.1

Q. And then turning back a little bit to paragraph 32, I saw that you said: "Local government is mostly funded by rates." Is that also correct?

A. That is correct. There are a number of other sources of funding but predominantly for most councils it is rates revenue.

Q. And then today, you discussed how the DIA is leading work on rates capping. Aside from the other sources of funding, has the DIA considered whether rates capping could in the future reduce councils capacity to engage in climate change adaptation as costs sort of increase?

A. I'll reiterate, the policy decisions haven't been taken in this area. There has been a short period of engagement and a number of issues have been raised both from councils but also in terms of the ability of councils to deliver a range of functions within a rates capping environment. Also relevant is the scope of local government core services and the Local Government Systems Amendment Bill I referred to earlier are currently before the House. These issues have been surfaced and are being considered in the policy advice which I would reiterate is still before Ministers who have yet to take final decisions.

Q. I see. I might have missed it in your answer, sorry, but is there any consideration being given to implementing anything in the rates capping proposal to exempt climate change adaptation expenditure?

A. I referred in my summary notes to the sort of two areas of exemption. One is in the case of significant natural hazards which would be proposed to be a ministerial discretion. This was the proposal that was consulted on. The other is an area where councils are undertaking significant investments. Now it's not specific around what that could be but potentially that could include resilient investment and future growth and housing subdivisions. That would be subject to a regulatory body's approval. Those were both features of the proposed system which, as I say, it has been out for consultation and is now coming into the decision-making mode.

The answers to your question is yes to scope through two possible variation pathways that could be relevant to investment in climate resilient infrastructure for instance.

JUDGE MILROY TO MR SONTIER – GRANTED QUESTIONS IN WRITING

(12:28) MS BOATWRIGHT TO PAUL BARKER:

Q. Can you hear me okay, Mr Barker?

A. I can hear you. I can't see you.

Q. Ka pai. No, that's okay. Ko Ms Boatwright tōku ingoa **Ms Boatwright is my name**. I appear on behalf of several claimants within this inquiry so I won't divulge as to who they are. But you will be familiar with one of my claimant's whose brief of evidence that you refer to in your own wider brief of evidence.

MS BOATWRIGHT TO JUDGE MILROY – GRANTED QUESTIONS IN WRITING

Now before we begin, there was a question that came out of your summary that you proposed about the consultation on the new proposed reforms that recently closed in February of this year and there was like all these submissions received. Do you know exactly how many were from Māori?

A. Can I just clarify, the submissions you're referring to for the simplifying local government proposals.

Q. Yes.

A. Okay. There were two forms. There was written submissions received. There were over 1,200 received nationally. Those submissions have yet to be put out publicly. I do know a number of iwi Māori groups have submitted. I do not know the numbers but we will be able to provide those in due course. There was something like 17 direct face-to-face engagements either in face-to-face online or in-person where Māori groups have sought to discuss the implications of those proposals.

Q. Thank you for that clarity. And now just referring to paragraph 61 of your brief of evidence, my learned friend just recently asked you some questions about this, but I just wanted to put to you about the LGA where local authorities must establish processes to allow Māori to contribute to decision-making and may foster the development of Māori capacity to participate. Is that correct?

A. I'm sorry, it was section 81 referenced in paragraph 61.

Q. Yes that is correct.

A. Yes.

Q. Okay. I put you, based on that section, that the ability for Māori to participate in the processes that council have to provide to seek Māori perspectives and engagement are not being fostered by council, particularly given that several councils around Aotearoa have voted to remove Māori voice from sitting on local council. What would you say to that?

A. Firstly, I would note that Māori participation in decision-making can take quite a number of forms and this in my experience does vary quite significantly across the country. I've seen situations where iwi representatives aren't formally, in the case of there's no Māori wards, but they have been very influential on councils. So we are aware that there is quite wide variety of experiences here and some of my other evidence refers to differences in capability and capacity across councils. There's 78 councils in the country. The smallest one is the Chatham Island, the largest one is Auckland, and a huge variety of different circumstances.

So I would just reiterate that the form of participation and the arrangements that different councils entertain vary significantly.

Q. Okay, thank you. Our claimants have provided evidence throughout this inquiry that there is a lack of sufficient infrastructure to address increasing flood and storm risks affecting many marae, particularly in their own rohe. In circumstances where that infrastructure is insufficient, would you agree that marae often serve as important cultural and community centres particularly standing up to provide a safe space for their communities when severe and natural events occur?

A. Yes, that has been my experience that marae have served exactly in that capacity.

Q. Would you agree that when marae do this they are often one of the first, I guess you could say, they form part of the first line of responses to taking in their community?

A. That will depend where across the country. But certainly in some of the areas, Kaikoura with the earthquake, *Cyclone Gabrielle* and many of the communities, those were exactly the places where many people sought shelter and support. So I would concur with your comments.

Q. Thank you for that. You note in paragraph I believe it is 102 of your brief evidence you refer to – I'm sorry I'm just getting the exact – yes, you refer and state that you are aware of the information from our claimants Ms Potiki and Ms Bennett regarding their rūnanga-led climate change plan and the support that they receive from their local council. For the record that is appellation #A32.

A. Yes.

Q. Do you agree that these –

A. I'm sorry, (inaudible 12:36:09) council was the Bay of Plenty Regional Council that was referred to in the claimant evidence.

Q. Yes, that's correct. Do agree that these plans were designed and led by Māori for Māori but also created to reflect the specific priorities, values, and circumstances of Maketū?

A. My knowledge is very much what was garnered in the claimed evidence but I'm certainly aware of that high level of interest. It was a really useful

example where local government is working quite directly to incorporate and facilitate adaptation planning such as that.

Q. I just put to you that this type of local-led iwi-driven approaches in creating their rūnanga-led climate change plans can be more tailored to the needs of the community than a nationally designed framework or a region-wide designed framework, can it not?

A. I would concur with your comments insofar as there are things that are best done at very locality or very specific locations. Sometimes that occurs under national guidance regulatory settings. Indeed, also within a regional context, that may also either be informed, sometimes resourced as in the example we were just talking about before with the regional council. So the way I would view that is that you need to have that alignment across your local district settings supported by regions where appropriate and then national policy settings, which you've heard evidence over the last couple of days, is really important in creating enablement. But I would certainly concur with your point that there does need to be flexibility and the ability for solutions that meet the needs of specific communities and that claimant evidence certainly highlighted where that can happen and work well.

Q. This next section I just want to take you to paragraphs 117 and 118 where you begin to explain the DIAs recently legislated changes to improve natural hazard disclosure, including information about the impacts of climate change and land information memorandums. The policy work that your department with the DIA concluded was that LIMs are not always appropriate source for providing natural hazard information for whenua Māori. Is that correct?

A. That is correct.

Q. Why was it considered less appropriate for whenua Māori in providing the useful information that Māori may need about their whenua?

A. The reasons for that were that the LIM disclosures are very focused on individual properties. If you're buying or selling a house whenua Māori has a number of quite distinct and different characteristics and particularly, in terms of transactions in the open market, it doesn't function in that way usually and that we were also aware that the needs of owners

of whenua Māori were quite distinct and different and therefore needed something quite more bespoke. If you were an individual house owner and you live in an urban area, then a LIM maybe quite useful but some very distinct and different characteristics of whenua Māori had led us to that conclusion.

Q. Just one final proposition to put to you before I conclude, based on the LIMs, would you agree that ensuring whenua Māori owners having appropriate access to hazard information is an important part of enabling them and also their own communities to respond to climate change risks in a timely manner?

A. Yes I would agree.

Q. Tēnā koe Mr Barker thank you for your time. Those are all my questions and I'll just put the rest to you in writing.

JUDGE MILROY ADDRESSES MS SWEDLUND – LEAD COUNSEL (12:41:33)

(12:41) MS SWEDLUND TO PAUL BARKER:

Q. Are you able to hear me, Mr Barker?

A. Yes I am.

Q. Tēnā koe **greetings**. My name is Ms Swedlund. I represent a number of claims with interests in Te Tai Tokerau, Heretaunga, North Eastern Bay of Plenty, and around Lake Waikaremoana so they span a range of councils and environments. I would just like to take you to paragraph 80 where you discuss the Community Resilience Work Programme. An early piece of work in this programme was the development of a framework to reprioritise that allocation of the 210 million from the COVID-19 Response and Recovery Fund. What was the take up of this fund like?

A. The $210 million that you're referring to which is in paragraph 210 that was specifically funding that was directed to regional council projects for flood protection.

Q. Yes.

A. The regional sector has been meeting and prioritising flood protection proposals from this period and have continued in various iterations into the current regional infrastructure fund. The answer to your question was that those proposals that came out, and this was in as part of the stimulus in 2020 the Shovel-Ready projects, it was successful because that tranche of funding, which I had been involved working with Kanoa in the Ministry of Business, Innovation and Employment, included an initial tranche of flood protection funding that went to a number of projects across the country.

Q. Āe. I guess, given that projects had to be prioritised, would you say there was some projects that missed out on funding in that current tranche that were proposed?

A. Yes, I mean that's a fair observation because there have been, as I indicated, several further tranches. The regional sector put together a set of proposals under the banner of *Before the Deluge* and there has been two further tranches. The initial ones were to be Shovel-Ready and not all projects, and particularly flood protection projects, can take some time to plan and consent. There have been, since 2020 time, two further allocations that had gone through the previous Government's Provincial Growth Fund and now the current Government's Regional Infrastructure Fund.

Q. You note then that funding for the Community Resilience Work Programme was significantly reduced in Budget 2022. I'm just wondering how much was that reduced by?

A. I would have to get back to you to give you specific figures. But we had time limited funding so it meant that much of the activity, except for the work that we really focused on around the reform of the land information memoranda, the LIM system continued. A lot of the other work that was going on finished and as I pointed out in my evidence, this also coincided with the period where the Ministry for the Environment was picking up the work as part of the climate adaptation work leading to, then it was to be a Bill as part of the previous Government's Resource Management Reforms. It was to be the third Bill. So that work was funded and supported through the Ministry for the Environment. I understand the

evidence has been presented as to the evolution of that work from our colleagues in the Ministry for the Environment.

Q. Āe. Essentially, if a workstream was under this Community Resilience Work Programme and it's not being undertaken by DIA or MfE, then that would have fallen through the cracks?

A. You would have to be more specific as to what things you thought dropped off.

Q. Sure.

A. But the work on setting up and leading to the first National Adaptation Plan and subsequent work, you heard was picked up by Ministry for the Environment.

Q. For example, developing a framework for managed threat.

A. That was picked up by them. There was an independent reference group that've been set up under the previous government which I think has been referenced in their evidence.

Q. Āe. In the Community Resilience Work Programme in the Cabinet paper, which I can take you to if you want, it noted that the important next step was targeted engagement with Māori communities located in high risk flood areas to ensure tikanga Māori and mātauranga taiao shaped the flood response. Do you know if this work was completed by DIA?

A. That wasn’t completed by DIA in terms of the direct engagement that had been planned. Again, that coincided with the change in funding and the change in responsibilities shifting to the Ministry for the Environment.

Q. Sure. How about providing greater national direction on flood risk management?

A. Indeed, that is one of the things again that you will have heard in previous evidence the National Policy Statement on Natural Hazards which came into effect in January. So that work had been carried through and is now in effect as of January.

Q. Ka pai. Now I'm going to around paragraph 92 in terms of policy work for natural hazard tools for whenua Māori. You state these were overtaken by work on the Māori climate platform, correct.

A. Correct. That was intended to form part of that work.

Q. Yes. Given the issues that had arisen about that form, are there any plans to develop natural hazard tools for whenua Māori now?

A. There isn't any work that we are currently undertaking to fulfil that. I can only speak for DIA on that matter.

Q. Yes, ka pai. Just jumping to 103 and there you're noting a desire of claimants to see a similar level of support for climate change plans from the government as local councils. Are you aware of any resourcing from central government that allows for iwi or hapū to develop place-based climate change plans?

A. There isn't funding that we provide directly for that. I mean in my experience community groups often bundle up funding from a variety of sources. For instance, in another part of DIA, there is some funding in this area that potentially could be used for that through the lottery side. Te Puni Kōkiri has some funds and grants. But I can't answer that with anymore specificity other than to confirm that we don't directly fund work such as that.

Q. So it is fairly fragmented then across notable funded sources.

A. Again, you will have heard evidence in terms of some of the cost sharing work that my colleagues from Ministry for the Environment discuss. A number of those issues will likely be considered in the context of further work being done there. But again, I just reiterate, this isn't an area that DIA has responsibility for leading so I can't really give you anymore comment than what I have on that issue.

Q. Ka pai. Just moving to 116 and 118. These are my last few questions noting the time. Is DIA currently undertaking any work to encourage government interaction with whānau, hapū, and iwi to identify alternative tools to improve access to natural hazard information for Māori landowners?

A. Not specifically. The primary focus our department has had has been on the support for a set of national regulations around the LIM disclosure so there is quite a lot of guidance there directly to councils and standardised set of requirements across New Zealand as to what should be in a LIM disclosure. So that has been our focus area.

Q. Sure. And then at 116 you've noticed the evidence of Aroha Wikotu who raised that kaitiaki do need access to information so they can best respond to the challenges of climate change if you're there. How would Ms Wikotu be able to get this information if councils are unwilling to work with her or can't afford to develop these tools?

A. In might experience, much of the council information is on platforms (geospatial platforms) that sort of thing. I would be concerned if there wasn't a willingness to make that available. A lot of council provided information is to exactly support the sort of endeavours that you are referring to. Again, this would be something that, if there are specific instances, we would try to work with councils to remedy that.

I also note again in the evidence of my colleagues from Ministry for the Environment, there is a lot of work going on in a National Flood Database which again is intended to be widely publicly available to assist individuals and communities to make decisions based around the best climate information and the situation of natural hazards et cetera. So that should be freely available when that work comes to a fruition.

Q. Just in terms of the proposed rates cap, was the role of councils in addressing climate change taken into account in setting that rate or that part?

A. Again, I just allude to the fact that the core functions are in a Bill currently before the House so that has still got to undertake its process. But councils, and I guess this is a sort of a general observation, do have to manage quite a lot of different demands. But I just point back to the fact that the proposed wording in the new Bill is to have Civil Defence Emergency Management, which is the meaning given to it in the Civil Defence Emergency Management Act, which is a very wide scope. It covers the Rs, Readiness, Response, Risk Reduction, and Recovery. So it's fully intended that councils do have to manage this, alongside their other core functions.

JUDGE MILROY TO MS SWEDLUND – CROSS-EXAMINATION TIMING

A. Thank you for your answers Mr Barker.

JUDGE MILROY ADDRESSES MS RONGO – GRANTED QUESTIONS IN WRITING (12:56:01)

(12:56) BASIL MORRISON TO PAUL BARKER:

Q. Thank you. Just one question. There is a lot of issues evolving at the moment and I'll just leave it at that. I was interested in the development levies or fees and the discussion that you were having about that or that has been had. Now my understanding is development levies are an option for councils to implement if they wish at the moment. Is that still the case?

A. Yes, you might be referring to development contribution.

Q. Yes.

A. So these are things that typically in a project that council will negotiate –

Q. Yes.

A. – as a share from the developer to cover cost of the infrastructure. The development levies is to replace the development contribution system. So it has got an enhanced application –

Q. Okay.

A. – and the intention is to make it easier for councils to recover costs across areas that are more integrated in terms of for instance of development area. It is in effect to replace the development contribution system which I think you may be referring to.

Q. Yes, I'm just mindful that in some cases councils did not charge those levies to try and encourage development in their communities and I was just wondering whether that was now going to be or being considered to be mandatory in whatever form you call that is all.

A. Look, it is certainly an important observation.

Q. Yes.

A. I mean the Government's overall policy intention is to have growth paying for growth –

Q. Yes.

A. – and that the beneficiaries of that growth and development are contributed so that is the underlying policy intent behind that.

Q. Okay, thank you.

(12:58) PRUE KAPUA TO PAUL BARKER:

Q. Thank you. Kia ora Mr Barker. You joined the Department of Internal Affairs in 2018.

A. I did.

Q. In terms of the issue that you refer to, and it's really from paragraph 80 in your evidence, but you've referred to it in your talking points here about the Community Resilience Work Programme which you say was a major piece of work sort of undertaken from 2018 to 2022. What precipitated it taking part then?

A. A very good question. It was identified at the time that this was quite a key area that was going to confront councils and of course, since 2018 and in my experience, there has been a number of very significant weather events. We recognised that climate change as an exacerbator was going to increase the intensity and severity of severe weather events and the intention was to really begin the dialogue with councils, with the local government sector more generally, to better enable the Government's efforts and councils to be better aligned. So that was the intention at the time to really start to get the dialogue going on quite a significant issue.

Q. And it stopped in 2022, is that right?

A. Well, it didn't stop completely. As I mentioned, we've progressed several pieces of work, notably, the work on the LIM system. The final part of that only came into place the end of last year which was the regulations I have referred to which are the ones that set up national requirements for what's in a LIM disclosure. For the best part of four years, when we had the budget appropriation for the support for Westport, it has been continuing that. And off the back of that and it is very experienced driven, there has been a lot of input, as I've referred to my evidence, with other government agencies, notably, our colleagues that NEMA and MfE. So you're right, the level of funding and the level of activity we were driving has changed but it did not cease.

Q. And in your talking points, you say that since it either didn't cease or slow down or whatever in 2022, the involvement has probably been more in

response, would that be fair, than to events rather than emphasis on resilience?

A. I'd qualify that in two ways. It's definitely in response to major events, like *Cyclone Gabrielle* came around in 2023 and we were very heavily involved with that, so that's the reactive component. The bits that has been a lot more focused on the forward agenda has been the policy developments and the input across quite a number of different areas of government activity, notably, the climate adaptation work, emergency management work are the key areas where we have focused effort.

Q. You refer to the Minister's intervention powers and the role obviously of DIA and giving support and advice. You've given the example in Wairoa. Are you aware of any other examples where the Minister has intervened?

A. Yes. Generally, as I say, it's quite a high should of intervention and it's designed really to actually return the council back to its council-led operation. Yes, more recently, the Minister has got some very similar intervention powers under the Water Services Act. They have been used in one instance at Waitaki. Probably an area the panel may be more familiar was with Tauranga which was a couple of years ago before that. So those are a couple of instances that I am aware of.

Q. I just thank you for the updates that you've included. The issue of the simplifying local government programme, what was the impetus for that coming in and late 2025? What was it based on?

A. There is really, I guess, two main themes that government has been focusing on. One is reducing complexity in the local government system and that is in terms of the layers of governance specifically with regard to the regional council care. The other area is around efficiency and effectiveness, whether councils can come together and provide more effectively delivered services. I would point that this is not a dissimilar theme. It has come up in the Local Government System Improvements legislation and also the idea of collaboration was quite a key feature of the Local Water Done Well Policy to encourage councils where appropriate to form multi-council water CCOs. So those were the primary drivers that have led Government to that policy.

Q. Was it a Coalition Agreement? I couldn't find it in the Coalition Agreement. Or did it just suddenly appear in 2025?

A. It was a Cabinet approved decision. I can't recall specific Coalition Agreements on that.

Q. I just wondered, if being involved in the work that you are, whether you think consultation that closes in late February is a good practice for something that could be quite a major change.

A. Look, I can certainly acknowledge that we receive a lot of feedback from councils because there's a lot happening. The bit of context from the government side is that there is very limited amount of House time to get things through this year. It's an election year. So you're trying to balance those two things, giving people fair and reasonable opportunities for participation but also for the government to be able to actually continue its policy and legislative programme.

Q. And I think you said in your reading of the statement that you anticipate that the legislation will be passed after the election. Is that correct?

A. Yes, as I indicated in my opening remarks, policy decisions have yet to be taken, but what the consultation document indicated was that the government intended to introduce a Bill into the House before the election and for that Bill to be passed after the election, so in the term of another government. That was the stated intention in the consultation document.

Q. Just finally, you've made a comment about officials are considering options for the involvement of iwi Māori and the development of regional reorganisation plans. What are the options that you're considering?

A. That policy work is still being developed and some of that will be informed by submissions. So I can't give you any further details on that because, as I indicated, there is over 1,200 submissions and that work is being undertaken alongside all the other feedback.

Q. All right. So there wasn't any involvement or discussion prior to the notification or prior to the documents going out or the consultation period?

A. No. I mean these were a set of proposals. They were developed firstly by Government and approved by Cabinet and then subject to the consultation process I've indicated.

Q. All right. Thank you.

QUESTIONS FROM REMAINING TRIBUNAL PANEL – NIL

(13:08) MR PREBBLE TO PAUL BARKER:

Q. I have one matter and it is actually a correction. I am informed by my DIA colleagues in the back of the room that indeed the Local Government System Improvement Bill is still waiting for a second reading. It went from second to third and I am suggesting now that actually it is the second reading. We can to the extent required, and apologies to Mr Barker obviously, the information when he presented his evidence was it is his third. I suggest what we do is we correct that because I am anticipating we are receiving some written questions so we can come back to the Tribunal just to make that very clear when we provide any answers to those questions. Thank you. And otherwise, thank you very much Mr Barker for your evidence today.

A. Thank you.

(13:09) JUDGE MILROY TO MR PREBBLE:

Q. Yes, thank you. If it was the third, we would imagine it would get through before the election.

A. Yes, that's correct.

Q. Alright. Yes, that would be good to have that formally corrected.

A. Yes, your Honour.

JUDGE MILROY ADDRESSES PAUL BARKER – MIHI, ACKNOWLEDGEMENT (13:09:23)

HEARING ADJOURNS: 1.09 PM

HEARING RESUMES: 1.59 PM

JUDGE MILROY:

Welcome back. Just before we begin again, we have found the trust that holds the NZUs from the Pre-1990 Crown Forest – you know what I mean – this is after lunch stuff. So the question is, and we're asking the Crown if they can

provide an answer to this from Mr Smith, it's just that we couldn't find it at the time when he was here, apparently there were 18 NZUs granted per hectare for the Pre-1990 Forest, and it's held in the Forest Emissions Unit Trust and apparently applications needed to be made and the allocations for those units closed in 2011. So we're just wondering if Mr Smith can tell us all about that.

MR PREBBLE:

I take it that will be as part of the response to questions or are you wanting that in advance of that?

JUDGE MILROY:

Response to the questions would be fine.

MR PREBBLE:

Thank you, your Honour.

JUDGE MILROY:

And Ms Seeley, you're leading Mr Bolger?

MS SEELEY:

Thank you, your Honour, yes.

(14:00) MS GRACE SEELEY CALLS

DANIEL JAMES BOLGER (SWORN)

Q. Tēnā koe, Mr Bolger. Just a few formalities. Can you please state your full name for the record?

A. Daniel James Bolger.

Q. And confirming that you have prepared a brief of evidence dated 29 September 2025 and you have that in front of you? That'll be on the last page.

A. Yes, correct.

Q. Thank you and for the Tribunal that's appellation #A139. And you have also prepared talking points that you intend to present today dated 12 March 2026?

A. I can't find the date but I do have talking points.

Q. Thank you. And again for the Tribunal that's appellation #A139(c). So if you could please present your evidence the Tribunal.

(14:01) DANIEL JAMES BOLGER: (#A139-(c))

Kia ora. Ko Dan Bolger tōku ingoa. So I'm the Deputy Director General at Fisheries New Zealand. That means, despite the terminology, that means I'm in charge of Fisheries New Zealand, which is one of the business units in the Ministry for Primary Industries.

We are, as Fisheries New Zealand, the government's principal advisor on fisheries issues, we operate the fisheries management system, and we work to ensure that Fisheries resources are managed to provide for utilisation of fisheries while ensuring sustainability of New Zealand's wild fish stocks and the wider aquatic environment.

There's a few Acts of Parliament that particularly guide us. So we support the Minister for Oceans and Fisheries in delivering obligations under the Fisheries Act 1996, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Māori Fisheries Act 2004, and there are regulations under the some of those, and the Māori Commercial Aquaculture Claims Settlement Act 2004. So I made variously reference some of those as we go through.

In my evidence I explained the background of the current fisheries regime, and how MPI works with Māori to participate in fisheries management and to enable Māori to manage their own customary non-commercial fishing activities autonomously.

I also explained MPI's role with respect to both fisheries and aquaculture and New Zealand's fisheries management system.

So today I'm gonna focus on:

1. Māori fisheries interests, with reference to the Fisheries Treaty settlement. Which kind of pervades fisheries.
2. How MPI works with Māori in the fisheries sector.
3. Māori interests in the aquaculture sector, with reference to the Aquaculture Treaty Settlement.
4. The impact of climate change on fisheries and the MPI responses to these impacts; and
5. Actions being taken by MPI to understand and address climate change impacts on aquaculture.

And maybe just a bit of an orienting thing. So for fisheries, we're the regulator, so we're advising the Minister on rules about how many fish someone can catch and all of that. We're enforcing the rules and monitoring, we're verifying, we're the regulator.

For aquaculture, it's primarily regulated by regional councils under the Resource Management Act. So our role in aquaculture is more about developing the aquiculture industry. We do have a small regulatory role but we're not the primary regulator. So we kind of wear slightly different hats in those two sectors.

Right. So just to kick off in terms of Māori interests in fisheries which are pretty substantial, the Crown's fisheries obligations to Māori arise through the rights guaranteed by the Treaty of Waitangi/Te Tiriti o Waitangi.

The Crown and Māori agreed an interim position back in 1989 to provide 10% of the then existing quota within the Quota Management System – so that's where – that's commercial fishing, Quota Management System – to a newly established body, which was called the Māori Fisheries Commission.

Then, a few years later, under the 1992 Fisheries Deed of Settlement Treaty rights were confirmed and given effect through the Settlement Act. And in 1992 it was agreed that the Crown would provide $150 million to the Commission (the Māori Fisheries Commission) to purchase up to 50% of Sealord Products

Limited (New Zealand's largest fishing company) and would provide 20% of any quota for any new fish stocks that were introduced into the Quota Management System after the Settlement Deed was signed.

As well as that kind of commercial dimension and the provision of substantial assets, the Settlement Deed also provided better provisions for non-commercial customary fisheries and outlined a requirement as well to consult Māori, through the Commission (which has now kind of evolved into Te Ohu Kaimoana), on the management regime to apply when new species are brought into the Quota Management System.

Deepwater – with commercial fisheries we tend to think about deep water fish stocks and inshore fish stocks, which is kind of what they sound like they would be, they can be affected by climate change in different ways depending on the individual species, the susceptibility to temperature variations, marine heat waves, current changes, dependence on habitats that might be sensitive to climate, and how and where that all happens, whether it's in coastal or deep waters or the east coast or the west coast and what have you. So there's a lot of variability. Dr Richard Ford is going to follow me, he's in charge of our science function at Fisheries New Zealand, and he's going to – he'll be able to answer a lot of questions about the technical science that I can't, but both of us discuss in our briefs how what I was just talking about may impact on Māori fisheries interests, and how iwi commercial fishing assets and customary fishing rights might be affected in different ways.

I am also going to touch separately on the arrangements that recognise Māori interests in commercial fisheries and customary non-commercial fisheries. Then I will discuss how these arrangements provide for input and participation of tangata whenua in the management of both commercial and customary fishing rights and interests.

In terms of Māori presence in the fishing industry, with respect to commercial fisheries, Māori rights to manage and utilise fisheries are secured by the Treaty and confirmed by the Settlement Deed and the Settlement Act. In some

circumstances individual Treaty settlements with hapū or iwi provide further guidance on how the Settlement Deed and legislation will be given effect to address their particular circumstance.

Fishing quota and monetary compensation provided by the Crown under the Fisheries Settlement was allocated to Te Ohu Kaimoana who, in consultation with Māori, developed a model that basically had a different approach for deepwater and for inshore. So for deepwater it allocated the quota and the monetary compensation to iwi in proportion to their population. For the Inshore fisheries around the coast, quota was allocated in proportion to the coast length of an iwi rohe in a Quota Management Area. So that model was ratified by Māori and legislated through the Māori Fisheries Act 2004.

It means that iwi with large populations receive most quota in deepwater fisheries, while smaller iwi (population wise) receive most of their quota in inshore fisheries.

The provision and allocation of quota and money has settled all claims in respect of commercial fisheries.

Māori now own or control the harvesting and processing of more than 40% of the Annual Catch Entitlements available to the industry. We refer to Annual Catch Entitlements as ACE as an abbreviation. And basically what that means is quota is held as a percentage of a fish stock. So someone might own 5.32% of the shares in Snapper1, so snapper around Auckland and that, and then every year that's converted into annual catch entitlement, which is the number of tonnes that someone can catch that year. And Māori own or control over 40% of the annual catch entitlement.

For individual iwi, their commercial fisheries interests are kind of circumscribed by Quota Management Areas which may extend beyond their rohe but they are fixed in place. So we manage fisheries by areas. And to state the sort of obvious, climate change may affect species differently in different Quota Management Areas.

Turning to Customary Non-Commercial Fishing.

The Settlement Deed and the Settlement Act confirm that Māori customary fishing rights are ongoing and continue to give rise to Treaty obligations on the Crown.

The Settlement Act requires the Minister to recommend regulations to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and fishing grounds of customary importance.

So, the Crown has made regulations to give effect to this obligation in both marine and freshwater areas. The regulations recognise that tangata whenua hold their fishing rights exclusively or collectively over well-defined rohe. Within their rohe the regulations enable customary fishing to be managed by tangata whenua through persons that tangata whenua appoint to authorise fishing, and they exempt customary fishing from any other regulations made under the Fisheries Act.

The regulations also enable tangata whenua to ask the Minister to establish mātaitai reserves over important customary fishing grounds where commercial fishing is prohibited in most cases and where tangata whenua may propose bylaws to manage non-commercial customary and recreational fishing.

So just on this one, so Fisheries New Zealand we don't manage customary fishing. It's managed by tangata whenua who appointment kaitiaki or tiaki who can authorise fishing, they can issue people a permit to catch whatever fish the kaitiaki determines. We help enforce it. So if people claim to be using a customary permit but they don't have one or things like this we will enforce it. But we don't make those rules.

Right. In terms of input and participation which is a phrase that we kind of use very frequently in our workplace, the Fisheries Act requires the minister to

recognise and provide for the input and participation of tangata whenua into any process to sustainably manage a fishery.

The Minister must also consult persons – so, consult being a lower kind of level than input and participation – must also consult persons who the Minister considers representative of Māori, amongst others. Usually that will be the Mandated Iwi Organisation which holds iwi quota and corporate assets on behalf of their iwi members in accordance with the Māori Fisheries Act 2004.

The Minister and iwi consulted extensively in 2004. They agreed that because of the overlapping interests amongst many iwi and hapū, it was important for them to have the opportunity to work together to understand the effect of any problem or issue on each iwi's rights and their fisheries. This would support reaching a consensus on how to work with the Crown through what's now Fisheries New Zealand to address the problem.

And that consultation and engagement process resulted in the establishment of regional Iwi Fisheries Forums to provide the primary platform for input and participation of tangata whenua into fisheries sustainability processes. Where Forums are yet to be established or may be temporarily in abeyance, MPI works directly with iwi governance entities.

These processes provide for input and participation of tangata whenua in the development of sustainability measures (which would include those that help respond to the impacts of climate change) as those measures are developed and implemented. Some measures are initiated by tangata whenua, and others are raised by us and discussed at the kind of conceptual and development stage with the Iwi Fisheries Forums and widely consulted on during public consultation processes. So, it is primarily through these processes that Māori are able to be involved in planning, research, development of fisheries management measures including measures that respond and adapt to climate change impacts on fisheries.

Where an Iwi Fisheries Forum expresses views on how kaitiakitanga is exercised, including in relation to climate change, the Minister must give particular regard to those views.

With respect to Māori interests in aquaculture, under the Aquaculture Settlement Act, the Crown must provide iwi with assets representative of 20% of new aquaculture space, on an ongoing basis. In other words, as the aquaculture industry grows, there's an ongoing obligation to provide additional space in light of that. So the regime to deliver that is reasonably complex actually because the industry is changing all the time.

So, the Aquaculture Settlement stems from the Waitangi Tribunal finding in 2002 that Māori have an interest in marine farming as part of the bundle of rights in the coastal marine area, and that these rights represent a taonga protected by the Treaty.

To identify Aquaculture Settlement Areas, the Crown considers a range of environmental and regulatory constraints to assess a site's appropriateness for aquaculture. In recent years this has included current and projected sea surface temperatures and projected marine heatwaves, to assess the Aquaculture Settlement Area's resilience to climate change.

Aquaculture settlement agreements are negotiated on a regional basis – that's sort of with regional council boundaries – with iwi, represented by 'Iwi Aquaculture Organisations'.

I'll turn now to discuss climate impacts on Māori fisheries rights and interests. Claimants have raised evidence on the impact of climate change across marine resources. So, Māori customary fisheries are by nature spatially located and static and are managed according to tikanga Māori and mātauranga Māori, practices which rely on intergenerational observation and collection of knowledge about the fisheries in the area. As noted in a report by Manaaki Whenua, there is a risk that localised impacts of climate change will undermine mātauranga through the loss of connection to certain coastal-marine

species due to the effects of changing oceanic conditions on those species. Similar risks may apply to freshwater fisheries. Claimants have noted in their evidence the impacts of climate change on traditional practices and cultural connections to the moana.

The spatial constraints of Māori customary fishing mean that climate change shifts or changes in abundance of species, as outlined in Dr Ford's brief of evidence, may impact on traditional harvesting of kaimoana. Such changes are described by some of the claimants, for example the decline in kaimoana species available during tītī harvest at Rakiura.

Although there is a lot of uncertainty about how marine organisms will respond to climate changes, overall the points that the claimants have raised align with the evidence of current changes that Dr Ford is going to discuss.

Turning to commercial fishing, there are fewer options to mitigate the impacts of climate change on wild capture fisheries than for some other primary sectors. If fish move from one Quota Management Area to another, the available Annual Catch Entitlement, may move up or down to reflect the changed sustainable yield from the fishery. So, the major presence Māori have in the fishing industry through that high holding of quota and Annual Catch Entitlement, which some of the claimants have noted, could mean that Māori are disproportionately affected by climate induced changes to fisheries in which they hold quota or Annual Catch Entitlement, and in some cases that may actually increase the value of someone's quota and in other cases it will decrease it.

With respect to fisheries adaptation and resilience.

The Fisheries New Zealand focus with regard to understanding and addressing climate change impacts on fisheries is really about adaptation and resilience. The Fisheries Act provides for a range of responses to changes in stock status that help support resilience of fisheries resources in response to potential climate impacts.

The fisheries management regime, it is kind of inherently flexible. It's designed to have catch limits move up and down or other measures be set. So it provides for a range of adaptive responses to changes in fish abundance and distribution, or interactions between species, or changes to the marine environment using the best available information gathered both through formal scientific research but also through engagement with iwi and with stakeholders. And obviously, some of those changes are climate driven.

The Fisheries Act also enables the Minister to implement urgent measures if required. There are provisions for emergency measures in the Fisheries Act, and my brief gives a number of examples of how measures have been used to respond to system changes.

With respect to enhancing ecosystem resilience, New Zealand's National Adaptation Plan notes that a resilient natural environment can buffer climate impacts. We've made significant progress on the fisheries-related actions in the Plan including implementation of the Government Strategy Revitalising the Gulf with respect to the Hauraki Gulf, and that includes the first area-based fisheries plan with three outcomes covering:

1. healthy, functioning aquatic ecosystems;
2. fisheries resources are at levels which meet the needs of Treaty partners and stakeholders; and
3. inclusive and integrated regional participation in fisheries governance.

Some of the actions underway:

1. You may have seen that the Minister closed, in the last sort of year or so, closed the inner Hauraki Gulf to commercial and recreational spiny rock lobster fishing (so, crayfish). That is consistent with management action 1.3.4 in the Plan about restoring healthy kelp forests to address the environmental impacts of kina and include management considerations for predator species – So, what that's all about is rock

lobster or crayfish eat kina, kina eat kelp. If there's not enough crayfish there's too many kina, and the kelp goes, and you get what's called a kina barren or an urchin barren;

2. Setting of stock management targets to support the needs and priorities of Treaty partners and stakeholders – and for example, in the snapper fishery in that area there was a decision not to increase because of some wider concerns even though technically it maybe could have been; and
3. Incorporation of mātauranga Māori into fisheries management decision making and science projects, including with respect to scallops and there was specific engagement with iwi and hapū about their needs and goals in relation to scallops.

Two other examples where fisheries measures are being used to support ecosystem resilience:

1. I've talked about urchin barrens already but it's not just Hauraki Gulf. So there have been other measures in Northland and wider out in Bay of Plenty aiming to increase crayfish/ kōura abundance, because of what I what I was talking about with the urchins, the kelp.
2. Secondly, blue cod. So back in 2024 we consulted on measures about reducing fishing pressure on blue cod in the Marlborough Sounds, and that review specifically noted the increase in marine heatwaves in the Sounds and the likely negative implications for blue cod, which basically doesn't really like warm water. Tangata whenua provided input into the package through Iwi Fisheries Forum representation on the Marlborough Sounds Blue Cod Technical Group and through regular direct engagement with the Forum as a whole.

Decision have been made on that now which includes a shorter fishing season that excludes the main Christmas period.

There are currently 11 temporary closures in force applied for by 10 different hapū or iwi, so that is up from four in 2019. Temporary closures support tangata whenua to exercise non-commercial fishing rights and provide for fisheries

management that better accounts for and reflects local pressures and conditions. Some of these pressures may be climate related.

Similarly, the first mātaitai reserve was gazetted in 1998, and there are now 59 around New Zealand, and a lot more people expressing interest.

With respect to climate impacts when we set a sustainability measure, like a catch limit for a fish stock or an area closure, the Minister must take into account the natural variability of the stock concerned, and when setting a Total Allowable Catch for a stock must consider any environmental conditions affecting the stock.

That requires consideration of how environmental conditions, which kind of has to really include climate change, are influencing abundance and distribution of stocks.

So you kind of look at all that and then we come up with management options that respond to the changes in stock, they're proposed, they're discussed with Iwi Fisheries Forums and publicly consulted on, and that feeds into advice to the Minister to make a decision.

So, snapper, there's an example there. West Coast North Island where snapper has become very abundant actually after being very poor in levels a few years ago. We've changed the way that management targets are set to account for an increase in snapper productivity associated with warming oceans. Basically, the method we normally use compares things to the amount of fish that were there and the absence of fishing. But when you've got this productivity increase, and the absence of fishing now there'll be more fish there than there would have been originally. So we've got a different scientific method in light of that change to deal with it.

Response to extreme weather events.

So, Cyclone Gabrielle was a terrible event in February 2023 and a reminder of how extreme weather events are becoming more frequent.

We didn't consider we needed to exercise emergency fisheries measures under Fisheries Act because there wasn't a lot of fishing going on because **(inaudible 14:24:01)** navigational and safety concerns, I mean, there were logs in the water, you know, so I saw some pretty terrible photos of people had tried to go out fishing and the big logs being hauled up on to a boat and what have you. But what we did do is actively monitor fishing activity so we can kind of track that on a real time basis so we could see how many boats are out and where they're going and so on, and we kept the conversation going with the fishers about what was actually happening.

But, you know, the medium- and longer-term implications were a key concern for everyone. And as discussed in Dr Ford's brief, tangata whenua provided early input into the research design of the marine research that Scientists New Zealand did in the wake of the cyclone.

And in fact, cyclones continued to influence fisheries management settings. In 2024 the Minister reduced commercial and recreational rock lobster catch limits from East Cape to Mahia and that was because of concerns about the impacts the cyclone has had on the rock lobster population.

Environmental factors, such as increasing sea temperatures, have been identified as the likely driver of what's a very kind of odd low abundance of females in that crayfish population. Tāngata whenua have both commercial and customary fishing interests in this fishery. During the December 2025 consultation, so it's more recent, on the next lot of rock lobster catch settings for the region, the iwi concerns were discussed about the fishery with Fisheries New Zealand through Ngā Hapū o Ngāti Porou. Those concerns were noted then in the consultation document.

So, we're building our understanding of climate impacts on fisheries. As Dr Ford can cover shortly there's been quite a number of projects completed or

underway to support our understanding of climate impacts on fisheries in New Zealand. Projects have identified that ocean warming is affecting the growth rate and productivity of some species. We're seeing expansion in the range of some species, for example snapper and kingfish. We're also seeing other species that have a lower tolerance for warm water, such as blue cod and red cod, are becoming less abundant in shallow depths. The information that Dr Ford will cover is helping improve our understanding of which fisheries are most vulnerable to climate impacts. These projects, like, we have a regular practice that our proposed research lists that's kind of shared with Iwi Fisheries Forums for discussion and during project development and when the project outputs are delivered.

I think in terms of managing climate impacts on fisheries, it is important that the management system can adjust in a timely way. The Minister announced some reforms last year, and in fact the Bill was introduced into the House yesterday, to make some changes to the Fisheries Act, to provide for active management of fisheries catch limits using different input information, which may include changes attributed to climate change. The intension is for that Bill to be passed, well, after the Select Committee process, so mid-ish, further on maybe, this year. Effectively we're trying to get it – the system is already flexible but we would like it to be more flexible is one of the key things that we're trying to achieve from that Bill.

MPI engaged with iwi representatives and organisations, including Mandated Iwi Organisations, Post Settlement Governance Entities, Te Ohu Kaimoana, Iwi Forum Chairs and key fisheries stakeholders, to notify them that consultation was open and to invite submissions.

Presentations were made to eight Iwi Fisheries Forums to provide an opportunity for them to seek clarification to help inform their submissions.

Te Ohu Kaimoana in addition was a member of the Seafood Industry Forum established by the Minister which helped identify opportunities for improving commercial fisheries.

With respect to sector adaptation, the fishing sector is exploring adaptation options. Now, we've been a member of a cross industry implementation group supporting implementation of the Aotearoa Circle Seafood Sector Adaptation Strategy, which is identified as an action in New Zealand's National Adaptation Plan.

That strategy focuses on the commercial sector.

The Aotearoa Circle website now has adaptation toolkits, along with material to support the sector to have regard to the Treaty Principles when implementing them.

Internationally, international engagement on managing fisheries in a changing climate complements the expertise of New Zealand's iwi, stakeholders and scientists informing New Zealand's fisheries management responses to climate impacts.

Just on aquaculture, because like I say our role there is a bit different, although the aquaculture settlement is a big part of our role. Building resilience to climate change includes:

1. how operations within existing water space might adapt;
2. enabling future development to occur in deeper, cooler waters; and
3. ensuring that climate change impacts are considered when identifying aquaculture settlement areas.

The Aquaculture Development Plan includes a commitment to support the industry to build climate resilience.

With respect to the Settlement, the Crown has a responsibility to ensure aquaculture settlement areas are suitable for aquaculture, and that means we've got to consider both regulatory constraints but also environmental constraints.

So, we look at sea surface temperatures, marine heatwaves, and the impact of those temperatures on the viability of an area for future aquaculture development.

Information about those, you know, sea temperatures and future suitability are discussed with Iwi Aquaculture Organisations during negotiations. Although climate change is not a mandatory consideration explicitly for selecting sites under the Aquaculture Settlement Act, in practice we commission climate forecasts out to 50 years, which would provide to Iwi Aquaculture Organisations to help everyone make an informed decisions about the suitability of a site.

Also, iwi have up to five years if they take some space in the settlement to exchange that for something if there are concerns, and then we have to kind of forecast on an ongoing basis.

Then every five years we kind of reconcile and we look back at how much growth actually happens relative to what we forecast. So if climate impacts are affecting aquaculture growth, that will then be picked up through that process.

My final page. As discussed in Dr Ford's brief, MPI co-invests in or supports a number of science projects that aim to better understand and mitigate the impacts of climate change on the aquaculture sector. Areas of focus are also discussed in my brief, this includes:

1. Selective breeding to increase resilience to climate change. And we see in the agriculture sector the profound importance of breeding. It's the same in the fish farming sector, there's heaps of potential there.
2. Spat supply, which is the biggest constraint on the mussel industry, to reduce reliance on unpredictability of naturally occurring spat. So, much of the mussel spat is harvested off a beach, currently.
3. Finally, climate-resilient space for aquaculture.

As for the wild fisheries projects, we share our science projects with iwi fisheries forums.

Seafood Sector Adaptation Strategy to Climate Change are under that.

The aquaculture industry is looking at adaptation. And we've been kind of – I've written leading, but it's probably more facilitating mussel adaptation work with the aquaculture sector as part of that Strategy.

The Cawthron Institute is leading work on farmed finfish adaptation, funded by MBIE. And Fisheries New Zealand has also supported the development of a climate change adaptation toolkit for aquaculture, led by the Aotearoa Circle.

In summary, the management focus for fisheries and aquaculture is supporting adaptation and resilience in response to climate change.

I have described the processes in place and examples to demonstrate the delivery of obligations under the Fisheries Act, the Settlement Act, the Māori Fisheries Act 2004, the regulations, and the Aquaculture Settlement Act both generally and in the context of climate change.

And I would do my very best to answer any questions that you may have.

JUDGE MILROY ADDRESSES VARIOUS COUNSEL – TRIM QUESTION TIME (14:33:10)

MS BOATWRIGHT ADDRESSES JUDGE MILROY – SOME QUESTIONS IN WRITING (14:33:59)

(14:33) MS BOATWRIGHT TO DANIEL BOLGER:

Q. Tēnā koe Mr Bolger. Ko Ms Boatwright tōku ingoa. I represent several claimants within this inquiry however I won't divulge as to who they are because we could be here all afternoon. But just wanting to get straight into it. I just want to take you to paragraph 34 of your brief where you

note that the participation processes involving Māori to provide input from tangata whenua, the Minister ultimately makes the final decisions on any matters relating to the Fisheries Management. Is that correct?

A. Minister makes – generally speaking the minister makes final decisions. The exception would be aspects of the customary fisheries regime where tangata whenua make decisions.

Q. No, that clarifies the next couple of points that I was wanting to ask you as well so that's fine, I will just move on. And at paragraph 72 you also note that while climate change is not an explicit mandatory consideration under the Fisheries Act it can be considered indirectly through environmental factoring of the **(inaudible 14:35:23)** affecting fish stocks, is that correct?

A. Yes, so it's not explicit but I wouldn't back us to win if we were challenged if we had attempted to think about the environment without thinking about climate change, you know what I mean, it's pretty essential, so yes.

Q. And so you would then agree that as climate change becomes more or holds or has more significant influence on marine ecosystems, these considerations do become increasingly important for the Crown and in particular the Minister to consider when making these decision?

A. Yes.

Q. Yes, okay. Moving on to paragraph 86, you explain that the flexibility of the current Fisheries Management Regime allows Fisheries management to respond to changes in fish abundance, distribution, species interactions or changes to the marine environment, yes?

A. Yes.

Q. And how are the fisheries management tools used to respond to these changes – to the changes experienced once they have been observed?

A. Okay, so I guess the tool that is used kind of every year is changes in catch limits. So increasing or decreasing the total allowable catch, that's the total amount of fish that can be caught, and then that that flows through to changes in the total allowable commercial caps, which kind of is measured in weight, so tons of fish that a quota can or an ACE holder can catch, and with respect to recreational fishing that's the kind of allowance then flows through to changes in bag limits or size limits for

example. And then with respect to customary fishing, that isn't controlled through that mechanism, we simply estimate the amount of customary fishing that's likely and allocate all the rest to commercial or recreational. Thank you for that and allocate all the rest to commercial recreation.

Q. Thank you for that. And further in your paragraph 86 you also state that some of the changes that may be observed is climate driven, correct?

A. Yes.

Q. And I'm not sure if this might be the most appropriate question for you or it may be for your scientists, but what types of climate driven changes may affect fisheries resources in the waters around Aotearoa?

A. Okay, I'll answer at a high level but you're right that **(inaudible 14:38:11 Rich Ford)** will be able to answer in a lot more depth than me but just temperature generally, so generalised warming, marine heat waves. So those two things you think of slightly differently. Stuff getting into the water through more storms and acidification are sort of the main things in my mind. But you can get a more scientific answer to that a bit later on.

Q. Yes, thank you, and the last question on this point is in circumstances where Māori do have customary cultural and commercial interests in any fisheries catchment area, these, would you agree that these climate driven changes do have the potential to affect those interests that Māori hold?

A. Yes.

Q. Now I just want to turn my last point, just want to refer to your kōrero at paragraphs 95 to 99 around the Cyclone Gabrielle weather events. And you refer to the impacts from them that the marine environment had from this event and also the Fisheries Management response. Again it might be a question for your scientist, but what types of impacts did the cyclone that you or the Fisheries New Zealand found did the cyclone have on the coastal ecosystems and fisheries resources?

A. Yes, so well I'll mention a couple of things and you're right, you can get a more detailed answer if you wish, but one thing was what I mentioned before. So there were logs and other debris washed into the water, sloshing around, and certainly impacting the ability to catch fish, and I don't know to what extent impacting the actual fish themselves. But

secondly, sediment. So the work that Earth Sciences New Zealand did found material loadings of sediment coming into those waters and that will have affected various fish species in different ways, Rich Ford would be able to explain that in more detail but the sediment impacts were quite significant.

Q. Thank you for that. And just finally, would you agree that engagement with iwi and hapū who do or are heavily affected by these types of weather events, do assist government agencies like Fisheries New Zealand to understand the local impacts of extreme weather events on fisheries resources?

A. Yes, I think it's a more general point about understanding fisheries impacts, whether it's extreme weather events or other things that engaging with local hapū and iwi does help understand those issues in my personal experience, yes.

Q. Tēnā koe. Thank you for your answers to my pātai. I do have further pātai that I'll just put to you in writing. Tēnā koe.

(14:41) MS RONGO TO DANIEL BOLGER:

Q. Tēnā koe Mr Bolger. My name's Eve Rongo and I represent Ngāti Kōata who are based in the Marlborough Sounds, so a lot of my questions will be around Fisheries, of course. Now, my only prior run in with Fisheries New Zealand is when an officer boards my boat to measure my catch, and this is a lot more pleasant experience, so tēnā koe. So you explain in your evidence that Māori customary fisheries are spatially located and tied to particular coastal areas, correct?

A. Yes.

Q. So then you'd understand that with fish stocks diminishing due to climate change, iwi are not simply able to relocate their customary fishery activities, correct?

A. Yes.

Q. And with strong relationships to these particular areas, it would therefore be particularly impactful on coastal iwi, you'd agree?

A. Yes, I mean, depending on what is actually happening in that particular area, but the fact that there is a rohe which is the rohe, if there is a material

impact they don't have the option of just kind of going and exercising those rights somewhere else, so yes.

Q. Yes. So I wanted to explore how that would impact their identity and customary practices. You'd understand that you know as an iwi they have a rohe and they would consider that their pātaka kai, it's kind of like their fridge, they would go there and they wouldn't necessarily go to anyone else's because that's their fridge. And how for some iwi it actually takes on part of their reputation, you know.

A. Yes.

Q. If Ngāti Kōata were to go to a culturally significant hui, it would be expected that they would bring blue cod, it's what they're known for, right.

A. Yes.

Q. So for example, if the blue cod were to diminish in numbers and it's harder to catch, with Ngāti Kōata turn up with a quarter of what they brought the previous year, that would impact their reputation, you'd agree?

A. I think that's your expertise, not mine, but I understand what you're saying, yes.

Q. Yes. And it would have an impact on who they are. Would you agree with that?

A. Once again, I'm probably not the expert on that but I can understand completely what you're saying, yes.

Q. Good try for me. Now you acknowledge that Māori have significant commercial interests, you say that in your evidence, making up more than 40% of harvesting and processing of ACE. Ngāti Kōata, I don't know if you've seen the evidence of Hemi Toia at #A029, but he talks about their interests and 500 tonnes of fisheries quotes and their interests in the agriculture companies that they are part of. You would agree that it would be reasonable to say that Ngāti Kōata specifically were disproportionately exposed to climate induced changes to fish stocks, right?

A. I'm not sure if I can say disproportionate because I just don't know in relation to what, if you know what I mean. I can see that that would be a material impact for them, yes.

Q. Okay, let's get specific. So in the Marlborough Sounds there was a blue cod review completed. You're familiar with that?

A. Yes.

Q. Okay, a package of measures have been proposed, because it hasn't been completely finalised yet, has it?

A. So there have been some decisions made such as what I mentioned earlier around shortening the recreational fishing. Well, no I can't remember I'm sorry whether there are still more to go or whether it's out at that point for now.

Q. Right. Now, Ngāti Kōata iwi members were part of that review, correct?

A. I don't know personally, but I imagine there would've been engagement that happened in some way with them, yes.

Q. Okay, yes, we had two in particular, two iwi members that were part of the Marlborough Sounds Blue Cod Technical Group –

A. Great, okay, yes.

Q. – which were a group that completed a report and fed into the review. But one of our concerns with that is that there were just two iwi members amongst a larger group and that it wasn't necessarily tangata whenua input based on Treaty rights. It was just as a stakeholder.

A. I wasn't involved personally in the detail of the group so I can't fully respond to that. But what I would say is that I'm fairly confident that we would've also been discussing the Marlborough Sounds Blue Cod issues with the iwi Fisheries Forum, the Tauihu Fisheries Forum that represents the iwi in the top of the South, and that would've been another avenue where we would kind of seek that input and participation of tangata whenua.

Q. Thank you. Now what I found interesting from that review is that it did identify heat waves as a reason why – as a scientific finding and a reason why the blue cod needed to be reviewed. But as I was reading through your evidence it was clear that that the Fisheries Act is really there to address sustainability and fish stock, and it's really just any climate change effects, Fisheries New Zealand and more reacting to the climate change impacts rather than being able to do anything to prevent climate change, you'd agree?

A. Well, in terms of preventing climate change, yes, there is very little that Fisheries New Zealand could do. What we seek to do is build the

resilience, the marine environment to deal with it and build the flexibility and adaptability. But we know the **(inaudible 14:47:45)** drivers of climate change and they're not within the control of Fisheries New Zealand, no.

Q. Those are my questions. Thank you for your answers.

JUDGE MILROY ADDRESSES MS TE WHENUA – TIME (14:48:19)

(14:48) MS TE WHENUA TO DANIEL BOLGER:

Q. Tēnā koe Mr Bolger. My name is Ms Te Whenua. I represent a couple of claimant groups in this inquiry and today am asking questions on behalf of Te Urunga o Kea, the Te Arawa Climate Change Working Group, specifically as they provided evidence by Peter Rice**(inaudible 14:48:46)** which I believe you've read. The appellation is #A057 and the appendices are #A057(a), and I give those numbers also for the Registrar just to have those ready. Thank you. Mr Bolger, did you have an opportunity to read and familiarise yourself with the affidavit of Mr Rice? I believe you've referred to it, in your affidavit.

A. I've read a summary of it but I haven't read the affidavit itself.

Q. Sure, I'll take you through it. That's not a problem. From paragraphs 2 to 7, Mr Rice sets out his qualifications and experience with respect to Fisheries, noting at paragraph 3 that he's the interim CEO of the Te Arawa Fisheries Group and a director also with that group. Do you know him in that capacity, were you aware of that?

A. Yes, I've met Peter Rice in his capacity as the chair of the Te Moana-a-Toi Iwi Aquacultural Working Group.

Q. Yes, that's right. That's a related role that he holds with respect to his role with Te Arawa Fisheries and he sets that out at paragraph 4 of his brief. You may or may not be aware that he's also at paragraphs 6 of his brief noted his experience as a legal financial and economic expert advising multi-national blue chip companies, were you aware of that?

A. Yes.

Q. And also with respect to his experience on climate change and economic matters he has published, while residing in London as a policy advisor to the Shadow Chancellor of the Exchequer – sorry if my pronunciation is

not good – for John McDonnell MP, publication *Finance and Climate Change: A progressive Green Finance Strategy for the UK.* You may not be aware of that but you are now, correct?

A. I am now, thank you, yes.

Q. Thank you. Just to give background to I guess where he comes from with respect to his perspective and the evidence that he gives, and I'm going to discuss directly your evidence on the government aquiculture development plan, which you begin at paragraph 60 of your brief of evidence, not the summary, but your main brief. And the reason for that and I'm sure you're aware, correct me if I'm wrong, that Te Arawa see aquiculture as the burgeoning industry for them which will support their resilience to climate impacts on their fisheries sector. And are you aware of that?

A. Yes, yes.

Q. Would you agree then that the aquiculture strategy and the development of the aquiculture industry for Te Arawa is highly important, in the context of climate resilience especially?

A. Based on what I've heard from Te Arawa, yes.

Q. Ka pai. At your paragraph 60 you note that the government's priority for, at least for revenue generation is that the aquiculture sector grow to one which is a three billion – **(mic cuts off 14:52:16)**

JUDGE MILROY ADDRESSES MS TE WHENUA – FROZEN (14:52:30)

JUDGE MILROY:

It would not be usual for the Tribunal to ask questions but given that we've got the space and we haven't got much time, I'll let Professor Williams ask his question.

(14:55) PROFESSOR DAVID WILLIAMS TO DANIEL BOLGER:

Q. Tēnā koe, Mr Bolger. You observe that you use the words input and participation several times in your department or in your Ministry and this summary of the brief proves it. Either Māori input and participation or input and participation of tangata whenua. You're probably aware that

both claimant and Crown evidence has referred to the Wai 262 Waitangi Tribunal report, are you familiar with that one at all?

A. Not really. I know of it, but I…

Q. Can I just summarise briefly that in making decisions about matters where Māori may or may not have an interest, there's a **(inaudible 14:56:12)**slaying scale in terms of relationship between rangatiratanga and kāwanatanga and there are some things in which Māori may have very little interest and they may just be consulted like anyone else, and at the far extreme they may be something so important to such a taonga for Māori that they should be the decision makers. And so, I would just suggest you that Māori were about halfway along the scale in this one, 40% of the commercial fishery plus Mātaitai plus Taiāpure. So they're a very, very significant participant in the fisheries industry and in the customary rights. So I'm just wondering whether you're satisfied that input and participation is sufficient to meet Treaty obligations? Because at the end of the day as I understand it, correct me if I'm wrong, the Crown is the sole decision maker at the end of the day.

A. So as I understand it, input and participation, the use of – the framework or the requirement for that arose from the Fisheries Settlement and the legislation that was drafted in light of the settlement is where that arose from. So that's what the Fisheries Act requires us to do. So that's what we do.

Q. You don't see there's any further obligations from the wider requirements of compliance with Treaty?

A. I think there’s quite a deep engagement at multiple levels if you think about the commercial interest and every time we're engaging with the commercial fishing industry. A number of the participants in the room are Māori owned companies, you know. So I don't know, I'm not – I wouldn’t want to give some kind of legal view on that, it wouldn't be for me. We're operating under the Fisheries Act and we work hard to deliver what's required and to ensure that there is strong input from tangata whenua into the processes **(inaudible 14:58:30)**.

Q. So can you tell me which Fisheries Act? Is it in 2004, the final settlement after all of the 10 years of litigation –

A. Sorry, the Fisheries Act ’96 which would've been amended at some point along the way.

Q. But so the phrase input and participation comes from the legislation?

A. Yes, that phrase is in the Fisheries Act, yes.

Q. That’s helpful. Thank you.

(14:59) PRUE KAPUA TO DANIEL BOLGER:

Q. Kia ora Mr Bolger. Just wanted a clarification in paragraph 57 of your brief – of your notes. This amendment that where you're talking about the announcement in 2025, that’s different to the Bill that was introduced yesterday **(inaudible 14:59:21)** –

A. No, that’s the same thing.

Q. It’s the same one. So that –

A. Yes. The policy was announced last year and the Bill just got introduced yesterday, yes.

Q. Right. And in that, that's that removal of the size limitations for commercial for a number of species?

A. Well, actually that's by no means the main thing in that **(inaudible 14:59:40)**.

Q. **(inaudible 14:59:40)** It’s one of the…

A. But it’s sort of in fact that's really more efficient implementation of a thing that was foreshadowed in some amendments to the Act a couple of years ago.

Q. And in relation to that, do I take it from paragraph 58 that Māori were involved in the discussions around that?

A. Yes. So the Bill, in terms of that Fisheries Amendment Bill, yes there were conversations with Iwi Fisheries Forums about the Bill and the proposals and Te Ohu Kaimoana representing iwi were a member of the **(inaudible 15:00:19)** Industry Forum that the Minister established to kind of look at opportunities for change and there was a subgroup of the forum which Te Ohu Kaimoana were also a member of, yes.

Q. Okay, so it's mainly around Te Ohu Kaimoana PSGEs as well, I mean, you refer in there...

A. I'm trying to remember now, I believe – I can't quite remember, I believe that we did have some engagement with PSGEs, in fact, it says so here. But what it says here is notifying them that consultation was open, so that was more about notifying rather than strong engagement.

Q. Thank you. Okay.

(15:01) JUDGE MILROY TO DANIEL BOLGER:

Q. Tēnā koe anō Mr Bolger.

A. Tēnā koe.

Q. I have just got a couple of questions, one is around process and Professor Williams was talking about input and participation and I just wondered if you could tell us a little bit more about that process, because acknowledging that the Minister makes the final decision, obviously there's influence involved there in terms of what's coming from the industry which Māori are a part of. So could you tell us a little bit more about how all that works?

A. Yes. So the main, as I sort of mentioned before, the main way we sort of work input and participation is through the Iwi Fisheries Forums which was kind of back in the early 2000s, people kind of agreed that was gonna be an efficient way to do it because not just efficient in terms of time taken but efficient in the sense that iwi in an area will likely have overlapping kind of interests and it was better to be having one conversation around all of that. So we support those forums to meet multiple times a year. We attend them with a range of people from our organisation both experts and more senior people as appropriate. I mean, iwi run the forum really but we will put things on the agenda. It might be our research plan, it might be a more open ended item about seeking input on something. My experience **(inaudible 15:02:54)** always have some matters that they wish to raise with us that we will then take back. And when we provide advice to the Minister to make decisions It's our practice to ensure that the views of iwi are carefully identified in there and accurately relayed and we always remind the minister in that advice of the input and participation obligations and their duties with respect to, you know, how they need to –

I can't remember the legal term, whether it's a have regard to or whatever, but the weight on which they must place on those views.

Q. So the Minister could make a decision which completely ignored iwi views, but that's not the advice that he'd be receiving?

A. So well we could also, well, we wouldn't give advice that ignored iwi views. We might give advice that was different to the view that we'd heard from iwi, but we would explain iwi views and if we had a different view we would explain the rationale for that.

Q. And what sort of things would lead you to provide advice that would be different from what iwi were asking for or had indicated?

A. So, you know, we're required to use the best available information. So, in terms of information gathering we'll often have a formal science kind of report. We might have views expressed by iwi and we might have submissions from stakeholders and some of those might in turn be backed up with some kind of science paper or whatever. So you know we're obviously trying to look across all of that and get to what the real issues and options are on anything. So it might be that there's some compelling evidence that's different to the view that we've heard from iwi and that might be because iwi saw one thing in their own area but in a wider area it's not always a case. I don't know, that's a sort of a hypothetical, not a real example. So, (a) we're looking at all the evidence, and (b) then we're looking at the tests in the Fisheries Act which goes back to the purpose of providing for utilisation or ensuring sustainability. So it might be that people have a view about pushing one way or the other on that and in the round we're not agreeing with that.

Q. All right. But if there was scientific evidence or other evidence about something, would you go back to the Iwi Forum to discuss that further?

A. That depends. Not necessarily before a decision just in the sense of there's an annual cycle, there are deadlines, if a catch limit isn't changed before the fishing year it waits for a year. It might be that it's important to act. So we're always kind of, you know, we're meeting those forums multiple times through the year so there's an ongoing conversation. We won't necessarily always go back ahead of giving our advice.

Q. All right, that suggests to me that at times the input from – that Māori haven't had the opportunity to respond to evidence or whatever.

A. Usually there will be a point, generally speaking there will be a point where we've assembled the evidence. So we may have an early – we may get early input from Māori through the forums or other means. That will feed into forming some proposals which are consulted on. Then during that process, generally speaking, we would be engaging with forums again, at which point the scientific stuff would've been pulled together and it will be out there and if iwi wish to tell us that what they're seeing is different to what the science is telling us or whatever then they will have the opportunity to do that, so generally that will be possible.

Q. Thank you.

(15:07) PROFESSOR DAVID WILLIAMS TO DANIEL BOLGER:

Q. Can I just come back? Excuse me, Mr Bolger, I've just had a quick look at the 1996 Act and there's lots of references to input and participation. It's always input and participation by tangata whenua having a non-commercial interest in the fisheries resources concerned. So can I ask you to give a written answer to a question, well, what about the 40% or so of Māori commercial interest? That's not the same as the input and participation by tangata when in non-commercial interests. There's also Māori commercial interests, very substantial Māori commercial interests. Is that recognised separately from the commercial industry as a whole?

A. There is an obligation, and it probably is better I come back in writing, there is an obligation in the Act with respect to obligations on the Crown to – I just can't remember the words if it's consult or with respect to others who hold those interests, but it's better if I come back in writing I think, yes.

Q. Right, thank you. But it is definitely non-commercial interest where that phrase appears all the time, about 15 times.

A. Yes, yes.

Q. Thank you.

JUDGE MILROY:

Right, we seem to have our online people back with us. Just to explain what's been happening, because we're so short on time the Tribunal has been asking some of its questions while you've been offline. You will be able to see the questions and answers when the transcript comes out, so hopefully that will be satisfactory. I did have one final question but I think Ms Te Whenua you might be building up to the same question that I had. So I will hand back to you and leave you to ask your questions.

(15:09) MS TE WHENUA TO DANIEL BOLGER:

Q. Thank you Ma'am and thank you Mr Bolger for allowing me to kickstart again where we left off and we were looking at your brief of evidence, or I was – had highlighted your paragraph 60 where we were talking about the government Aquaculture Development Plan and I'd asked you if it was I think correct, where we left off, that the, as you note, the aim and aspiration is to reach a $3 billion revenue industry by 2035.

A. Yes, that's right.

Q. And you note at paragraph 61 the development plan includes a commitment to support the sector's adaptation to climate change, that's correct?

A. Yes.

Q. But then you go on to note, sorry, whilst also noting the importance of that Māori Commercial Aquaculture Strategy and also Claim Settlement at paragraph 62 for Bay of Plenty iwi. You also note at paragraph 63 and paragraph 67 that whilst 20% of new aquaculture space is required to be reserved for iwi on an ongoing basis under the Aquaculture Settlement Act and 67 hectares of the space has been granted via coastal permit farming has not commenced in any of those areas, that's correct isn't it?

A. That's my best understanding, yes.

Q. Now with respect to – what are the challenges that you're seeing with respect to iwi not being able to realise the asset and begin aquaculture farming?

A. So there's a challenge for the entire aquaculture industry in the Regulatory Framework and the government, you know, has attempted to address that in a number of ways and, you know, current changes to the

Resource Management Act are another opportunity for that. But most people in the industry would be of a view that the process of obtaining resource consents to progress aquaculture has been very difficult.

Q. Are any other –

A. They may not be the only constraint but that's a major one.

Q. For Māori, are there any other specific challenges that you're aware of? Are there funding challenges or access to capital challenges for iwi Māori?

A. I expect there would be, I expect there'd be access to capital challenges for many entities that wished to establish an aquaculture farm depending on the kind of farm, some of them can be very capital intensive, yes.

Q. Is there any allowance in the aquaculture strategy – the Crown's Aquaculture Strategy to address that particular challenge?

A. I mean, maybe I'll step back from that. So the settlement is the settlement. It enables iwi to take either aquaculture space or money and in some cases iwi may take a small amount of space and the rest in money with a view to helping fund the development of the space. We also will typically provide money to assist the process of obtaining a resource consent. The Crown has other avenues available for businesses including Māori businesses that seek support with their development. So might be through, in MPI we've got Māori Agribusiness function which may fund like a scoping study or something or an investment in respect of something along those lines. MPI also has the **(inaudible 15:13:47)** Growth Fund where sectors or businesses can seek funding. And then more broadly in government through Kānoa, the Ministry for Business, Innovation and Employment, there has been and is investment in aquaculture businesses such as Whakatōhea Mussels for example has had material investment from Kānoa. So there are quite a lot of Crown avenues to support in that.

Q. Mr Rice is quite critical of, despite those avenues which you outlay which I'm grateful for, he's quite critical of – he remains critical of the capital available to iwi to develop that particular asset. At paragraph 74 he says to achieve a $3 billion industry by 2035 the government needs to move

faster and smarter and take on more risk. Do you have any comment on that?

A. I agree that it's a big goal and it requires a lot of action, I think that is a lot of action, but I like I said at the start I think getting the regulatory settings right probably be the biggest driver of whether that goal is met.

Q. Mr Rice provides some particular financial models that he is aware of being utilised successfully overseas in particular. From paragraph 58 he refers to research and development mission led models through the development of economic development agencies and supported by development banks. Are you aware of programmes? Have you looked into in your capacity as Fisheries New Zealand similar programmes and types of funding regimes?

A. I haven't personally looked into those.

Q. Do you think there are existing – would you agree that more could be done then to look into other models that could benefit and fund and expedite the sector?

A. I think if it's about Crown investment then that's probably beyond, like actual commercial investment, that's probably beyond the scope of MPI's activity to do that. Kānoa do invest in commercial enterprises and that's probably how the Crown is dealing with that. I'm not sure I've got much to add on that.

Q. I guess my last line of questions, and in the context of your answer, Mr Rice refers to the precautionary principle at his paragraph 39 which is a principle contained in the **(inaudible 15:16:50 RIO)** Declaration, which says that in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, and to amp up funding research development and investment in those areas. Would you agree that it seems the Crown has not done enough to meet principles – these types of principles?

A. No.

Q. You could not agree, that's fair enough. Would you agree that more could be done?

A. Well, under the – I'm not sure we're talking aquaculture of fisheries but under the Fisheries Act, there's something a bit similar in the information principles which sort of says just you still have to act even if you're not quite sure if there's a problem. So that is kind of how we operate in fisheries, you know, using the words in the Fisheries Act, not these words, but it's a little bit similar.

Q. Okay, thank you so much for your time and for answering my questions today.

JUDGE MILROY:

Thank you, Ms Te Whenua, and we are very sorry that there was that big interruption and we just have to blame it on the internet. The final questions for you Mr Bolger are from Mr Lyall. Sorry, Ms Swedlund.

(15:18) MS SWEDLUND TO DANIEL BOLGER:

Q. Tēnā koe Mr Bolger. My name is Ms Sweetland. I appear for a number of claimants with interests around the motu, but specifically in Te Tai Tokerau, Heretaunga, the North-Eastern Bay of Plenty, and around Lake Waikaremoana. So I'll get right into it. Just to begin, quite a broad question, so your evidence stresses the need for ocean ecosystems to be healthy and diverse so that they can adjust to climate threats. Would you agree that the Crown's adaptation policies will be most beneficial if they support ecosystem resilience rather than focusing on separate species?

A. Well, I think both are important. Yes, the ecosystem's important but it doesn't mean you don't have to act with respect to particular species when there are issues.

Q. Yes, but you would agree it is important to support ecosystem resilience on the **(inaudible 15:19:39 whole)**?

A. Yes, my understanding of the science is that it is believed that a wider – a healthy ecosystem will help ensure resilience through the challenges of climate change, yes.

Q. And so, at paragraph 102 of your brief, you note the intended reforms to the Fisheries Act. If we could just go through these in a bit of depth. So the reforms would allow the Minister to make one decision to set catch limits for up to a period of five years, that's correct?

A. Yes, in two different ways. So that's one of the things in the reforms, yes, either to set a kind of a staged catch limit, so it might step up over the years or step down for example or temporarily increasing go back down, or to put in place what we call a management procedure, basically like a formula which, after consultation and engagement, would set out how fisheries is gonna be managed for a period and then you would kind of turn the handle on that unless there was a reason to put the flag up and stop and you do that for a maximum of five years.

Q. Great, I was gonna go there so that's perfect. And your view is that this would allow for more responsive settings that may consider climate change?

A. Well, the current system is inherently flexible, but there's quite a major limit to the number of fish stocks that we can review in any year and we now get way more data every day than we've ever had before and one of the goals or the thinking in behind the bill that's just been introduced is to enable us to use that data better so that in any given year we can address more fish stocks and for any given fish stock it can be looked at more often.

Q. That makes sense. But there is nothing in the proposal that would require climate change to be taken into account?

A. Well, I don't think it's more or less than what's in the Fisheries Act at the moment, so that's kind of like I was saying before, you have to take the environment into account and I can't see how we could do that given that the environment has been changed by climate change. I can’t see how we could do that without thinking about climate change.

Q. But to **(inaudible 15:22:16)** climate change into account, that would rely on the minister being able to access relevant information on the impact of climate change on fish stocks, distribution, threats et cetera.

A. Yes.

Q. Yes, thank you. And the impact of climate change is not a focal point of current stock assessment research, is it?

A. Well actually, across our science team, and Dr Ford may be better placed to answer this question in more detail, but I'm not sure that I'd fully agree with that. There is certainly a climate dimension across much of our research as well as climate change specific projects but I'll maybe defer to my colleague to give a more comprehensive answer.

Q. **(inaudible 15:23:04)**. The reforms have also meant that catch limits or will mean that catch limits can now be set with social, cultural and economic values positioned as highly as biological values, is that correct?

A. Sort of. The current Act is a bit odd because it lets you, in one place in the Act it says that you can – I'll try and get this around the right way. There's a bit in the Act that talks about the rate, the way in rate of a rebuild and there's a bit in the Act that talks about the appropriate time for a rebuild. And the courts have found that currently, which wasn't how the Act was operated for most of its life, the courts found that you can't take social cultural matters into account for the appropriate period for a rebuild but you can for the rate of a rebuild. And the provision in the bill would say you can kind of take it into account for both.

Q. Yes, but would you agree that this could result on a focus on the economic in terms of the period for a rebuild, a focus on the economic is something that is more easily quantified at the cost of the environmental when setting catch limits?

A. No, I don't think so because the purpose of the Act is provide for utilisation while ensuring sustainability, and the courts have found that that ensuring is a higher test if I understand the legal position right, so we will always look back up to that purpose.

Q. So in the 2022 National Adaptation Plan, I can bring this up if you like, the action point 2 was to strengthen the Fisheries rules through setting tighter rules about what commercial fisheries must bring back to port **(inaudible 15:25:09)** return. Is that your understanding of that or would you like –

A. Yes.

Q. Yes.

A. Yes, that was done –

Q. And the –

A. Yes. So that was a change to the Fisheries Act. I'm not quite sure when but… three or so years ago. And then some of those provisions are now – will now be changed again with the bill that's just been introduced.

Q. Yes. So my understanding and please correct me if I'm wrong but the current Fisheries reform will remove the current requirement for fishers to land **(inaudible 15:25:49)** the catch.

A. The construct of the framework is that you have to remove – you have to land it unless there's an exception that says you don't have to. So it adds another exception, the bill that's been introduced, which says that if the fish is monitored by a Fisheries New Zealand camera or a Fisheries New Zealand observer then you can return it but you have to count it against your annual catch entitlement. So you don't get to kind of biff it for free, you've still got to pay for it.

Q. Yes, sure. But would you agree that it still has the potential to increase **(inaudible 15:26:27)** status quo the wasting of fish?

A. It's actually a bit of a tricky one because, well, the status quo hasn't even fully been implemented yet from that bill because there was a time period to deal with what were a large number of sort of legacy exceptions if you like. So we're only part way through that process. So I don't know, I mean, wasting, I don't know if that's the right way to put it. It will potentially lead to more fish being discarded than if the bill hadn't been introduced. But there is an incentive on fishers not to find themselves in that position if they possibly can because they are having to count that against their catch entitlement which means they can't catch some other fish that they could've sold.

Q. But would you agree that given the action in the National Adaptation Plan was to strengthen the fisheries rules through setting these types of rules around what can be brought back to port and what can be discarded, this new legislative change undermines that action?

A. I don't think so because the provision kind of if you go back before the last amendment it was a muddle. So there were various kind of reasons you could either had to discard fish or could discard fish. Some of the people couldn't really track down the reason for, they're lost in the –

missed the time. So we've now got a coherent system that I'd argue is a significant improvement and then this will change that system. Well, people can make their own judgment about how it compares, but I think one could reasonably assess it as being sort of a stronger and better system than what was originally there, yes.

Q. **(inaudible 15:28:20)** but not what was there in the 2022 Fisheries Reforms.

A. Well, there is quite a strong case to say with respect to the – monitoring discards is the name for that thing where you can discard a fish if it's monitored. It's not negative for sustainability for a fish that has no value to be put back in the sea rather than take into land and possibly ending up in a landfill or something. So it's probably – in the cases where that would happen, and we don't know how many that would be, it's probably better for it to be in the sea.

JUDGE MILROY:

Ms Swedlund, I'm afraid you'll have to ask any further questions in writing. That's your time.

MS SWEDLUND:

Thank you very much Mr Bolger and thank you, Ma'am.

JUDGE MILROY:

Thank you. Last thing is I just need to ask Matua Kevin who's a Tribunal panel member, whether he has any questions for you.

QUESTIONS FROM KEVIN PRIME – NIL

QUESTIONS FROM CROWN COUNSEL – NIL

JUDGE MILROY:

Thank you very much Mr Bolger and yes you can escape. Now, our next witness is Dr Ford.

(15:30) MS SEELEY CALLS

DR RICHARD BRIAN FORD (SWORN)

Q. Tēnā koe, Dr Ford. Can you please confirm your full name for the record?

A. Richard Brian Ford.

Q. Thank you and can you please confirm that you've prepared a brief of evidence dated 29 September 2025 and you have a copy before you?

A. Correct.

Q. Thank you. That's appellation #A138, and you have also prepared a PowerPoint presentation that you intend to address today?

A. Yes.

Q. And I understand there is one point that you wish to address today prior to your presentation. Can you please explain?

A. Yes. I perhaps should've noticed this earlier but in Peter Rice's evidence I went to paragraph 70 to look up some recommendations that he had cited and I believe there must be an error in there somewhere because the report he states that those are in, I cannot find them in that report, which is one which we commissioned from Fisheries NZ.

Q. Thank you, Dr Ford. If you could proceed with your presentation.

(15:31) DR RICHARD FORD: (#A138)

Thank you. So I guess I stand before you with my qualifications, or sorry, sit. I've got a doctorate in Marine Science. I've worked for Fisheries NZ since 2008. I've represented Fisheries NZ science at two iwi fisheries forums, the ones in the South Island, Te Tauihu and Te Waka a Māui, since 2016. And I've been the Science Manager for Fisheries NZ since 2019.

I'm gonna talk today about the science about climate change commissioned by FNZ. I'll also mention other science I know that is ongoing that we might not have commissioned ourselves and where government is funded or contributed to that I'll try and highlight that. I guess an important point to note is that a lot of the examples I'll cite do not necessarily mean that happens the same way for that species across its entire range or for other species. So they are simply that, examples. And I guess I also make the point that science progress is not always linear or predictable, so as hard as we try to commission science

projects that are gonna directly feed into our policy or our management, sometimes that works and sometimes it doesn't work and there's not a direct input there. Thank you.

So in terms of how the science part of Fisheries NZ interacts with iwi. We have engagement and participation in the identification and prioritisation of research through the Iwi Fisheries Forum process that Dan Bolger outlined.

So all of our planned research is discussed annually by Scientist with that Iwi Fisheries Forum. At the same time we're open to suggestions for research from Iwi Fisheries Forum at any time. So we generally go to them sort of November/December time to discuss our sort of long list of proposed projects and get any feedback on those projects from them. We then put that feedback from Iwi Fisheries Forum to our leadership for a project prioritisation. So we're going from a long list of potential science that we could do to a shorter list of stuff that is the highest priority and that we can afford to fund. And then we generally go back to Iwi Fisheries Forums often around March, but sometimes the differs, to give them some feedback on how that process is played out.

We'll also engage with them about ongoing research that they're interested in and sometimes that's ongoing projects, sometimes that's reactive research. So the two I've mentioned up there are the Cyclone Gabrielle research which got mentioned earlier where both Fisheries NZ and NIWA engaged with the local iwi about the design of the science and the outputs of that, and the Kaikoura Earthquake where we engaged primarily through the Kaikoura Guardians.

So you don't need to worry about the detail of the diagram in the top right, but I guess the point here is the marine environment faces many challenges. Climate change, pollution, extraction, et cetera. It's not always easy to separate those drivers of change. So often we study the environment and climate change is part of that environment, but it's not always considered separately from that. So for example, climate change affects the oceans directly through changes in heat and acidification, but also through increased runoff. But at the same time you might have pollution and extraction going on at the same time.

So it's not always easy to neatly box things up and say this is climate change and this is something else going on.

So this evidence will cover science that focuses on climate change but also science that investigates environmental change where climate might be a part of that. So for example, affecting recruitment and stock assessments. So, recruitment is the number of young fish coming into the stock that are then able to be caught by the gear that you're using for harvested species. Or affecting prey availability for hōiho in multi-threat risk assessments. So multi-threat risk assessments are thinking not just about the threat from fishery but the threat from dogs on land or habitat loss or all sorts of things.

So in terms of research provision, across government the main places where we see climate change research for fish relevant to fisheries is through MBIE, DOC, MfE and ourselves. MBIE's bolded there as they're the largest funder in this space.

We spent about $20 million a year, and this is taking a relatively long view, since about 2000 we've spent around that. At the moment, our funding is around $17 million per year. But we also recognise that industry contribute directly to some research in that space.

Around three quarters of that is usually spent on stock assessment. And those assessments integrate recruitment, so the number of young fish coming in over time. So that's gonna – often in many species that will change due to climate change but we don't separate that out, that's all sort of integrated in.

And so, we have done separate studies over time looking at the impacts of climate change, and we know for things like snapper they do well as the water warms and for things like Hoki they do less well. So we've done both focus studies trying to look at those relationships but we also build it into our stock assessments over time.

I went back through our accounting system and if you search the projects that have got climate in the title it totals up to 3.6 million we've spent on those projects since 2005. But as I've said, there are other projects that will incorporate it in various different ways.

There's also the Customary Research Fund. So when I talk about that round about $20 million a year, there's a much smaller fund that looks for applications for iwi driven projects. There's been no projects explicitly on climate change that've come through that mechanism but noting that when you do look at change over time it's gonna be built into that, sort of, if you're doing monitoring for example.

So warming is happening in New Zealand. It's a known fact. The warming of 0.2-0.3 degrees Celsius per decade. We've shown that from studies where funded in the surface waters and the coastal bottom temperatures are warming by about 0.1 degrees per decades. So that graphic off to the right, that's this month's prediction showing that you're gonna get the greatest warming in bottom waters off the south-east of the South Island there.

We know this is regionally variable. Surface temperatures warm quicker Kermadecs and offshore North Island and the bottom temperatures are gonna warm fastest on the Chatham Rise and Southland areas.

And the heatwaves, the number of heatwaves are gonna increase across all of New Zealand, but they'll get most intense around the North Island. So when I've got organisations in brackets after the statement, that's the organisations who've funded those pieces of work.

And it’s also the weather. Warmer waters mean more severe storms and larger rainfall events.

This can play out in terms of more sediment and forestry debris entering the ocean and more coastal erosion. What that's gonna mean is that coastal habitats will become muddier and sediments and shallow depths can be

resuspended. Now, there are some species who will benefit from shallow waters becoming more muddy and there are some species that won't. We know this is likely to be higher along the East Coast and the protected bays. And in 2023 Cyclone Gabrielle, we saw this playing out in terms of smothered shellfish and finfish habitats and impacted water quality for two to three months. Now, the impact on fisheries is not yet fully quantified. We haven't explicitly looked at that although we can look at catch records over time.

MPI also supports, not through Fisheries NZ but through other parts of MPI, research to minimise erosion. So there are some measures going on out on the land but others would be better to talk about that than I. And what we've found agrees with things like Peter Rice's brief where he says that greater sediment delivery leads to increased stability, decrease like penetration and high bacterial loads. We're not disputing that.

Equally when you look at acidification and currents, we'd agree with Abby Smith's brief that ocean acidity increases with those numbers between ’98 and 2000. And it's projected to continue to increase down to a pH o 7.75. Now, that's a bit counterintuitive down to a pH of 7.75 but it just means it's getting more acid over time. That ocean acidification is monitored by a network which was set up by MBIE and DOC since 2016.

And Dan was asked the question before about the impacts of acidification. You’ve got most of them. The one I think he missed was around current changes. So with climate change you can get changes in currents. So the Moana project has been monitoring temperature from net sensors to understand those currents, and that was funded by MBIE. And more recently in February this year there was an announcement, there's a new project funded by MBIE to the tune of 8.9 million over five years to look at ocean change forecasting for climate resilience in Aotearoa. So there's ongoing work in that space.

And modelling also occurs of the heatwave events and shifts in the Sub Tropical Front. Now, when I say the Sub Tropical Front, you see that red line on the

presentation? That's where the Sub Tropical Front is. It's the meeting of the warmer water to the north and the colder water to the south and there are currents associated with that and at the moment that sits over the Chatham Rise sort of to the east of Christchurch there and that's a high productivity area for fisheries because of that, those currents.

So you've got the physical changes that happen at sea and then there's a question of how that impacts on the things we're most interested in which are the fish that we are going fishing for. So it happens in different ways.

You get range expansion and recruitment increases, so the number of juveniles coming into fishery for things like snapper and kingfish, and we're seeing those further south than we have in the past. But we're also getting some changes that we're not so fond off like the long spine sea urchin which is forming barrens in deeper waters than we've seen before, and it's there in greater numbers because of those warmer waters.

And Dan also mentioned we're getting some poor recruitment or loss of food habitats for things like blue cod, red cod, pāua. And we know that acidification impacts on things like larval survival and development for pāua and green-lipped mussels from some work we've paid for.

And heatwaves have negative impacts particularly in areas like the Hauraki Gulf and Fiordland around bull and giant kelp and sponges.

But we've also looked at some species that show no trends. We've looked at eel recruitment over 27 years and it's highly variable but doesn't seem to be varying with any particular trend over that time period when we last looked at it in 2022.

So those were sort of a lot of the highlights from the work we've done or is ongoing but there's stuff that's ongoing that's more about informing baselines. So for example from some remote sensing work we know there's been a decline in productivity from 2020 to 2023, which is work MfE paid for.

We've looked at the distribution of fish so they're modelled nationally, so that looked allow us to form a baseline that we can compare further results against.

We've been monitoring Zooplankton down in Sub-Antarctic since about 2008. Often industry vessel that goes down there to fish toothfish in the Antarctic.

And in the grey there we've got an ongoing project about macroalgae mapping and modelling to try and look at the impact of climate change there. And there's some regional trends in kelp cover now available. Now sometimes for things like that you have to look over a pretty long time scale because we know that kelp gets damaged by storms and the cover changes when you look at it by satellite from satellite cover quite a lot. But we're looking to try and see if we can see trends there.

And in terms of informing impacts, we've done lab studies on phytoplankton, snapper and green-lipped mussels to warming and acidification.

DOC's done a review on the impacts of climate change on marine mammals which has showed that the most vulnerable species are the Westland population of New Zealand fur seal, Māui dolphin and a number of baleen whale species.

And so when you've got all this information coming in, it also helps to think about how you would prioritise actions. So we've got a project on the go at the moment, which is using a Canadian researcher actually to look at a climate vulnerability assessment tool to say if you're going to spend money on climate change, what makes the most sense where you're gonna have the most impact. So that's a piece of work that's ongoing and very current. I saw a presentation on it last week.

Moving on to Aquiculture. There are broad impacts. We've paid for heatwave mapping and water current modelling studies to inform site selection because it's so critical in terms of aquaculture.

We know increased storminess is a risk to aquaculture not just in New Zealand but more widespread than that.

And algal blooms are likely to increase in occurrence and frequency in some regions with climate change, from work we're funded.

MBIE have also tried to look into the specific mechanism around how that works in terms of public health.

In terms of salmon in particular, we have seen mortalities in Marlborough Sounds associated with higher temperatures. Sorry – chinook salmon is the species of salmon we're farming here. And we've had mortalities from oceanic waters, and the mechanism of mortality as I've said it's been investigated by MBIE. Sorry that second bullet point that says: "MPI support selective breeding," that should be, "MBIE support selective breeding for salmon thermotolerance." So the idea that you can breed salmon that are more tolerant to higher temperatures is being investigated.

And MBIE's also funded some work with Te Arawa Fisheries around a climate adapted finfish research programme is working on adaptation strategies. Now I haven't seen progress on that so I can't talk in depth about that, but I do know that it's ongoing.

And my last slide is more talking about green-lipped mussels. We're supporting the mussel industry in a number of ways. It's more around resilience to a number of factors, one of which is climate change. So we're developing a cost-effective nursery feeding and culture methods. Barge-like system for rearing spat to larger sizes. New harvest techniques (including ocean based spat catching, nursery units, spat feed and substrate for attachment.

We're trying to quantify the benefit and value of triploid mussels. So triploid mussels are those that've got three sets of chromosomes instead of two. So what that means is they're sterile and they are supposed to grow faster because

they're not putting that energy into reproduction. And looking at spat survival and retention of those.

And we're trying to identify Northland sites that are appropriate for aquaculture development of mussels and oysters given climate change.

So I think that's all I have to say and I'm happy to take questions.

JUDGE MILROY ADDRESSES COUNSEL – TIMETABLE (15:51:49)

(15:52) MS SWEDLUND TO DR RICHARD FORD:

Q. Tēnā koe Mr Ford, Dr Ford. My name is Ms Sweetland and I appear for a number of claimants with interests in the Te Tai Tokerau, in Heretaunga, in the North-Eastern Bay of Plenty and around Lake Waikaremoana. So from your evidence I take it you would agree that climate change is likely to create multiple stresses for ocean ecosystems, just very broadly?

A. Yes.

Q. And would you agree that understanding how these stresses may interact or do interact is important to know for adaptation purposes?

A. Yes, but I would note that that's a gradual process, sometimes it's hard to understand how they interact, tend to look at what results from the other end. So you could spend a lot of time and energy trying to work out exactly how they interact. You might be simply better to try and measure the result of that to understand how multiple factors, because climate change doesn't happen in isolation from anything else that's going on in the ecosystem.

Q. And so you've noted throughout your brief in a few places that for example the impacts of marine heatwaves on fish physiology remain poorly understood, that the impact of fish – of Cyclone Gabrielle and fisheries remains not quantified. Would you agree that this lack of understanding is due to the **(inaudible 15:54:24)** research that specifically analyses the impacts of climate change in Aotearoa?

A. No.

Q. Why? Would you say that these remain fully understood?

A. I think there's a number of challenges that are going on, climate change is one of them, but there are – the marine ecosystem is very big. There's a lot that we don't understand. So we tend to prioritise research and some of the climate change questions get prioritised. There's a real balancing act going on in terms of the needs of fisheries and what science we prioritise and so we balance a whole lot of different factors when we're thinking about what questions we ask and what questions we need an answer to. So there will always be more questions that we could ask. So we tend to prioritise those that we think are most important for trying to make the decisions we need to make.

Q. And would you agree this largely comes with economic considerations as well? Given that for example, **(inaudible 15:55:43)** studied with aquaculture?

A. There are economic considerations within that research prioritisation, yes.

Q. Ka pai. And you've noted that MPI has funded numerous research projects examining, specifically examining the effects of climate change and the total funding has been 3.6 million since 2005. In the context of massive fisheries assets, the taonga status of some species, and this is **(inaudible 15:56:22)** drop in the bucket, would you agree?

A. Whenever you're trying to investigate a new area of research you have to start and build building blocks. So often you'll start with what do we know, where the gaps, what can we do to fill those gaps? It's a gradual process. And yes, there's $3.6 million on climate change specific research. There's a whole lot of other research that's also going on that contributes to our understanding. Some of which is funded by Fisheries New Zealand, some of which is funded by industry or other parts of government. So I think it's probably misleading to focus on just that $3.6 million number. I think there's more going on than that number represents.

Q. But that's the MPI **(inaudible 15:57:22)**.

A. Sorry?

Q. That’s the totally funding for the MPI **(inaudible 15:57:27)**.

A. No.

Q. On climate change I mean.

A. Sorry, that's projects that specifically mention climate in the title. There's other parts of different projects where climate change is a component.

Q. So your evidence is that the majority of MPI's research funding is spent on stock assessments. And so these stock assessments, you say they primarily focus on particular species rather than looking at ecosystems as a whole?

A. Yes.

Q. Do you think this is missing potentially the impacts of climate change on the ecosystem as a whole?

A. What we control when we're trying to manage fisheries is often the take of single species. So we do consider the – how this take impacts upon other species taken at the same time. But it pays to focus your science on the decision you're trying to make at the other end and often that decision is about the take of a single species and the implications of that. So we tend to focus the science on that.

Q. And then turning to the Customary Fisheries Research fund. So when was this established?

A. Sorry, I don't know. I joined in 2008 and it was already established then.

Q. I can ask in writing if that's something that you can provide. And so **(inaudible 15:59:16)** in your presentation but my internet fell out, but how much funding is available through this research fund?

A. At the moment there's 180,000 per annum available.

Q. And sort of how many projects roughly would that fund per annum?

A. Off the top of my head I think four or five, something in that region.

Q. And do you tend to get more proposals than the amount that gets spent **(inaudible 15:59:49)**, is oversubscribed?

A. I'd say both of our research funds are oversubscribed and we have more proposals than we could support.

Q. And is this the only dedicated research fund for tangata whenua in this space looking at customary fisheries?

A. I'm not sure if there's any funding. I think there was some around eel fisheries through another part of government but I'm unsure if that still continues.

Q. And is there any scope for supporting capacity and capability building that iwi and hapū within the fund or is it more for already established projects if that makes sense?

A. I believe there is some scope to support capacity and capability building there, but we also do take opportunities to support that through our normal research fund. For example, there's a couple of members from I think it's Tainui who are going out on a West Coast North Island trawl survey, I think they might be out there right at the moment actually.

JUDGE MILROY ADDRESSES MS SWEDLUND – TIME (16:01:08)

(16:01) MS TE WHENUA TO DR RICHARD FORD:

Q. My questions are quite specific and I understand – were you in the room when I introduced myself?

A. Yes.

Q. Great, so I won't need to reiterate that, I'll go straight to the questions which are just really clarifications around your response to the allegations in the claims from your full brief of evidence at paragraph 48. Do you have that in front of you?

A. Yes.

Q. So there you note, and these are quite specific responses to the evidence of Peter Rice, that you're not aware of evidence to support that marine heatwaves lead to sudden spikes in water temperature that can overwhelm mussel physiology and lead to increased stress and mortality rates. Would you like to explain what you would support with respect to or what it is that you don't support with respect to that allegation?

A. Sorry, I possibly could've been clear in my response there. I'm not disagreeing that marine waves can lead to sudden spikes in water temperature. I'm saying that we're not seeing the evidence to support that that's overwhelming the mussel physiology leading to increased stress and mortality rates. The evidence I've seen suggests that we're not seeing those impacts in the mussels.

Q. Just wish to refer you to your report and it's appended to the brief of evidence of Mr Rice. Now, that's appellation #A057(a). I can share my screen Ma'am if it's easier and in the interest of time.

So this is a report of Fisheries New Zealand, you'd agree?

A. Correct.

Q. And it's with respect to marine heatwaves. You're familiar with this report?

A. Yes.

Q. So throughout this report, for example from page 4, and I've highlighted references to the impacts of marine heatwaves on green-lipped mussels.

A. Yes, I can see that.

Q. You can see that and then without wishing to waste anybody's time I'm gonna try and be as efficient as possible at driving this, but again specifically at page 15, are you able to see this highlighted part here referring to the effect of heatwaves on physiology of shellfish?

A. I can see that. I don't know that sentence off the top of my head but I'm not – I trust that that sentence is written but I just can't see that it refers to shellfish at the moment.

Q. Right. I also checked, we can double check perhaps in writing. I'll move down to where it's more expressed at the next page 16 where mussel deaths from heat stress in Northland Beach were recorded and observed in the Bay of Islands. So that's a mortality factor. Can you see that? And I guess would you concur that this is credible study and credible outcome of the study, this observation?

A. Yes.

Q. Thank you and it does continue on at page 18 to note the stress factors on spawning mussels caused by temperature stress. Can you see that and again concur that's a credible outcome of your incredible study?

A. That's stress induced spawning, so yes, leading to an increase in stress, that agrees.

Q. Thank you. I don't wish to waste your time or anybody else's, but just for the – because mussels are such a critical factor to aquaculture, the aquaculture sector for Māori, it is important, wouldn't you agree, that if heatwaves are causing stress to mussels as a result of climate change,

that it's known to Fisheries New Zealand and that research on the effects and how to avoid them should be prioritised?

A. Yes. So my apologies that my evidence obviously missed a couple of details here. Yes, it's important and it is – that was one of our reports. So we definitely know about it now and have been reminded so thank you. Sorry, can you repeat the second part of your question?

Q. Thank you, Doctor. The second part was around, well I guess it's slightly concerning that there's a knowledge gap because what happens for us as Māori and **(inaudible 16:07:37)** claimants deposed to us in the Tribunal consistently is that where there's a knowledge gap in data collection or in the recognition of that data by agents of the Crown, especially those who provide advice, it affects policy. So the reason why I highlight it is around the possibility that the lack of recognition is feeding through to policy advice. Would you agree that if this is a significant impact on mussels, heat stress, that therefore should be prioritised in terms of research and climate adaptation in the aquaculture sector?

A. I guess I'll go back to something I said when I was presenting my evidence. There are often examples, there's a question of significance in priority here that you've raised and I guess that has to be weighed against the significance and priority of other research needs that we have. So there are many things to be weighed here. Yes, the significance and priority should be weighed against other things that we might spend our research money on.

Q. I understand that. Just a couple more questions because in interest of time, would you accept that – do you accept that Māori are key players in the aquaculture and fisheries sectors?

A. I think based on the evidence that Dan Bolger gave earlier yes I'd have to agree.

Q. Do you therefore accept that climate impacts on the aquaculture and fisheries sectors are going to be significant for Māori communities who hold interest in those sectors?

A. It's a bit outside my field of expertise but based on what I understand, yes.

Q. And in the context of priorities as a Treaty partner, would you accept that that elevates the need to prioritise climate impacts, research,

understanding and policy and funding by Fisheries New Zealand and the like with respect to aquaculture fisheries and climate impacts?

A. Sorry, that's truly outside my expertise as a fisheries scientist. I will let other answer that.

Q. Fair enough. Thank you very much Dr Ford for your responses today.

MS TE WHENUA:

I will note that, Ma'am, I may have to put further questions in writing. There were other anomalies with respect to Mr Ford's responses, direct responses to allegations around the evidence that Mr Rice has put forward including his paragraph 70 which was raised by Dr Ford before he began today.

JUDGE MILROY:

Thank you, yes, you have leave to do that. Thank you Ms Te Whenua.

JUDGE MILROY ADDRESSES MS RONGO – QUESTIONS IN WRITING (16:11:05)

HEARING ADJOURNS: 4.11 PM

HEARING RESUMES: 4.30 PM

JUDGE MILROY ADDRESSES TE MINENGA – TRIBUNAL MEMBER DEPARTED (16:30:41)

(16:31) MS SEELEY CALLS

KAY MARGARET HARRISON (SWORN)

Q. Tēnā koe Ms Harrison.

A. Kia ora.

Q. Just some formalities before you begin your evidence. Could you please confirm your full name for the record?

A. Kay Margaret Harrison.

Q. Thank you. And confirming that you have prepared a brief of evidence dated 30 September 2025 and that's before you.

A. I have, yes.

Q. So that's appellation #A133. And you have also prepared talking points that you intend to speak today.

A. Yes, I have.

Q. Excellent. Please proceed with you evidence.

A. Thank you.

(16:31) KAY HARRISON: (MIHI, #A133-(b))

Tēnā koutou e ngā rau rangatira mā. Kia ora.

REFERS TO #A133(b)

My full name is Kay Margaret Harrison.

I'm an independent consultant advising on climate change matters, particularly in the area of international negotiations under the Paris Agreement. From April 2019 until July 2024, I was New Zealand's Climate Change Ambassador employed by the Ministry of Foreign Affairs and Trade. From 2009 to 2019, I was employed by the Ministry for the Environment in various roles, including as Director Climate Change between 2014 and 2016, and as a private secretary to the Minister of Climate Change in 2017 and 2018.

In my evidence, I will explain the Crown's engagement with Māori on New Zealand's Intended Nationally Determined Contribution (INDC) and ongoing negotiations under the United Nations Framework Convention on a Climate Change and the Paris Agreement.

New Zealand is a Party to three international climate change agreements, the UNFCCC, the Kyoto Protocol, and the Paris Agreement.

The first Conferences of the Parties (COPs) were meetings of the Parties to the convention, the UNFCCC, which came into force in 1994. There have been 30 COPs, the most recent was held in Brazil in November 2025.

At the first few COPs, parties designed the way the convention would be delivered, by developing the convention's more operational arm – the Kyoto Protocol. By the 2010s, however, it was clear that the Kyoto Protocol alone would not deliver emissions reductions and the limit to warming required for a safe and stable climate.

The Paris Agreement was designed, drafted, and concluded in 2015.

At the COPs that followed the adoption of the Kyoto Protocol and then the Paris Agreement, the rules and operating procedures were negotiated in detail.

International climate change negotiations have taken place every year (except 2020 because of COVID-19). They are a place where parties' climate action is reviewed, and where public and private sector initiatives are launched. Importantly, they are a key place where indigenous peoples have a strong presence and where civil society can make itself heard through statements in the formal meetings, through lobbying, and through protests.

COP26 was held in Glasgow in 2021. The Intergovernmental Panel on Climate Change (which leads the climate science that informs COP) (IPCC), and the United Nations Environment Program, provided sobering evidence of what was required to keep warming to a relatively safe level and the gap between that goal and the NDC aggregate ambition.

At COP26, parties, including New Zealand, demonstrated a big step up in ambition. The Glasgow Climate Pact was an important milestone in the negotiations. For the first time parties committed to the phasedown of unabated coal power and the phaseout of inefficient fossil fuel subsidies.

Because the Ministry for the Environment is the lead agency on New Zealand's domestic climate change policies and international targets, responsibility for engagement with the Treaty partner is led by MfE. For example, in 2015 when I was Director Climate Change at MfE, I managed the organisation and running of hui to consider the Government's proposed first NDC.

Engagement on the negotiation of international treaties (such as the Paris Agreement) and international trade agreements, is led by MFAT.

During my time at MFAT as Climate Change Ambassador, I engaged with Māori through the Iwi Chairs Forum climate leaders, through targeted hui alongside public hui/webinars, and through supporting the participation of iwi/Māori representatives at COPs. My team sought advice from the Māori Policy Unit within MFAT and used the Ministry's networks and mailing lists for contacts. While my team and I felt we were not achieving the depth of engagement with Māori we wanted, on more than one occasion I was told that our approach was at the standard they expected others to aspire to.

The primary vehicle in the Paris Agreement for achieving the goal of holding the increase in global average temperature to well below two degrees Celsius above pre-industrial levels is a nationally determined target or mitigation commitment called an NDC.

In the year leading up to the conclusion of the Paris Agreement in December 2015, countries were required to put forward their indicative target, their Intended National Determined Contribution (INDC). New Zealand established an interagency project called the “Paris Project” in June 2014 to manage the preparation of advice on New Zealand's INDC. Over several months, we undertook research, analysis, and modelling. We developed policy options for Cabinet consideration (particularly on the issue of the form of the target, including the potential for treating different greenhouse gases in different ways).

Preliminary advice on options for New Zealand's INDC was given to the Minister for Climate Change in September 2014. Public consultation on New Zealand's INDC then took place over May and June 2015.

As part of the public consultation process for New Zealand's INDC, the Crown held 15 public meetings and hui specifically with Māori in 11 locations around

New Zealand. Two additional meetings were held in response to criticism from Māori on the limited number of a locations and short timeframes for consultation.

The Crown had published a discussion document with questions shortly before the public meetings and hui. The document covered the need for a global response to climate change and asked what a fair contribution for New Zealand would be. It provided information on New Zealand's emissions; the cost of the target at different levels; and how New Zealand might be compared with others. It advised that the INDC needed to be seen as fair and ambitious and it needed to guide New Zealand's overall transition to a low emissions world.

People attending the hui wanted to discuss the issues actively rather than simply here from officials. We decided that the most appropriate function we could perform was listening to the various views presented. After the first hui in Whangārei, we generally provided only a very brief opening before inviting statements from those attending.

Generally, much larger numbers attended the consultation meetings than we had anticipated. Many participants were angry and felt the Government was not interested in their views, especially since Ministers did not attend any of the hui. The majority of participants thought the proposed targets inadequate and lacking sufficient ambition. At the hui, we heard the same responses repeatedly.

Tangata whenua were vocal that their perspective was holistic and integrated and informed by tikanga. Their whakapapa to the Pacific meant that they were acutely aware of the dire impacts of climate change on their whanaunga. They called for New Zealand to lead on this issue. In their view, this was an intergenerational issue; a moral issue.

People were concerned the Government was too focused on the economy and the costs of meeting a target. Hui participants said that instead the government

should consider the costs of inaction, as well as the benefits and opportunities for New Zealand.

Officials recorded the feedback from the meetings in the hui and analysed written submissions. This material was provided to the Minister and used to inform the Cabinet paper which sorted decision on the INDC. The Cabinet paper summarised the feedback from consultation and specifically from the Iwi Leaders Group and other iwi/Māori feedback. While I believe Cabinet heard and understood the feedback, I don't recall any changes being made to the proposed target on the basis of this consultation feedback. This was because, in my view, the Government was acutely aware of how challenging the proposed target would be to meet domestically given New Zealand's emissions profile (i.e., high levels of renewable electricity generation and high levels of hard-to-abate agricultural emissions). In that sense, my understanding was that the Government regarded the proposed INDC as both ambitious and fair.

Cabinet decided on the INDC, announced it, and submitted it to the UNFCCC on 7 July 2015 and after the Paris Agreement was concluded, New Zealand lodged its first NDC after ratification in October 2016. It committed New Zealand to reduce its greenhouse gas emissions to 30% below 2005 levels by 2030.

Before New Zealand enters into an international Treaty, the government assesses the potential impacts of signing the Treaty on the nation's interests.

When an international Treaty is presented to the House of Representatives, it must be accompanied by a National Interest Analysis (NIA). The NIA is a central focus for parliamentary examination of a Treaty and the select committee that examines the Treaty is required to append the NIA to its report so it is available on the public record.

Each NIA must address a range of mandatory matters, including the reasons for New Zealand becoming a party to the Treaty, the impacts to New Zealand

of doing so (including costs, and economic, social, cultural and environmental effects), and a statement setting out consultation undertaken.

The House of Representatives is reliant on the NIA to inform it of the factors the government has considered in determining whether to take binding action on an international treaty.

In August 2016, before New Zealand ratified the Paris Agreement, officials at MfE (where I was Director Climate Change) in consultation with MFAT, prepared the NIA, which was lodged with the Foreign Affairs, Defence, and Trade Select Committee.

The committee called for submissions, received 14, heard from 10 submitters and officials (including me) from the Ministry for the Environment.

We advised, in the NIA, that in ratifying the Paris Agreement, New Zealand retained full discretion over its policies and regulations. We noted the Paris Agreement encourages when addressing climate change to respect, promote, and consider domestic obligations on the rights of indigenous peoples.

The NIA also noted the disproportionate impact on Māori of climate change that was likely to be exacerbated if the Paris Agreement did not enter into force or was not globally effective. Specifically, the NIA stated that Māori communities and the Māori economy were likely to be disproportionately impacted by climate change. Sea level rise and flooding were already leading Māori communities to consider relocation of coastal marae. Climate change would also impact on natural resources used for cultural and sustenance purposes.

Agriculture, fisheries, and forestry are sectors of importance to the Māori economy. The increased risk of floods, wildfires, and sea level rise, as a result of climate change, will therefore have significant negative impacts on the Māori economy. The degree of risk will depend on the effectiveness of the global Treaty.

In 2020 and 2021, as countries prepared for COP26 in Glasgow, the Crown considered updating the NDC as the domestic landscape now included the Climate Change Commission (as a result of the 2019 Climate Change Response (Zero Carbon) Amendment Act whose advice would be sought by the Government on the level of the NDC.

The Zero Carbon Act amended the Climate Change Response Act of 2002, establishing a regime through which New Zealand would transition its own economy to the low/zero carbon world economy that is emerging. It established the Climate Change Commission – an expert and independent advisory body; and a system of domestic emissions budgeting, planning, and review.

The Climate Change Commission also engaged with iwi and Māori before providing its recommendations.

For several years, the Crown also relied on regular engagement with the National Iwi Chairs Forum and occasional series of consultation hui or webinars as constituting meeting its responsibilities to work with its Treaty partner. Specifically, with respect to climate change, the subgroup of the NCIF was the Climate Change Iwi Leaders Group (Pou Take Āhuarangi). Meetings and discussions would occur between the Chair (iwi leader) with the Minister; and between the Lead Advisor (iwi expert) and officials. In addition, broad iwi and Māori consultation was conducted on specific matters, for example, when the mandate for negotiations was reviewed and revised.

The Tribunal's recommendations in Wai 262 were important in shaping our approaches to engagement with iwi and Māori. For example, the Crown invited the National Iwi Chairs Forum to nominate independent representatives to join the New Zealand delegation and attend the annual Conferences of the Parties. Representatives were funded and included delegation meetings separately from the New Zealand-wide conference participants briefing. In other words, they were given special and particular access to negotiations, the negotiators, and Minister.

Alison Cole has set out that, within the public forums at COP26, her role as Iwi Chairs Forum representative was akin to the status of any member of civil society or corporate representative from Aotearoa who chose to attend COP. She notes that, although MFAT funded airfares and accommodation, iwi representatives were excluded from kōrero regarding the scope of negotiations and the terms of the negotiation mandate. As such, participation was through the public daily Q&A sessions with MFAT representatives and/or the Minister of Climate Change.

I do not agree with Ms Cole's statement. On the contrary, representatives from the Iwi Chairs Forum were given privileged access to the negotiation team's morning briefings. At these briefings, we would discuss – in confidence – how negotiations were proceeding, things the New Zealand negotiators would be pressing for that day. It was an opportunity for iwi delegates to question us or press their interests. At times, we were asked to confirm that we would uphold a particular position, for example, on the inclusion of references to the rights of indigenous peoples. This opportunity was not available to New Zealanders attending in their own capacity.

The representatives of the ICF were not permitted to negotiate on behalf of New Zealand. Each party or country must speak with one voice so that other countries know what their position is. The iwi delegates were not there to express the views of the New Zealand Government and were free to hold different views from the New Zealand Government.

Alison Cole also notes that within these Q&A forums with representatives of the broader public, she expressed the urgent need to kōrero at depth she believed necessary on matters relating to indigenous peoples. Instead, the Treaty partnership (as observable to any member of the public who attended COP26) was limited to facilitating attendance as a member of civil society as opposed to any other form of participation under te Tiriti/the Treaty. In her opinion, there is a vast opportunity to work in partnership with iwi representatives in such

settings, particularly regarding the alignment of tikanga with kaitiakitanga and the unique position held by Māori and Aotearoa on the world stage.

In response to these points, on matters relating to indigenous peoples, the New Zealand delegation was acutely aware of the Treaty partnership and the inclusion/involvement of iwi Māori and UNFCCC deliberations. I can provide two examples. We encouraged and supported engagement within the Indigenous Peoples' Platform which met in conjunction with negotiation sessions. I recall it COP24 in 2018 one of the Iwi Chairs Forum delegates spoke on behalf of New Zealand in the plenary. She spoke in her own words.

Secondly, with respect to negotiating rules for the operation of the Paris Agreement, we discussed with Māori delegates the way we would support references to the rights of indigenous peoples in negotiations on Article 6 (loosely, the article about carbon markets). I recall a particular discussion on this at COP25 in 2019 where the broader indigenous caucus had been calling out delegations that did not support the inclusion of indigenous rights. I reassured our delegates that New Zealand would speak in the room at the very next opportunity. (The order of speakers means that it is not always possible to indicate one's position in any given session if it is not yet your turn to take the floor). Our silence at the earlier session had raised concerns that perhaps New Zealand was not supportive. That was not the case.

Professor Kelsey has noted her view the negotiations during COP25 in 2019 were conducted in secret. She therefore notes there was no ability for Māori. or Indigenous Peoples' from the territories of the other participating states, to engage in and influence the negotiations, let alone a seat at the table.

In response, and on our indigenous participation at COP25, generally negotiations are open to all, including observers. New Zealand iwi delegates had "Party" badges which meant they could access any negotiation. In the second week of a COP the presidency (that is the host country) leads the process however it chooses. This may mean it holds private consultations with groups, with Ministers or with Heads of Delegation in smaller rooms. Often, we

would be told “one per party” or “Minister plus one”. In those cases iwi delegates were not in the room.

(16:55) MR BENNION TO KAY HARRISON:

Q. Okay, good afternoon. I thought I was coming up after someone else but I’m down for a few minutes but I might be able to get through this pretty quickly. I just first want to go to your main brief Ms Harrison paragraph 14. And just to say, I represent several claimant groups, some forest interests and some sort of more community interests as well. At paragraph 14 you've got COP26 and the bottom of that you say: “The United Nations Environment Program, provided sobering evidence what was required to keep warming to a relatively safe level and the gap between that goal and the NDC aggregate ambition.” Have you seen the 2025 updated *United Nations Environment Program Report* on the gap between NDCs and…?

A. Yes, I have.

Q. Yes. And that says effectively we're in an overshoot situation, correct.

A. It does.

Q. Okay. That means, doesn’t it, that it suggests that urgency needs to be increased and ambition needs to be increased.

A. It does.

Q. All right. And then you've got a curious comment here and I was very interested in this, paragraph 49 you've said at the last sentence there: “But even for New Zealand with its very high percentage of emissions from agriculture (and years of debate) the modelling of cost to New Zealand of meeting its NDC, including a price on agricultural emissions was “muted” – one model suggest an increase and the other decrease in the cost of meeting the target.” I was intrigued by that comment and I wonder if you could explain what you mean there.

A. Well, some people would say that modelling is like hydro digital analysis really. It's a finger in the wind. We had two main models that we had used at this time at great expense. But the models, like they could take you so far and then they would break. On this particular issue on

agriculture one came out saying: “It would slightly cost the economy,” and the other one said: “No, it would not,” and that's all.

Q. All right. Just while we're there, New Zealand's first NDC I think was it 2016 I think.

A. (No audible answer 16:58:33).

Q. Yes. I just wanted to note something there because I think you were there when that NDC was put in.

A. Yes.

Q. Right. It comes up in court cases because it is noted in the *Thomson* case that you may be aware of.

A. Yes.

Q. Yes. At that time, one of the important comments that we were making about agriculture was New Zealand's committed 45 million to the global research alliance and 48.5 million. So that was our response on agriculture at that time and that was how we dealt with agriculture at that time. In terms of our NDC we weren't including them in ETS but we said: “Look, we're putting research into methane inhibitors,” and those sorts of matters.

A. To be clear, agriculture is included in the NDC –

Q. Yes.

A. – but the Emissions Trading System, which is a domestic policy regulation regime underneath that, was originally intended to include agriculture, but as you said, there was a debate back and forth as to whether it would be. The government of the day said that it was so difficult to address and no other country in the world is pricing agriculture, the government instead decided to take the route of committing funds for research.

Q. Alright. Now, you didn't hear the evidence of Rebecca Prebble earlier in the week.

A. No I didn’t, sorry.

Q. That’s all right. Some people watch online but no, understand.

A. Yes, I watched some of it.

Q. No, it’s all right.

A. It was thrilling, yes.

Q. Yes, it's thrilling. There is now an extra $400 million and we're nearly at half a billion dollars and maybe more going to be put into research. She said: "It is actually quite exciting. There are a number of quite promising looking initiatives." Now what are we a decade on from the first NDC and we're saying: "There is a number of quite promising looking initiatives." It doesn't sound like much progress, does it, on the technology front?

A. I thought quite promising was an indication that was progress. I mean science is not a fast thing but there is definitely progress in the agriculture research sector. Definitely.

Q. All right. You're aware that the Climate Change Commission is warning that the Government has been putting too much emphasis on technology in the agriculture space and needs to be thinking about other options.

A. And there are other options obviously, yes.

Q. Okay, all right. Just lastly, I wanted to come to your interesting commentary at 73 and 74 about other solutions and carbon sequestration solutions outside of forestry and how cautious we need to be about the rules and frameworks for those other sequestration options. Firstly, where the Crown has now moved and put out at least a framework for assessing other sequestration options, you're aware of that.

A. Yes.

Q. Yes. I just wanted your comments on a couple of things. You refer to "additionality" in paragraph 73: "They must be additional to what has happened already," and I'm asking for just a general comment here. If I can give you a practical example. Currently, in this country, we have a rule that says that you must preserve wetlands. That would mean that preserving wetlands is not additional but restoring old wetlands would be additional. Is that a way to think about it?

A. That is correct, yes.

Q. Yes. So we would want to be a bit careful about changing a setting like that because of its potential impacts on how we think about sequestration and additionality. Is that fair?

A. Yes.

Q. All right. Also in that area in terms of the ocean and blue carbon, which I think you talk about in 74, we have an interesting situation here because

you're aware that the Takutai Moana Act says: “No one owns the foreshore and sea bed.” Have you seen anybody talking about what the implications of that are for ocean-based or blue carbon sequestration?

A. No, I've seen no comments on that.

Q. Okay. And then just lastly, have you seen in your work any discussion in the New Zealand Government of solar radiation management, so this is geoengineering?

A. Not in New Zealand. No, sorry, the Ministry of Foreign Affairs attended the United Nations Environment Program discussions and led with Switzerland a call for a discussion on the degree to which there should be some global governance of the issue, not only solar radiation management but any other atmospheric interference like that, on the basis that these things have transboundary consequences.

Q. Yes. I suppose it was probably high level, but do you know any iwi involvement in that discussion or not?

A. That was led by a different division from mine, I'm sorry.

Q. All right.

A. No, I'm sorry, don't know.

Q. Alright. No, thank you. Those are my questions.

(17:05) MR VINCENT TO KAY HARRISON:

Q. Tēnā koe **greetings** Ms Harrison.

A. Kia ora.

Q. Ko Sam Vincent tōku ingoa **Sam Vincent is my name**. I am acting in some of the claims alongside Ms Sykes. I'll ask you, firstly, a question about the consultation with Māori ahead of the intended nationally determined contribution, so that of course being in the months before the COP21 in Paris. Is it fair to say that Māori said loud and clear that there needed to be much more ambition from the government on emissions reduction at source?

A. Certainly, those who attended the hui made that loud and clear, yes.

Q. All right. And when you say “hui” you're talking about some 17 hui.

A. Yes.

Q. And now you've said that you don't recall any changes being made to the proposed INDC on the basis of the consultation feedback. My questions to you therefore is was there actually any point in Māori being consulted on the INDC in 2015?

A. Absolutely, there was. Of course, there was. But my observation was that Cabinet stewed over what it had heard and what it was committing New Zealand to. So, you know, I saw the whites of their eyes and I saw a very rare example of a Prime Minister attending a Cabinet Committee in which I had never seen before since. They were very, very aware of what they were committing to. They were very anxious about it and they did take on board the feedback but it didn't, in my recollection, result in any changes to what was in their proposal.

Q. Okay. I'll turn to some questions about carbon markets generally. And then if time allows, I'll go back to questions about COP.

A. Sure.

Q. Now, am I right that New Zealand has had an Emissions Trading Scheme since 2008?

A. Correct.

Q. It would be helpful if you could refer to the cross-examination bundle with the part for you, if that’s in front of you. Otherwise, I'll give you a copy.

A. Okay. There’s a lot of tabs. You’ll give me some direction.

Q. Yes. It is tab 32. Tab 32 is the PowerPoint presentation Geoff Bertram gave to this Tribunal last year and I'd like to take you to the fifth page of that presentation. They're not numbered so it's just the fifth page.

A. Accounting Net versus Climate Reality.

Q. Yes. Not that that's the exact topic that I'm trying to ask you about –

A. Okay.

Q. – but that's just helpful graph.

A. It’s well before that.

Q. It’s not that one.

A. After that. That one.

Q. Yes, that's the one. All right. So the line along the bottom, is that what you understand to be actual net emissions?

A. Yes.

Q. All right. Just noting that the graph only goes to 2023 so it's not quite up-to-date. Would you agree with me that New Zealand's actual net emissions and metric tonnes of carbon dioxide equivalent are actually higher or were higher in 2023 than they were in 2008?

A. We can find that out precisely from the reporting. But it looks like marginally, yes.

Q. Yes, all right.

A. It certainly was in between, yes.

Q. Sorry, what was that?

A. It certainly was greater in between as well.

Q. Yes, it was greater in between.

A. It jumps around.

Q. It does. And ultimately, would you agree with me that it is higher in 2023 than it was in 2008?

A. Yes, probably from the graph.

Q. All right. I'll move on. Have you had the opportunity to read the paper authored by India Logan-Riley, *Bloom Hearings*?

A. No. I read her affidavit.

Q. Right. Okay, that's alright. The paper addresses the experiences of indigenous peoples in the Pacific of carbon markets with a broader analysis of carbon markets. I'll let you know if it needs to be put in front of you. But in that paper, India describes carbon markets as a mechanism that consistently does not do the emissions reduction it has promised. Would you agree that that's a fair statement?

A. No, absolutely not. In fact, there is a lot of international research showing how effective emissions pricing, particularly emissions trading, will be. And of course from this graph 50% of New Zealand's emissions were not covered by the ETS, right. So this is not showing the operation of the ETS. It is showing the operation of the ETS on half of New Zealand's emissions. In fact, at first in 2008, 2009, 2010 many emitters were simply required to report their emissions. The trading itself was staggered and brought in. But globally, it is absolutely apparent that carbon markets reduce emissions and they reduce the cost of emissions as well. Freeing

up money that can be used for adaptation and further technological development, so it is, yes, a no brainer.

Q. All right. I just want to unpack some of that stuff. Particularly, you also said it in your brief that carbon markets have the potential to halve the cost of implementing NDCs.

A. Yes.

Q. Are you referring to the potential of relying on international carbon markets to meet our NDCs?

A. No, I'm talking about carbon markets in general can do that.

Q. Right.

A. This is from like the International Emissions Trading Association and other research done in various universities and things like that. New Zealand's position with respect to those issues of using carbon markets to meet its NDC is a subset of that in a small case.

Q. Is the other part of that the ETS in short?

A. The other part of.

Q. Well, the other part of –

A. Halving the cost.

Q. – using carbon markets, you say, they have the potential to halve cost of implementing NDCs.

A. Yes.

Q. Are you saying the ETS has the potential as part of – maybe I could let you just explain that.

A. The ETS is quite specific to whatever boundaries are designed for it. It's a little closed organism. It's a bit like musical chairs with an Emissions Trading Scheme with a hard cap that falls you're removing chairs. If you're one of the people who is standing there with emissions you're going to have to stop emitting. So you either can pay for a chair in that musical chairs round or you can't, but it delivers the reduction and emission. Some businesses will go out of business because they can't reduce their emissions or buy better technology. Some will go out of the business because they recognise that their business is producing electricity but they don't need to produce electricity by burning fossil fuels. So that is what an Emissions Trading Scheme does.

With respect to the use of carbon markets for NDCs, this was something that countries agreed should be flexibility given to countries and Emissions Trading Scheme applies to businesses who are emitters, like coal power stations et cetera, but countries could provide support to other countries who would otherwise not be able to afford to do some relatively cheap things at home. For instance, if you take the country of South Africa, it has a huge number of coal fire power stations. It actually planned to shut those down but it needs finance to do that. It can't afford to do it. South Africa cannot afford to do it. But they do say to other countries: "We could shut down power stations at something like 10 US dollars a tonne if you would fund it," and we could then say to you: "Those reductions and emissions that we delivered, you could count toward your country's NDC."

If you look at place like the European Union they might pay as much as 80 Euros a tonne of reductions. Well, I would say: "Should they be paying $80 a tonne to deliver their own domestic transition when they could do eight times as many tonnes in another country?" Because what we need globally is the volume of emissions to reduce not just in Europe or just in New Zealand. This is a global issue about reducing emissions as fast as we can and as much as we can. There are many cheap options in countries where it might be cheap for us but it's not cheap for them.

Q. So I understand you're discussing the merits of an international carbon trading system, right.

A. Yes.

Q. Obviously, we had major issues with the clean development mechanism –

A. Yes, we did.

Q. – and now, hopefully, we might hope that we are looking at a better iteration of that now. Would you agree with that?

A. I would. I would absolutely agree.

Q. Right. And that is just coming online now.

A. Yes, but when you're talking about the clean development mechanisms this is the thing where companies could go into developing countries and set up some kind of project and the companies were making money out

of it. That is one part of a carbon market. There is a mechanism under the Paris Agreement where you could do that but is much more strictly controlled now. But equally, the sort of thing I was talking about with South Africa doesn't involve companies at all. It is about countries agreeing country to country that they will support one another in this job of emissions reductions and what the country whose paying gets is the ability to count towards their target. That was not something that was part of the CDM at all. Those are quite different kind of concept.

Q. Yes, no, I understand that. What I want to put you is we are just now in 2026 having what might hopefully be a more robust system of international carbon trading being set up and I guess what I want to say or get your view on, isn't it, very, very late in the day now that we are at 2026 and climate change has gone on for so long and the world has heated up so much, and I'm not saying there isn't value in this necessarily, but isn't it really important that we maintain a focus on emissions reductions at home given that it is 2026 now and we're just having possibly a good mechanism for this being set up now?

A. Gosh, no. I mean everything in climate action is way too late but you can't sit around saying: "Well, it's so late now, you know, let's hold up our hands," right. We need to do as much as we can as fast as we can. If every country concentrates on only what they can do at home we will not do nearly enough and that's because the vast majority of countries cannot afford to do what New Zealand might regard is relatively cost effective things to do. We have to have cooperation between countries in order to get the volume of emissions reductions that are required and the sooner we start cooperating the better. Of course, it is heartbreaking that it took so long but one of the reasons it took so long to get all of those rules on Article 6 was because of peoples anxiety about what had happened under the CDM, particularly to indigenous peoples. But there is a lot more to it than these projects that were in some cases very disruptive.

Some of it is about recognising the ability of countries to deliver emissions reductions in one another's countries for the sake of the world and that's what we should be doing. If we at home in New Zealand have to pay a

$100 a tonne we will not deliver many tonnes and what we need to do is deliver as many tonnes of reductions as is humanly possible.

Q. Well, I agree with what you're saying about needing to reduce as much as much as possible. Where I think I'll take you next with your brief, I'm sorry, just one moment. Can I take you to paragraph 35 of your brief. I'll wait until you have that in front of you.

A. Yes.

Q. All right. Now do I understand that you talked about what's happening in 2014 and 2015 when the negotiations were going on that led up to COP21 and you said and this is towards the bottom of page 8: "For New Zealand, fair rules on forestry and the ability to cooperate using carbon markets were crucial elements of the negotiation. Without access to carbon markets, our target would have been economically damaging and we made that a condition of our INDC."

A. That's correct, yes.

Q. All right. Now do I understand right that this is a discussion about international carbon trading under the Paris Agreement?

A. It is, yes.

Q. Okay, all right. Now what I want to ask about this, it's really that analysis of economically damaging and the question that I want to ask about this is that is there a policy decision that's being made here between the cost of reducing emissions at home and the cost of getting emissions to be reduced somewhere else, which I accept might be able to be done more easily? Is that a policy decision that's being made with those things being weighed up against each other?

A. One of the things I would say was that going into the Paris Agreement countries like New Zealand that already had a target had to commit to a target that was greater than their previous one. I'll give it to you in round numbers. We imagined back in 2014 or so that in the period 2021 to 2030 we would emit around about 800 million tonnes if we were going on the basis that we had been going, 800 million. Now we set a budget for ourselves in our target of 600 million tonnes. That means we had to find 200 million tonnes of emissions reductions. Of that 800, 400 million tonnes were in agriculture. So to get the kind of volume you need, you

could cut half of your agriculture for example. If you were to cut out all of your emitting industries and all of your transport emissions you still wouldn't get 200 million tonnes of emissions reductions. So this is the kind of volume of reduction we had committed to because it was greater than our last target, but we did so on the basis that this is about a cooperative effort in global emissions reductions. That it wasn't reasonable to expect New Zealand to kill half of its agriculture sector or indeed, to close its only steel mill, it's only aluminium smelter et cetera, et cetera. Those things, you know, anyone would look at that and realised that that was an extreme response but also in the scheme of things an unnecessary one.

At the same time, New Zealand was acutely conscious that it needed to transition its own economy and that is what you see coming later on with emissions budgets and emissions planning. Our trajectory for our own pathway to change our economy and change the nature of our emissions profile. But at this point. while most countries were thinking about how do we get out of coal fire power stations or how do we reduce our dependence on diesel, we already had a high level of renewable electricity generation and we had this massive agriculture sector which was really difficult to do anything about if you don't kill the cows.

Q. I guess what I just want to say to that, I want to put it to you is that actually making fundamental changes at home, in fact, a lot of people would say: “That's not extreme, that's not unnecessary.” That is entirely possible that we could have an equitable transition for all that might result in lower GDP which might mean we have an economy that looks different. Aren’t we dealing with an issue of lack of ambition at home?

A. I mean ambition is in the eye of the beholder to some extent. You’re absolutely right that we must transition our economy but each economy is gonna transition in a pace that reflects what it's made up of. As I said at the time, when I talked about climate action they were talking about clean energy. It was really remarkable, you'd leave New Zealand and climate action was just about energy. In New Zealand it was all about trees and agriculture but we were way ahead of the game in that but we nevertheless had to make our fair share of a contribution.

You're absolutely right we should do stuff at home. That was always the bottom line is you transition your own economy. But what the world negotiated was a recognition that this is both a local need but a global imperative. And if rich countries decide to take an expensive price to transition their economies and allow other countries like South Africa to go without any support, the significant support that carbon markets would provide, then we will not solve the global issue.

Q. Would you accept as a limitation of the current system of international carbon that is being set up that in light of the issues that arose during the clean development mechanism, I know that a lot of effort has gone into trying to deal with those, that it still untested at the moment and there may be further issues that arise with it?

A. Yes, there may be, there may be, and there are a number of safeguards, many more safeguards than under the CDM. But I think the big prizes aren't in the CDM like projects. They are in countries cooperating and we're starting to see that with some countries, like Switzerland and Singapore, who also want to make a bigger contribution than they're able to with their own economies. I think those are very promising.

Q. I want to ask a question about the ETS so going back domestically and an issue of fairness really. At paragraph 71 of your brief, and that's where you're talking about the clean development mechanism, so you've said: “There were cases where indigenous peoples were displaced or their land used without their consent.” One of the issues that's arisen in this inquiry is about pre-1990 forest land held by Māori, where Māori must keep their land in forest or face a financial penalty and they can't earn any carbon credits from that land. Don't we have here in Aotearoa a real example of actually what you've identified there where land is used without the consent of indigenous land holders in order to accumulate carbon credits?

A. They don’t accumulate carbon credits.

Q. Sorry, I perhaps worded of that wrong. Let me word that differently. Don't we have an example of okay again land being used without the consent of indigenous land holders to sequester carbon?

A. So the land that you're talking about was land that was chosen to go across in Treaty settlements by the iwi concerned where they received the ownership of the land and they received rentals from growing trees on that land. When the Emissions Trading Scheme was designed, and it was recognised that New Zealand was at risk of having massive emissions blowout if land was deforested, there was a negotiated agreement with iwi over the number of New Zealand units that would be provided per hectare of land to those iwi who had purchased forests as part of their settlements. So it was an agreement between iwi and the Crown.

Q. Would you agree with me that the compensation in terms of NZ Units hasn't fairly compensated Māori for not being able to earn carbon credits on that land?

A. No, I think what was really harsh was the iwi who did not have any forestry, who did not receive any royalties, and did not receive any NZUs. You know there are very uneven aspects of the application of policy. I wouldn't agree with you, no.

JUDGE MILROY TO MR VINCENT – TIMING

MR VINCENT ADDRESSES JUDGE MILROY – GRANTED QUESTIONS IN WRITING (17:31:31)

JUDGE MILROY ADDRESSES KAY HARRISON – MIHI, ACKNOWLEDGEMENT (17:31:37)

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING ADJOURNS: 5.32 PM

HEARING CONCLUDES ON FRIDAY 20 MARCH 2026 AT 8.58 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

(09:00) JUDGE MILROY: (MIHI)

Tēnā koe e Kevin e whakatuwhera ana i tā tātou hui **thank you Kevin for opening our hearing**. Thank you. Welcome to our final day for this hearing week. It has been a long week. We're resuming with questions to Ms Harrison.

Can I just say that my friends here really need to catch their planes. Otherwise, Mr Morrison is going to end up home by midnight and that's not something we would like. So, I am going to cut the lunch hour in half. It will still be at the same time, but we'll resume at 1.30. We will short in the morning tea as well by about 10 minutes just to make sure we get through the evidence and questions as indicated in time so that we can finish by four o'clock.

All right. Welcome back Ms Harrison.

MS BOATWRIGHT ADDRESSES JUDGE MILROY – FURTHER QUESTIONS IN WRITING (09:01:30)

(09:01) MS BOATWRIGHT TO KAY HARRISON:

Q. Mōrena Ms Harrison. Can you hear me okay?

A. Tēnā koe. Yes, I can, thank you.

Q. Ka pai **good**. Ko Ms Boatwright tōku ingoa **Ms Boatwright is my name**. I represent several claimants within this inquiry and we might be here forever if I had to go through them. But for your purposes, they range all over Te Ika-a-Māui but primarily focused and dominating Te Tai Tokerau. My learned friend yesterday Mr Vincent took you through parts of the topic that I want to discuss with you today around engagement with Māori. I just wanted to turn you to your paragraph 22 where you note that, while engagement with Māori did occur, you and your team felt that you were not achieving the depth of engagement that you wanted. Is that correct?

A. That's correct.

Q. And when you refer to “depth of engagement” that involves more than simply holding hui, doesn't it?

A. It does.

Q. Which would also include ensuring that NZUs expressly can be properly considered in decision-making.

A. Yes, that was less of a concern. I think it was more the gathering of the whakaaro than the subsequent consideration.

Q. Okay, no, thank you. Would you agree that meaningful engagement requires more than consultation and also includes the ability for kōrero from Māori to influence outcomes?

A. Yes. I mean I think obviously we use the word consultation in short hand sometimes. Of course, there is law that helps us with that. But of course, first and foremost, one has to have a relationship and I think we had a number of relationships and kōrero but, as I said in my evidence, it wasn't as deep or as extensive as I would have hoped.

Q. In your view, would be I guess the lack of depth in the engagement processes that you have described, do you think it meets that standard as based on your answer from before?

A. Meets what standard, sorry?

Q. I guess you could say the standard of, you know, as Māori our claimants ensure that, you know, they are welcome to the table to have kōrero with Crown officials and that they would like to see their kōrero actually influence meaningful change, particularly in policy development. I guess you could say that standard.

A. Yes, absolutely. And in many engagements that I've had in my professional career with Māori on many policy issues in different contexts the engagement has been much more full and deep. It's difficult to know when you are in a relationship whether more is desired than is present because one of the difficulties I faced was sometimes getting input, getting engagement. I had spent quite a bit of time talking to various organisations and groups, including Te Hurumanu that you've heard about, about: “Was I doing the right thing? Was I attracting the engagement or what else could I do to do it better?” Because, as I said, my experience in other areas had been much more fulsome shall we say.

Q. Of course. No, thank you for that. Again, my learned friend Mr Vincent took you through the consultation of New Zealand's involvement in the INDC which included hui with Māori. You acknowledge in your section around paragraphs 26 to 28 that additional hui were required following criticism about locations and timeframes being quite limited. Is that correct?

A. Yes, that's correct.

Q. Would you agree that these initial limitations constrained participation by Māori communities, particularly those that are located in rural areas?

A. It did and that's why we addressed it, yes.

Q. Okay, thank you. Just moving further through that section, you record that many participants at these hui express concern that proposed targets lacked ambition, but you also note that Māori perspectives were quite holistic, intergenerational, and grounded in tikanga. Is that correct?

A. Yes, of those who were present absolutely.

Q. Was this also recorded in any written submissions or engagement that was received by your team?

A. Yes it was.

Q. Sure. But the perspectives raised by participants across the board, these weren't ultimately reflected in the final proposal that was adopted. Is that correct?

A. The whakaaro reflected in the Cabinet paper that resulted in the decision. Whether or not you can kind of impute that they were in the number that was the target is impossible. I think, however, the government of the day said it was choosing a target that was genuinely ambitious. So in a sense, both those who had put in their thoughts and the government were aiming for the same thing. It is just they didn't necessarily agree on how that could be expressed as a number.

Q. Okay, no, thank you. My last point just taking you to paragraph 33, you further state that as a result of the consultation feedback that was provided to Cabinet, you don't recall any changes being made to the proposed ambitious target as a result of this. Would you accept that this indicates that consultation with Māori did not materially influence or

change the outcome that was going to be made by the government of the day?

A. The fact is it didn't change the outcome. That doesn't mean though that it was a predetermined outcome and it wasn't. It was a deeply considered one.

Q. Okay, thank you. Just one final question, do you agree that consultation without any impact on the outcome may be insufficient to protect the interests of Māori or enable meaningful participation in these processes?

A. I don't think that's something that I can answer. I think it feels like that for people. You know in any engagement, if your views don't become the outcome, you might feel that way. I think it's something that this inquiry might help us to explore further. But I couldn't say that it did.

Q. Of course. Tēnā koe Ms Harrison.

A. Kia ora.

Q. That is all my pātai for you today. I do have further pātai that I'll put to you in writing. Tēnā koe.

A. Tēnā koe **thank you**.

(09:11) MS RONGO TO KAY HARRISION:

Q. Tēnā koe **greetings**. My name is Ms Rongo. I am here for Ngāti Kōata who are an iwi of Te Tau Ihu whose customary fisheries and kaimoana gathering areas are located in the coastal ecosystems such as the Marlborough Sounds and surrounding islands. They are particularly reliant on kaimoana. So, in preparing the Crown's International Climate Policy Advice, did officials undertake any assessment of the climate change risks on Ngāti Kōata fisheries in Te Tau Ihu?

A. Specifically, for Ngāti Kōata –

Q. Yes.

A. – no. For fisheries in general, absolutely, yes.

Q. Yes. But not specifically for Ngāti Kōata. Ngāti Kōata are vulnerable to climate change impacts. Crown evidence predicts that by 2085 all tuatara that are hatched will be male which will shortly follow with an extension. That is particularly worrying for Ngāti Kōata. They are kaitiaki of Takapourewa Island and its taonga species which includes 90% of the

world's tuatara population and for Ngāti Kōata, as stated in their evidence, that is not something they want to see happen, as you can understand. So did the Crown undertake any iwi specific analysis of how climate change would affect their coastal ecosystems in Te Tau Ihu, including Takapourewa and their taonga species?

A. I'm not aware of that but that doesn't mean to say there wasn't. So I'm afraid, I don't know. But as you can imagine what was driving us was the anxiety about exactly that kind of devastating impact. This is an existential threat that we were fighting and our prime objective was to get the world to act.

Q. But it didn't make a difference, did it?

A. Absolutely, it's making a difference and we have to keep on striving. This is not something that concluded with the Paris Agreement. That was the start really of galvanising global action and we have seen improvements in the, you know, still increase in temperature rise, but it would have been worse without Paris.

Q. But the Crown evidence still states that by 2085 tuatara will be all male that are hatching so there will be an extinction event unless something happens.

A. Indeed.

Q. So your evidence records that the Crown was aware that Māori raised intergenerational concerns about climate change and its impacts on future generations, correct.

A. Yes.

Q. Those concerns would logically apply to iwi whose cultural identity and economy are closely connected to coastal ecosystems, you'd agree with that, right?

A. Yes.

Q. Despite that awareness of Māori vulnerability, particularly Ngāti Kōata with their tuatara, can you point the Tribunal to any climate policy analysis undertaken by the Crown that specifically considers Ngāti Kōata's ecosystems, fishery resources or taonga species?

A. I cannot, no.

Q. Thank you. Those are my questions.

(09:15) MS DORN TO KAY HARRISON:

Q. Tēnā koe **greetings** Ms Harrison. Can you hear and see me, okay?

A. Kia ora **greetings**. Yes I can.

Q. Thank you. Ko Ms Dorn tōku ingoa **my name is Ms Dorn**. I represent several claims in this inquiry, including the New Zealand Māori Council, just to give you some context for my questions. My learned friend Ms Boatwright was asking you some questions and I may follow a similar approach, so just going to paragraph 22 where you were explaining to her about not achieving the depth of engagement that Māori wanted. You just made a comment there in your answers where you said, it was difficult to know if more is desired about getting input and getting engagement. Could you just clarify further what you mean by that?

A. I think it's really important never to have the sense of satisfaction that what you've done is enough. I think my general principle is: “Have we done enough? Is this sufficient?” My outreach wasn't always responded to and one looks at oneself and thinks: “Have I used the wrong channels,” or whatever, but unless you hear explicitly that was sufficient or that was insufficient, as we found out for example with a number of hui, it's difficult to know.

Q. Okay. Is there any set of specific standards, policy, or guidelines that are followed with regard to appropriate engagement?

A. We relied of course upon Wai 262 for example on legal precedents around consultation. Of course, you need to design the engagement for the particular topic that you're working on. Previously, just the year before, I had been working on water reform and followed some of the ideas that I think Alison Cole mentions in her evidence of a team that worked alongside the policy team in collaboration and co-design but that's not always going to be something that's desired by Māori or necessary for the task.

Q. Thank you. Another Crown witness earlier this week, also from that MFAT, Ms Helen, in her answers to questions she spoke to consideration and the usefulness of the Te Arawhiti document “Engagement Continuum” which sets out what level of engagement is

required depending on the significance of Māori interest. Are you aware of this document?

A. Yes I am.

Q. Would you agree your discussion about the consultation on the INDC, would you agree that for Māori this was of significant interest for them?

A. I think it would have been very useful to have had the Te Arawhiti framework in 2014 and 2015 but it wasn't produced until 2019. It wasn't a standard against which I could judge our engagement at the time.

Q. Okay, thank you. Now that you have this document in place, would you agree that more than consultation is required when engaging with Māori for interests that are significant for them?

A. Once again, it is on a scale, right. In something like, for example, water reform that was way up the end of that scale. Yes, it depends on where on that scale you believe or you discern that those interests sit.

Q. For climate change specifically, do you not think that it reaches that high level of the scale?

A. Certainly. My experience on domestic policy around climate change and domestic policy around climate change adaptation, yes, it was on the far end of the scale. When it came to negotiating what we were going to expect of China and the US and others, perhaps less so.

Q. From the Crown's perspective it is less so.

A. From Māori perspective in many cases. This is the feedback that I got, for example, through discussions with the Iwi Chairs Forum group on climate change that it was of less interest. In some cases, for example, or in one case for example, we funded a representative from one particular iwi to attend a meeting of the Local Communities and Indigenous Peoples Forum in Canada and when she returned she said: “I want to work on issues here in Aotearoa. I don’t want to go and help these other indigenous peoples with where they're at.” That was one individual and one case. But there was a diversity of responses and some of them were like that: “Yes, we are completely and utterly concerned about the issue of climate change and we are most concerned about how we are addressing it in Aotearoa, particularly around adaptation.” I think

some of those I interacted with decided to – made the choice to prioritise domestic climate change issues.

Q. Okay, thank you. Just in the interest of time, I will move to another question. Later in your brief of evidence you state at paragraph 53 that MFAT consulted with and relied on regular engagement with the National Iwi Chairs Forum and its subgroup Pou Take Āhuarangi and that this constituted meeting its responsibilities to work with the Treaty partner. But in this regard, is it correct, that Iwi Chairs does not claim to represent all Māori as Pou Take Āhuarangi is a group of experts on Māori-related climate change and environmental issues but it does not purport to be a Māori representative body? That's correct, isn't it?

A. We did not rely on our engagement with the Iwi Chairs Forum and the Pou Take Āhuarangi as meeting our constituted Treaty obligation. You must always go to the whole of te ao Māori in any engagement or consultation. No, we didn't rely on that. We relied on it, in the sense that it was a starting point.

Q. Okay, thank you for that clarification. In that paragraph specifically, it does say word for word "as constituting meeting its responsibilities to work with the Treaty partner", which is where that question came from.

MS BOATWRIGHT TO JUDGE MILROY – GRANTED QUESTIONS

Thank you for your answers today Ms Harrison.

A. Can I just clarify something. Yes, it does say that and I think that is not what I should have written. But I would say that the National Iwi Chairs Forum represents 98% of Māoridom so we thought we had pretty good coverage.

QUESTIONS FROM BASIL MORRISON – NIL

(09:24) PRUE KAPUA TO KAY HARRISON:

Q. Mōrena Ms Harrison. Thank you for your evidence. I missed a little bit of yesterday afternoon so hopefully I won't repeat any questions that you may already have asked to date. I just wanted to ask you about your role as Commissioner for Climate Change. Were you New Zealand's first Climate Change Ambassador?

A. No, I think I was probably about the fourth.

Q. Okay. Is there currently a Climate Change Ambassador employed?

A. Yes, there is. It is Stuart Calman.

Q. Thank you. You finished your role in July 2024. Was that the end of your contracted period or was there some other reason for leaving in 2024?

A. No, I resigned.

Q. Was there any reason for the resignation?

A. Pardon me, relevant to your inquiry.

Q. I mean let me rephrase that. That's a little unfair, sorry.

A. Thank you.

Q. Obviously in 2024 there was quite a bit happening in the climate change area with the government policies and different issues. So I'll do it as perhaps just a yes/no. Was part of your views about resignation related to some of the emphasis in some of the policies that were being touted at that particular time?

A. I was a public servant for many decades and I have worked with many governments and respect their status as the elected representatives who get the opportunity to make the choices about policy and your job as a public servant is to represent what those decisions are and the rationale for them. I pride myself on having worked for many governments of many colours and many Ministers and worked effectively with them.

Q. Thank you Ms Harrison. Thank you. No further questions.

(09:27) PROFESSOR DAVID WILLIAMS TO KAY HARRISON:

Q. Good morning, ata mārie.

A. Kia ora.

Q. Questions from David Williams to you. Just firstly, follow-up from your answer to counsel for the New Zealand Māori Council, you talked about the sliding scale analysis and the Arawhiti document of 2019 which wasn't available to the relevant time. But are you aware of the Waitangi Tribunal's *Wai 262 Report* which was published in 2011 –

A. Yes I am.

Q. – which had that sliding scale in it?

A. Yes, indeed.

Q. So what was the relevance of saying you didn't have access to the Arawhiti document?

A. That was what I was being asked about.

Q. I see. All right, okay. But you are aware of that principle?

A. Indeed, yes.

Q. Yes, good. Thank you. The only substantive question I had was you and other people whom we have heard from MFAT this week stress the fact that international conferences expect each nation to speak with one voice and you repeat that in your evidence a couple of times. But you also go on in paragraph 44 of your summary or paragraph 60 of your full brief to recount an occasion at COP24 in 2018 when one of the Iwi Chairs Forum delegate spoke on behalf of New Zealand in the plenary and she spoke in her own words. So you're breaking the rules. How can that have happened if they are able to hold different views from the New Zealand Government which is also in your evidence?

A. First of all, it happened. I wasn't the head of delegation and I wasn't the Climate Change Ambassador. I was a member of the delegation and I observed it happening. So I think you would have to ask the person who provided that opportunity for her. Yes, I think it was unusual. I think it was probably courageous but, yes.

Q. Can I put it to you slightly differently. Do you think that was a breach of the expectations that other countries have of New Zealand?

A. No. What would have been a breach is if we had had to go back and explain that we didn't agree with what our spokesperson had said. I mean there are ways in international fora where you have a young member of the delegation who accidentally misspeaks for example in a room and then you might have the head of delegation return later and say: "To be clear, New Zealand's view on this is a, b, c." There are ways that you can address misspeaking. That is a reason for example why delegates are not allowed to record anything in the negotiation meetings. In this case, the person was speaking about the Indigenous Peoples Platform I believe, and the head of delegation made the call that it was appropriate for a Ms Mako to speak in her own words. There were no negative consequences. Maybe if there had been something might need to have

been done. But it wasn't something that when you put your person forward that's the person, that's the voice that is speaking and so no other countries were concerned about that. They were hearing from New Zealand as far as they were concerned.

Q. Interesting. Okay, thank you very much.

A. It was interesting.

Q. Thank you for your evidence.

(09:31) JUDGE MILROY TO KAY HARRISON:

Q. Thank you Ms Harrison. In your evidence yesterday afternoon, and it was getting late so this might explain my confusion, but you were talking about the fact that if there was global cooperation about carbon trading, this was in your discussion with Mr Vincent, New Zealand could assist a place like South Africa where the carbon price is $10 a tonne and here it's whatever it is at the moment. Can you just explain how that would work? I was trying to figure out how that cooperation would look in actual practice.

A. Well, there are a couple of ways. In that instance, New Zealand would simply provide the funding under an agreement with South Africa for certain actions to take place, for example, the decommissioning of a power station, the building of an alternative renewable power source and the retraining of the workers. And then you would see, as a result of the power station closing, a drop in the emissions of South Africa that would not have otherwise occurred. And that reduction would then be either shared between South Africa in its reporting and New Zealand or all go to New Zealand depending on the nature of the agreement. And what New Zealand would get was the opportunity to show that it had met part of its emissions reduction target by reducing emissions in South Africa. But it could be a case, for example, that a New Zealand business works in say Vietnam has the technology to show farmers, for example, how to reduce their emissions or some manufacturer to reduce their emissions and that arrangement also has a government to government aspect to it, where, in exchange for supporting that business to go into Vietnam, Vietnam not only record some of the emissions reductions itself (and of course the business itself benefits from that) but also New Zealand. The

New Zealand business who has supported them receives revenue and the New Zealand government might agree with the government of Vietnam to claim some of the reduction towards New Zealand's target.

Q. So that global cooperation assistance that was part of the reasoning or rationale for having the fund that everyone is meant to contribute to under Paris. That is what that development-

A. No.

Q. That was different.

A. It's different.

Q. Yes.

A. Parties to the Paris Agreement who are developed countries are obliged to support developing countries in their own climate action as well. This would have to be on top of and separate from any support that we provided. It would be really important for example that we didn't try to do that instead of the support we provide for example in the Pacific. I don't believe New Zealand provides any support to South Africa for example so this would be quite separate and it wouldn't displace assistance that we gave to Tonga and Samoa for example.

Q. Yes.

A. Ideally, you would fund it through things like the revenue from the Emissions Trading System. In fact, what you were doing was getting polluters to pay for this, rather than take money out of the general fund that you would perhaps otherwise use for building a hospital in New Zealand.

Q. All right. I'm asking this because my understanding was that the New Zealand carbon market was closed. It's only for New Zealand. Yes, it just confused me a little were we opening up our carbon market or not.

A. We could do that. We could link our Emissions Trading Scheme to other Emissions Training Scheme, such as the one in California or whatever, and that has efficiencies but ours is closed. However, the objective of our Emissions Trading Scheme is to provide a price and that price means revenue for the government. In the past, that revenue has been quite healthy and we have used I think 800 million from the Emissions Trading Scheme auctioning of units towards a development assistance our

climate aid. But it could well deliver enough revenue if the price is appropriate to fund the government to pay for reducing emissions offshore.

In the past, the early days of the Emissions Trading System, it wasn't closed and New Zealand emitters could go and buy units from under the Kyoto Protocol and surrender them towards their liability. That's no longer possible.

Q. That was the point at which people were buying a lot of, if I can call them, junk units.

A. That's right. The government then surrendered non-junk like gold plated if you like units in return, so we made good on the wooden nickels that we had in the coffers.

Q. Yes. The price at the moment I understand is capped at $25.

A. I'm sorry, I don't know. There is sometimes a price that you can buy it. But at auction the auctions may not deliver. So I'm sorry, I'm not really up-to-date with it at the moment.

Q. This is also intended to be a forward-looking inquiry. In your view, what would be the steps New Zealand needs to take now in order to both contribute to reductions of emissions and prepare I suppose for a changing world?

A. So what should New Zealand be doing in this space? Well, there's quite a lot of information from the International Energy Association and the scientists that say that we should have globally an average target of reducing emissions by 60% or so. Of course, it is going to be really difficult for some countries to do that, particularly poorer countries. But countries like New Zealand should be having a target that's consistent with the global average, if not better, because they can lead the way. We should be maximising the opportunities from the pricing regime that we have, the Emissions Trading System, as well as investing in electrification and renewables and the transition that we need to take. We have the architecture that can do this in terms of the Climate Change Response Act, the budgeting system, the planning system, the review system. It's all there and, yes, maybe if the rest of the world had those pieces of architecture we would be in a better place than we are. But we've got a

really good system for doing that, as well of course is the Climate Change Commission that provides expert and independent feedback on how we're doing.

Q. In terms of the signals coming from the government at the moment and I suppose particularly the change in the methane reduction levels, are we consistent in our messaging?

A. Consistent with what, sorry?

Q. Consistent with our requirements under Paris, but also in terms of being serious I suppose about addressing emissions reduction.

A. We're certainly consistent with our obligations under Paris, there is no question about that. Every country, every Party under Paris Agreement has a sovereign right to determine its domestic policy action and it's for that country, you know, in our case our democracy to determine whether or not we are satisfied with the approach we are taking or, in our case, we've got the feedback that comes from the commission et cetera to provide some guidance on that. It's a choice and, yes, it's the government's prerogative to choose those policies.

Q. All right. Thank you very much for your evidence.

A. Thank you.

RE-EXAMINATION QUESTIONS FROM MS SEELEY – NIL

MS SEELEY ADDRESSES KAY HARRISON – MIHI, ACKNOWLEDGEMENT (09:42:32)

JUDGE MILROY ADDRESSES KAY HARRISON – MIHI, ACKNOWLEDGEMENT (09:42:37)

MR PREBBLE ADDRESSES JUDGE MILROY – MIHI BY MR FONG (09:42:52)

HEARING ADJOURNS: 9.43 AM

HEARING RESUMES: 9.48 AM

(09:48) MR FONG CALLS

DR SAMUEL MARTIN DEAN (SWORN)

Q. Welcome to the Tribunal. Can I begin by asking you to confirm that your full name is Samuel Martin Dean.

A. That is correct.

Q. And that you are Principal Scientist for Climate at Earth Sciences New Zealand (formerly NIWA). Is that correct?

A. Yes.

Q. And you hold a PhD in Atmospheric Physics from the University of Canterbury, correct.

A. Yes.

Q. Can you confirm that you have prepared to brief of evidence for this Tribunal dated the 25 August 2025?

A. Yes, that is correct.

Q. And that you have prepared a PowerPoint presentation to summarise your evidence.

A. Yes.

Q. Can I invite you to give that presentation to the Tribunal.

MS SEELEY ADDRESSES JUDGE MILROY – TECHNICAL ISSUES POWERPOINT PRESENTATION (09:50:09)

(09:51) DR SAMUEL DEAN: (MIHI, #A132-(a), (b),(c))

Tēnā koutou katoa. Nō Ingarangi hoki ōku tīpuna. I tupu ake au i Whakatū. Kei Te Whanganui-a-Tara ahau e noho ana. Ko Sam Dean tōku ingoa. It is an honour and a privilege to speak to you today, and I have prepared this presentation.

REFERS TO #A132(b)

I have given it a title *Knowing the impacts of climate change – now and into the future*. I think that is the focus of my evidence.

I have just a quick note that I am now the Chief Scientist for Climate at Earth Sciences New Zealand, which is a merging of what the former NIWA, who

I worked for, and GNS Science as a new Crown Research Institute or Public Research Organisation as they will soon be known.

I have worked for NIWA for 20 years. Before that, I was at Oxford University in the UK, and before that a PhD here in New Zealand at the University of Canterbury. Since I guess the early mid-1990s when I have considered climate change in my lectures, I discovered all about it and came to realise what a significant and serious concern it was and have devoted my life the next 30 years to thinking about climate change and working on it. And I'm very proud of a few things that I have contributed to New Zealand Aotearoa. These include:

- Our climate change projections over a number of years. I think being able to predict the future is one of the great achievements of science and it allow us to make decisions about what we are facing and what we have to do in a way that is incredibly powerful. And if we can grasp that, then we can make a difference to the outcome that we face and that is quite different from the way societies have faced challenges in the past. So there is a big opportunity through science to understand what might come.
- It has also included the Adaptation Technical Working Group. Obviously, a lot of climate change is going to happen and adapting is important. I have been an author on the Australasian chapter of the Inter-Governmental Panel on Climate Change which is focused on the impacts of climate change on Aotearoa and I was the Science Lead on our first National Climate Change Risk Assessment.

So there is no question that humans are rapidly increasing greenhouse gases in the atmosphere. This is mainly caused from burning of fossil fuels. This has had massive implications; no one is questioning that, warming air and oceans rising sea levels. This is a point I make in my evidence which is important about the fact that there is a lot of natural climate variability also occurring that makes it hard to interpret exactly what is happening and what is caused by climate change.

You can see that just in this figure here which shows temperature change, the global mean temperature change for a number of different products that are measuring that. You can see they highly agree for most of that time and you can see that sort of variability that wiggling through time which is our natural variability. At the same time, you can see this increasing trend through time which is climate change in action.

There are also other things and we could talk day about some of the features of this curve. Maybe the minor ones that will come up is that very high peak in 2023 and 2024 where we have seen temperatures that exceed 1.5 degrees above pre-industrial.

Much of my evidence focused on attribution. This is going to be important I think and the concept of attribution is about the formal scientific determination of causes. It is similar in medical science in terms of determining the cause of a disease. It is going to be important in the future I think because it has played a role in the past in understanding at the IPCC level that climate change is occurring and what is driving it. But also it will play a role in the future in legal contexts because as we have seen there is more and more legal cases under civil law coming up about damages to climate change. Being successful in those is going to be quite important to show robustly that you can attribute the role of climate change in those damages if you are to seek recompense for those damages from and who is responsible for that. We have seen that previously with other large-scale health problems where there are impacts so I focused some of my evidence around that.

I'm trying to talk about how we do formal attribution of climate change impacts, how little we currently have done in Aotearoa, and how much more but we could do a lot more. This is little graph on the right is not in my evidence but it's in this presentation and it's just trying to demonstrate that a little bit. Again, we have that same figure of the temperature time series that I had in the last slide and that is the black line through time. So, it is right through nearly to present. But now I have added on top of that, there is an orange line and some shading, which is a simulation of a climate model, in its attempt to replicate that

temperature rise with a confidence interval associated with that the shading behind it. You can see that largely matches the observed time series, although not in some of the little spiky details which is that natural variability. Then we have the green line which is when we run that same model where we don't include the effects of climate change. We don't include emissions of greenhouse gases as they happened. We create a world with these models that could've existed had we not embarked on this terraforming experiment and that is shown there by the green lines. As you can see, temperatures after 1940 or so would not have warmed in the way that they did subsequently. This allows us to separate statistically in comparison to a world that might have been the world that we have now in a sort of controlled experimental way because we don't have an alternative real world. There is only the one world we live on, the planet we live on and the choices we made to date. But this method has played a strong role in the way in which international scientists have been able to understand and prove that climate change is driving these temperature increases that we see and look at how those impacts flow through the system.

For Aotearoa New Zealand, it is very difficult to formally detect local climate signals. I have done it for temperature previously. I have not been able to do it for rainfall for instance. The reason for this is that New Zealand has a lot of natural variability going on. There is lots of interannual, one year is wet, one year is dry, one year is cold, one year is hot, and that makes it harder to pull out a signal. The signal needs to be really big relative to that variability. To do it, we usually require consistent, long, observational records either of ecosystems or of physical components of the climate system and we often don't have those.

I have been involved in some experiments, some studies, scientific studies looking at extreme rainfall events using that kind of climate model approach that I talked about before. These map these scientific methods. And using that world without climate change in that world with climate change, we can show that rainfall extremes have become generally two to three times more likely and more intense by two to 12%. So that's a strong component of our evidence for

arguing that climate change is causing changes in extreme rainfall in Aotearoa New Zealand.

The rainfall in *Cyclone Gabrielle* we believe was about 10% is higher as a result of climate change, so using similar studies. We also think that climate change will have increased the rainfall in January, but we don't have studies showing that and one of the reasons for that is that those kind of storms are difficult to model. I just gave that point that we think climate change almost certainly has affected that Auckland flood but we can't formally attribute it because we don't have models that can capture that. So it is sort of a distinction between *Cyclone Gabrielle* and the Auckland floods, even though we think climate change will have affected both.

And then in my evidence, I go on to talk about the Observed Physical Impacts of Climate Change that are really robust for New Zealand and obviously warming is one of those. We have sort of got to the point now where we can all sense that it is warmer than it used to be, let alone need scientists to tell us that.

Figure 3. Heavy snowfall in St Bathans, July 1903 (F. M. Pyle).

This is a picture from New Zealand's coldest day ever recorded which was in July 1903 in Central Otago nearby to St Bathans. This is the snow associated with that vent. We know that snowfall has become less common at low levels in New Zealand in recent years and at high altitude as well.

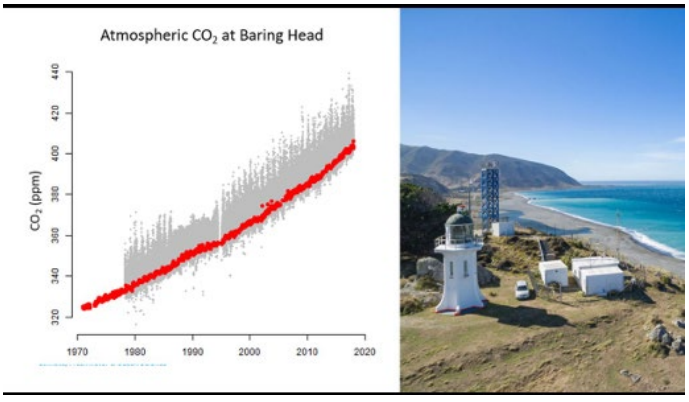
There is a two to three-fold rise in frequencies of warm days. There are increasing trends in the number of growing degree days because this is affected by warmth. This is saying there are likely some positive impacts of climate

change in some places – Wellington might be slightly nicer, I'm sorry, that's a joke but it takes a bit of getting used to. There are some positive impacts potentially, so I didn't want to just leave that out completely, that you might be able to grow some more productivity in some places. I mean New Zealand is not a place that becomes uninhabitable as a result of climate change but there are consequences for many of the things we might value at the moment.

Glaciers have been observed to have declined by at least 21% due to climate change, probably more than that by now. Some of these numbers are little bit old.

Annual rainfall has increased on the West Coast of both islands and decreased on the East Coasts. We don't know if that's climate change, though it is consistent with what we'd expect to see and the streamflow's have changed in line with those rainfall changes as well. We don't know if those are caused by climate change either.

Our model suggest that the 2012-2013 drought, which was so damaging to the economy, was at least 1.5 times more likely because of climate change. You can just get that from the temperature. You get two things for that. There is both the fact that it is warmer and the fact that these high pressure systems might be more sustained in the summer.



The concentrations of carbon dioxide in the atmosphere has increased. I have included a figure there of CO_2 in the atmosphere. It is fairly stark. That is measured from 1970 to 2,020 out at Baring Head here in Wellington. It is a beautiful place to visit, you can walk there. That says measurements being

made there at the lighthouse for all these years and they say a lot about where the carbon and the atmosphere is going, the sources and sinks of carbon across the country whether it's into forests or whether it's coming and/or where that carbon is going, so I would be happy to talk some more about that.

We also measure that the concentration of methane is increasing quite significantly.

In the ocean, we see that the coast of Otago has become more acidic where we have a long-term running measurement that the Earth Sciences maintains with the University of Otago.

We measure that coastal sea surface temperatures around New Zealand have warmed significantly and we have seen sea level rise. I don't think I've lifted that but we certainly measure sea level rise occurring as well of more than 20 centimetres.

Studies suggest that economic damages from extreme flooding and droughts can be partly attributed to climate change. We are doing this sort of new work on looking at how much damage can be formally attributed to climate change versus other things that are going on.

I've got a little summary of projections here. By 2090, annual average temperature across the country is expected to increase by 0.8 to three degrees. This is without consideration really of some of the significant uncertainties involved in that.

More hot days, fewer frost days, all the things you'd expect.

Rainfall changes remain uncertain, I would say, for our country. Some increase in the west and decrease in the north but the signals are small.

At the same time, though, you see increases in drought in extreme rainfall. This is because you're changing the hydrological cycle, so your warmer

temperatures are causing more evaporation, the atmosphere can hold more moisture, you get more rain when it rains, and so the cycle is running faster. The outcome of this is that you get the distribution changing. While the average amount of rainfall might stay the same, you get more of it in extremes and you'll get bigger droughts. And on average, it will end up being the same but you're average less often; so you get that averageness less often. That's sort of like our summer right where you might see fewer average summers.

Warming oceans in the Tasman Sea.

Decreases in snow.

Some ocean effects around macronutrients which might increase but also significant negatives around oceanic certification.

Marine heat waves which have severe implications for ecosystems in the ocean.

I'm sorry, this is terrible.

Natural Ecosystem Impacts of Climate Change not so much my area of expertise but I have provided a summary at the review level where I have been involved through the IPCC in reviews of the National Risk Assessment. But I am not an ecosystem researcher per say. But in these reviews my impression would be that ecosystems, I think we've heard it during the week as well, that there's a lot of pressures on ecosystems already and climate change is in additional stress are on those.

We have a lot of studies suggesting that our ecosystems are sensitive to things like temperature and ocean acidification. But at the same time, these are often highly disturbed by habitats where we've had habitat loss, we might have invasive species competition, we have run-off from modified landscapes into rivers sedimentation. We have all sorts of pressures in fishing. I mean extraction that is going on, at the same time it complicates our ability to detect.

When we see a drop in a species in a certain area or a movement, it is very hard to know what the role of climate change is contributing to that. But there is definitely lots of interest in understanding that.

Major negative impacts are predicted based on those sensitivity studies. But altered rainfall, drought, so the climate effects as well, ocean acidification, sea-level rise, and extreme events, so challenging.

We did compile a list of the projects that the former NIWA has undertaken with Māori partners to look at climate change mitigation and where adaptation around the country. It was felt that it was best that those local partners speak to those in this forum, should they wish to or need to. But that information is there and can be accessed.

I thought I might speak briefly about one that I've been involved in since it is personal observations. We had a five-year research project called *Mā te Haumaru o te Wai* which was looking at trying to improve flood risk for New Zealand and understand how climate change would affect flood risk. We partnered with a Wairewa Rūnanga from Ngāi Tahu in Banks Peninsula and that's the picture there of little river and the lake.

I personally found it quite a valuable and informative experience to spend quite a bit of time with those local Māori about understanding their perspective of flooding and how it affected their rohe. It was cleared they really care about the tuna. Floods are less a front of the mind in the impact they have on the tuna in the lake and the healthiness of the lake so there's a lot of work around that. But it was also clear that they considered that previously they would've been quite

adaptive to climate change and how it was altering things but circumstances of the past have prevented that.

They have a marae that is placed in a reserve beside a stream that cannot be moved because of the way private property rights work. So it is there and it cannot be moved away from that stream and the sense of all the things that are going around and imposed on them that create an inability to respond in the way that they would like to protect what they treasure. I personally found it very moving and important and I encourage everyone to understand these things if they can get that experience. So it was very powerful.

Also, finally to finish, I have provided responses to the evidence of James Every-Palmer. I would like to say that by and large I don't substantially disagree with the evidence. I have provided a few clarifications where I think it might assist in the broader context or understanding of the points.

There is one error in the evidence about the fact that last year was actually warmer. In 2024 it was 1.55 degrees so it was warmer than he'd indicated.

I talk a little bit about methane and its role in climate change. It is the different sources of methane that contribute to the increasing methane trend we have seen with both natural feedbacks. As we warm, we are getting increases in methane emissions from various sources, like wetlands. The fossil fuel industry is a large source of methane globally. There is a lot of methane coming from leaks and pipes or deliberate venting of unburnt methane. When the IPCC talks about reducing methane, there is obviously an easy win in fixing leaky pipes, as well as agriculture in biomass and waste.

It has come up over the recent days about the choice of weather to include forestry and, if you do, then a lot of New Zealand's accounting consequences stem from that decision to include forestry. But there's obviously lots you can talk about whether forestry is a useful offset or not.

The use of IPCC global emissions scenarios as a guide but still recognising that we have to consider our own situation when we set our plans.

And then I had a brief response to Stephen Goldthorpe who again just a concern about including industrial emissions per unit area as a slightly unusual thing to do and for comparison and some clarification about the complexities of how carbon dioxide enters into the ocean for acidification. That hopefully is useful to the Tribunal in understanding some of these processes. Thank you for your time.

(10:15) MR SHARP TO JUDGE MILROY:

Q. Your Honour, on discussing the main questions from other counsel that the questions that I was going to ask are all being asked by other counsel. So I would seek leave, if necessary, to file any further questions in writing following the questioning from the other counsel, Ma'am.

A. All right. Thank you Mr Sharp.

(10:15) MR BENNION TO DR SAMUEL DEAN:

Q. Dr Dean, thanks for your evidence and thanks for your commitment in an area that, yes, some days must seem fairly dark, so I appreciate the work you're doing. My questions are not going to focus on attribution. And I thank you for responding to Mr Goldthorpe because he was my witness and he stepped into your attribution space and I appreciate the feedback there. He was trying to draw a broader point and I sense you were concerned about how accurate that can be. But I'm not looking at attribution so much but just the level of uncertainties in risk. Because from my clients point of view they think there may be not enough caution and precaution in the current government approach and the government approach of the time and they are seeking some benchmark guidance from the Tribunal on that, if they can get it.

I was going to put to the *UN Environment Program Report* of 2025 and its statement that our NDCs don't currently suggest we're going to meet the 1.5 target and we're going to overshoot. But do you agree generally that we seem to be in a situation where the 1.5 degree target is almost

essentially exceeded now and we seem to be in an overshoot space for that target?

A. I don't think we have exceeded the 1.5 target yet. I think formally the way that would be calculated as over a number of years. If the temperature is, like in 2024, 1.55 and then last year they are 1.4, then the average of those is still below 1.5. So we will need a few more years but it is going to happen very soon. Certainly, based on everything I have read, it will happen by 2030. The size of the emissions reductions that are needed to stay below 1.5 degrees are very large and there is no evidence that that is. I mean, at this point, it would have to be incredibly large. In terms of looking at the global picture realistically, we are in an overshoot scenario, yes.

Q. Okay. The next matter I wanted to take you to is the assessment of whether we're in overshoot or not, which the UN report talks about, is using the IPCC modelling, yes.

A. Yes.

Q. I wanted to just explore a little bit the limitations of the IPCC modelling is modelling and arguments that they may be undercounting some matters. I mean modelling always has its limitations, doesn't it?

A. That is correct.

Q. I just wanted to ask you question about an item, which we put in our bundle and we'll bring up the page on the overhead here. I don't know if you're familiar with this. It is on the MfE website. It is called Emperor's New Climate Scenarios, Limitations and Assumptions of commonly used Climate Change Scenarios in Financial Services. So it's an actuarial financial assessment of where models are of the IPCC models and their limitations. Are you aware of that Emperor's New Climate Scenarios paper?

A. Yes, thank you for sharing that one. We probably need a bit of a conversation about it. That particular document I don't agree with. This is not to deny your point in this lightest. In fact, we should talk about it. I don't think that's a very well informed document. The authors demonstrate a lack of understanding of climate models and the processes they do and don't include. They refer a lot to tipping points and ideas of

catastrophic tipping points that aren't included and then take in sort of actuarial risk framework. I would say that at the moment there is no evidence that we are underestimating climate change. The recent acceleration of warming that has occurred is consistent with the latest generation of IPCC climate models. These models include all sorts of tipping point feedback processes much more so than previously. And as a result, they are warmer than previously. The latest generation of models do include much hotter responses but they are consistent with the observed warming that we have seen.

Q. Well, let's move away from the actuarial paper. Let me then take you to –

A. Yes.

Q. – a further point on this.

A. Great.

Q. Let's jump straight to James Hansen –

A. Yes.

Q. – and Global Warming in the Pipeline paper.

A. Yes.

Q. As you know, the IPCC says that for a doubling of CO_2 emissions we should expect to see global mean temperature rise in a band between two and five degrees but they settle on around three degrees of change increase. But I think, is it Professor Hansen, the guy from NASA right, as we all know him, he says it's more like 10 degrees and the aerosols are hiding something like two degrees. It is an outlier paper, is that fair, to put it that way?

A. He's talking about all sorts of different things in that paper. The climate model he works with has a climate sensitivity of about 4.8 degrees and that's at the high end, right up the high end of IPCC models. The IPCC talked about three being the best guests in this very likely range which included up to five degrees. James Hansen, the model he works with and the evidence he's presenting is an argument for the upper end of that.

Q. All right.

A. So for five degrees. James Hansen is concerned about the IPCCs decision to focus on cooler, the lower answers. I agree with him. I don't support what the IPCC did in empathizing the lower sensitivity models. I

think the better models have higher sensitivities for very good reasons and there's also literature to support them as you pointed. I didn't like the actuary paper but I agree with everything else you provided.

Q. All right.

A. Just to share this. The good news is that our own climate projections we did not do that. Our own climate projections for New Zealand include models with sensitivities is very much at 4.8-4.9 degrees.

Q. Yes, all right.

A. We include those high sensitivity outcomes and those models do show a lot more warming and we include them. So it is very careful. Like there is an issue so MfE when they show our climate projections they average all the models so you're looking at the ensemble mean. Sorry that's a word. It means an average. The average tends to take you back towards that three but is a mistake to not consider very carefully that there are high end risks that we do see, even in our models and our understanding of the climate system which are five degrees of climate sensitivity which would lead to warming. Not quite five degree. That's five degrees for doubling of CO_2 but you might see another three degrees above present in the next 50 years or so. But these are included in the broader IPCC projections that were included in our projections and I don't see evidence yet that the climate system is responding in a way that we don't understand. And I will say I think is one of the great achievements of science that these models that people created in the early 1980s like Professor Hansen and they've been incredibly accurate at predicting what has happened.

Q. All right. One more on that, you saw I included the GUNAR paper. Is that GUNAR the series –

A. Yes.

Q. – satellite data versus what I said the CMIP6 Model which is the one that New Zealand uses, the CMIP6 series.

A. Yes.

Q. Okay. I just want to put up one illustration from that. I don't think we're at a great distance from each other on this. Yes, that diagram the Table: Figure 1. If I'm accurately describing this, the red is satellite data, the light

grey lines are different outcomes from different runs of the CMIP6 models, and the black line is the sort of average of those models. Is that correct?

A. That's correct.

Q. That's correct, yes.

A. What is being plotted is the energy imbalance at the top of the atmosphere.

Q. Right. The indication from this paper is that the energy imbalance from the satellite data is showing itself to be at around the high end of the CMIP6 model runs. Is that a fair way to look at it?

A. This graph on its own doesn't show that. I would say this graph shows that the CMIP6 models have done a pretty good job of simulating the energy imbalance that you get from climate change. There is obviously an issue there. In 2023 you're just poking up above, like just at the top, you know, the top of the red line it is always a problem to cut-off a time series at a peak. But that is a concern that 2023 was very hot. But at the moment, it is just one year and based on one year I couldn't say anything definitive. There is too much natural variability in the system.

Q. All right.

A. But there is another plot there which does show – I mean this is an excellent paper – that the energy imbalance at the top of the atmosphere suggests a high climate sensitivity that is consistent with James Hansen's arguments.

Q. All right.

A. I also would agree that I think high sensitivity is more likely.

Q. All right.

A. The models are not wrong.

Q. Okay, no, I understand. But we're at the higher end, as you say. Now I just want to come to the thing about rainfall and attribution there. We included a paper on CMIP6 model projections for the Auckland region and I wonder if this is an illustration of the problems that we have with modelling rainfall. I was just look at, it's page 79. You're familiar with that paper.

A. Yes.

Q. This is Auckland Council, I think, or somebody in Auckland trying to use these CMIP6 models to see what might be coming in rainfall terms.

A. It's an Earth Sciences report commissioned by Auckland Council.

Q. Right.

MR BENNION TO REGISTRAR – DISPLAYING DOCUMENT

MR BENNION TO SAM DEAN – DISCUSSION RE DOCUMENT

They present two different time series but this shows that under the high-end model, and I'm thinking about the high-end model the 8.5 model, this shows that by 2090 annually you would have one extra one in one hundred, is that the way you think about it, one extra one in one hundred rainfall day exceedance per year? Is that the theory of it?

A. No.

Q. I guess my general point is-

A. Nothing near that extreme.

Q. Right.

A. So it's like a one in two year event because it’s not a very extreme metric of rainfall change.

Q. Yes, that was what my question was and I noticed it I think on the next page, there's a discussion of ex-tropical cyclones and atmospheric rivers and those are separately discussed. They're not modelled. I just wanted a general reflection on the experience of people in the last couple of years would be that they're hearing a lot about these atmospheric rivers.

A. I’ll just clarify one thing though.

Q. Yes.

MR BENNION TO REGISTRAR – DISPLAYING DOCUMENT

A. Those SSP things, SSP1, SSP2, SSP3, SSP5 those are scenarios of emissions and socio-economic pathways. They are four different – just in case you aren’t all familiar – pathways that the IPCC developed. The 1.2.6 is an extremely strong mitigation scenario which is where we go up but we go back down quite a lot. SSP2 is a mitigation scenario that's plausible. SSP370 is a baseline scenario where there's essentially no mitigation. SSP585 I would call it like a war in the Middle East scenario. It's like you go back to burning lots of coal because the world becomes

very disjointed and self-interested and, regardless of climate change, decides to use coal. It started to be considered quite unlikely –

Q. Yes.

A. – but unless you test –

Q. Can I ask you about-

A. – the very extreme kind of –

Q. Yes.

A. – and it's not impossible. It is unlikely, because that would require a massive change in geopolitics as we see it happening, but it could happen and so it is up there for consideration of testing what might happen. People often show the scenarios, even though some of those are extremely unlikely at either end. But we're not showing the model here. This is the average so we're not showing that high sensitivity that you talked about. So what's missing from this is what does the high model actually think. It's not in that table. What you have is the high scenario –

Q. Yes.

A. – which is the – I'm sorry, carry on.

Q. Understand.

A. Complicated, I know.

Q. Complicated, I appreciate.

A. Two dimensions.

Q. Yes. But separately in the next page, there is a discussion of – this was atmospheric rivers and ex-tropical cyclones.

A. Yes.

Q. This reflects the point you were making in your evidence, doesn't it, that we're not very good at the moment at fully understanding what's happening with maybe atmospheric rivers' health and they might hit us. We've got some assessment that they might be happening perhaps one or two times more; I mean twice as likely. But I'm just wondering whether the experience of people in New Zealand in the last 24 months has been that we are seeing a lot more atmospheric rivers than previously.

A. This is kind of the point in my evidence I guess that people's experience is like an observation or what I would call an observation. So they have seen what has happened recently and they can think back over the last

10 or 20 years and think: “This is this is different. I haven't experienced this.” There is a lot going on in Auckland at the moment and you see quite a lot of media articles where people say: “My house isn't prone to flood. I've lived there 30 years and it hasn't flooded,” right. So they have got a 30 year observational record of flooding at their property.

I would say unfortunately in New Zealand that's not going to work very well on those timescales because we are a very variable country. We are affected by El Niño, by La Niña, by other modes of variability in the climate system. We definitely have decades where we don't get a lot of floods and we have decades where we get a lot of floods and that happens naturally. There weren't many floods in the 2000s. No one was interested in flood risk management or climate change effects on floods. And, yes, it is quite hard to talk to people about it. But in the last 10 years we’ve had a lot of floods. Some of that will be climate change but some of it is also just that there is natural variability.

A good example of this is in the temperature series. There was the hiatus they called it, which is between 2000 and 2010, there wasn't a lot of warming. There were a lot of climate sceptics arguing about climate change not being real. But as climate scientists we always understood that that short term plateau is just an example of variability in the system. Our models have that kind of variability in them and we expect there to be periods of increase and decrease but the long term trend is change. So it is very hard to judge flooding or rainfall based on what has happened in the last two years. There is some climate change in that. But it is varied so we have to use our models to try and understand that.

Q. Okay.

A. Our models include all these processes. What we think of atmospheric rivers is they haven't become more frequent but they are carrying more rain. What we think in the future they will become more frequent and carry more rain, so we have to combine our observations with our physical understanding and our models to try and get away from the fact that we only have one real world and we are living in it and there's lots of things going on in that world that aren't just climate change.

Q. All right.

A. That is not to downplay the significance. In the end climate change becomes the big signal, right. Like if you keep going for large warming the consequences are severe. I mean there is Paleo evidence record that about five degrees you'll have mass extinctions on the planet, right, so you are talking about an existential crisis. I don't mean to downplay the seriousness of the problem. At the moment, we have a lot of things going on and if we carry on climate change becomes the big thing that's going on.

Q. I just had one more question. It might be about five minutes on methane.

MR BENNION TO JUDGE MILROY – ADJOURNMENT

HEARING ADJOURNS: 10.37 AM

HEARING RESUMES: 10.59 AM

JUDGE MILROY:

We're back with you, Mr Bennion.

MR BENNION:

Yes, thank you, your Honour.

(10:59) MR BENNION TO DR SAMUEL DEAN:

Q. So, Dr Dean, just one last area wanted to talk to you about. Paragraph 79 where you talk about the setting of a methane target and I just wanted to check with you something I put to Ms Prebble, which is that – well, first of all, you're familiar with the methane review of December 2024.

A. Yes.

Q. Yes? You are familiar with that document, yes. I put to her a statement from that review which we'll probably put up on screen just so went right there. Just checking the science here. So, I'm just looking at this sentence under – paragraph, sorry, under the drawing there. If the chemical composition atmosphere is changed along the lines of SSP4 inequality narrative. So, that's an ambitious SPP, I think, being the lifetime of – methane can be extended by the three years. If methane last

longer this means that methane construction's increase requiring steeper cuts to maintain a consistent level of warming. Conversely, this is what I want to check – if the world follows a higher emissions and warming scenario such as SSP5-85, then methane lifetimes would reduce, lowering the level of methane emissions reductions required to satisfy the no additional warming condition. And the thing I just wanted to check with you, which Ms Prebble agreed with, was that the indication here is that if other greenhouse gases increase under higher end SSP scenarios, then that means that methane comes gets converted into the atmosphere faster, it's warming effect disappears more quickly and that lowers the level of a methane reduction you would need to get to get to your no additional warming condition. That's what's being said in the methane review, isn't it?

A. Yes.

Q. Yes.

A. I mean, the panel was tasked with identifying what the level of methane reduction would be to be consistent with no additional warming. They weren't asked to say whether that was a good idea just that yes, so that's a policy decision and the why – I mean that's the reason you explain is the primary reason why you need a panel to do a piece of work is because it is sense – that that as a target is sensitive to the scenario because of how methane the lifetime of methane in the atmosphere, that's correct.

Q. All right. And just – since you say you're familiar with the review, in their modelling they say they were asked to consider a scenario consistent with 1.5 degrees above pre-industrial levels and they go EG SSP 1-19. I mean, I'm not sure how I read it. It doesn't seem to me they looked at an SSP8.5 scenario when they set the no additional warming. Do you know whether – is that the way you read it or not?

A. I'm sure they would've –

Q. I can do that one in writing if you want longer to think about –

A. I would’ve thought they did, but I would have to check, sorry.

Q. So you see the implication of it is, if I look at your paragraph 79 you say, I think you say it's reasonable under Paris for countries to tailor their ambitions their own set of circumstances. It's widely accepted that

reductions and **(inaudible 11:03:22)** emissions are currently hard to achieve. It would be a reasonable policy choice to make least effort in reducing agriculture. If that was balanced by relatively more ambition in carbon dioxide reductions. But the no additional warming policy choice actually pushes in the other direction, doesn't it? It says, actually there's no other carbon dioxide reductions in the greenhouse gases in that area grow, then the level of reduction needed for no additional warming for methane gets lower. That's what weird – it's a weird dumb incentive, isn't it?

A. Yes. And the point I was just making in that I guess is that lowering our methane target, lowers our ambition unless a way of reframing, that but if we had a similar level of increase in ambition and carbon dioxide that would be, you know, if you just reduce the methane target you have reduced the ambition.

Q. Yes, and just lastly while we're there, on this part. You're saying, you know, it's hard to achieve for cultural missions coming hard to achieve reductions relative to other industries. But my clients, one of – Toitū Taranaki say one of the things that should be done straight away is to electrify as much farming equipment as you can. That would be the sort of some sort of budget in that area could be a way of reducing greenhouse – other emissions while you have a less ambitious methane target. Is that the sort of –

A. Yes. There are certainly other emissions in farming that are significant associated with transport of materials, evaporation of milk, use of fertilizers, the creation of fertilizers from fossil fuels is a large emission source.

Q. Yes, understand.

A. So there are significant other emission sources and farming beyond the methane produced by the animals.

Q. Yes. And just then lastly at 76, there's a talk about tipping points and - sorry, I see – I take your point that I'm not specific, I mean methane in my sentence. Yes, so you're right that. The sentences on says that to me, well, I'm right and what – "… it is widely accepted reductions and agricultural emissions are currently hard to achieve relative to fossil and

waste industries other than through reductions and farming", and that sentence should – the sentence is not right and that it should say, 'methane emission, agriculture, methane emissions'. And you are correct that there are other agricultural missions that would be. So, that's an error on my part.

A. I understand, yes.

Q. Sorry, I was just realising your point. Yes-no. I double took, double take on your comment that I might be right about something that's at home and here I don't hear that often. Paragraph 76, just lastly on this, people talk about tipping points, and you make a comment I think that – just a comment, for example, that confoundingly, if you like, that the AMOC or the Atlantic Marine Overturning Circulation actually may have quite a cooling impact in part the strangely and quite intense calling impact in parts of the world. But I was most interested in your comment about, can I see it there, the one about methane. I think you talking about class rates and meeting – here it is. Prime one, two degrees of warming is a thawing of perma frost by increasing atmospheric methane. That's a tipping point you say that could occur below two degrees of warming and you just said in your presentation now, when you – verbally, that methane the atmosphere is increasing quite significantly, does that – are you relating your comment about methane in the atmosphere is increasing quite significantly, does it relate to a concern that you have about approaching that tipping point?

A. I'm not a big fan of tipping points or the language associated with tipping points. A lot of most of them aren't a point. So, they are there is already increasing methane from permafrost thawing that is occurring. That's captured in the earth system models that we use. A lot of these processes are captured in the models already so the change in the overturning circulation Amazon forest dieback, these are included in the models, they just – a lot of them happen slowly and at some point become overwhelming in terms of the rate at which these things are occurring. And of course some people like to focus on that there is uncertainty in these models and so these things could happen faster than we think they're going to, and this is true, they could. But by in large, we do

incorporate understanding of these and our best understanding of these processes and incorporated in our predictions of what will happen. And so it doesn't quite answer your question, sorry. And methane, methane emissions from permafrost thawing could become significant, which will become significant if we continue to warm, yes.

Q. Yes. I'll leave it there. No, thank you for your evidence and your answers.

JUDGE MILROY:

Thank you Mr Bennion. Our next questions are from Ms Rongo.

(11:09) MS RONGO TO DR SAMUEL DEAN:

Q. Thank you, Ma'am. Tēnā koe my name is Eve Rongo, and I'm really excited to kōrero with you today. You are from Te Tauihu, and you include You actually include tuatara in your evidence so, kia ora. And I did want to start by acknowledging you and the mahi that you do. It's obvious that you've dedicated yourself to this kaupapa and shows that you're invested in seeking more knowledge and understanding of climate change. So that's just a mihi to you. So, my clients are Ngāti Kōata. They are in iwi who's based in Te Tauihu and their kaitiaki of the tuatara in their area and they work fiercely to protect this taonga. So, you would agree that the tuatara are at risk of climate change.

A. Yes.

Q. And I understand from your evidence that you're able to predict what will happen in the future. But you do that so that we're fully informed, so we can make the necessary changes, correct?

A. So that we can choose to make changes or not, yes.

Q. Thank you.

A. I'd like to think we would make changes –

Q. Exactly.

A. – as a choice.

Q. But those changes that we make, the choices that we make, they are based on what we consider important to us and those things that are important to us that we want to continue to remain, to access, to have, correct?

A. Yes.

Q. And you would agree that the Crown need to act to prevent any further impact of climate change on the tuatara?

A. I think the world would have to act to prevent further – like climate change is a global problem and New Zealand's efforts in reducing its emissions are important because climate change will only be solved through global action.

Q. Yes.

A. So we should and have to do our part within international arrangements, but that international conversation and we'll ultimately determine the outcome – New Zealand's actions – like, I just want make the point that we could mitigate strongly but if no one else does it, it won't matter, the tuatara will still be affected.

Q. But New Zealand can make that choice. We can be ambitious and lead the way.

A. Yes, yes, agreed.

Q. So, the choices that the Crown have made, do you think that would prevent the extension of the tuatara or just delay it?

A. I'm not intimately knowledgeable on the exact thresholds that would be required to prevent tuatara from extinction? Do you know? Do you want to give me the temperature or?

Q. Yes. I am looking at the research that you provided in your appendices where it talks about, of course, that their hatch, their sex determination is based on the temperature of the soil and that higher temperatures result in a male bias.

A. I don't think that's in my evidence, is it?

Q. It's page 217 of #A132(a).

A. So that's someone else's evidence.

Q. That’s not your evidence? That would be someone else's evidence then. You are Dr Dean?

A. I am.

Q. It's your evidence. This look to be your evidence #A123(a), appendix (a), page 217.

A. There must be a filing error if that's the case because I don't think I have any appendices in my evidence.

COUNSEL ADDRESSES DR SAMUEL DEAN – CITED EVIDENCE TO APPEAR ON SCREEN FOR REFERENCE (11:14:33)

MS RONGO:

The report is the report entitled current knowledge and potential impacts of climate change on New Zealand's biological heritage. And I'm looking at page 12 of that. Left hand column. That looks like it.

MS RONGO TO DR SAMUEL DEAN: (CONTINUES)

Q. So, it starts at page 216, just up a little bit, the bottom of the right hand column where it just – sees: "Tuatara have temperature-dependent sex determination where more males hatch when incubation and then it moves to the top of the left hand column, temperatures are higher, putting tuatara at risk in a warming climate where long generation times in bale bias would cause population decline. While populations are currently sustainable with about 60 percent of hatchings being male, without making adaptations such as deeper nests or nesting in cooler locations, tuatara hatchlings would all be male by 2085 under current climate predictions, and the population viability analysis indicates that if sex ratios of tuatara surpass 85 percent male, the population of *S. guntheri* on North Brother Island, could become extinct. Any adaptations that could occur nesting behaviour or response to temperature would not happen rapidly enough due to slow generation times." And helpfully it says: "Migration of tuatara to cooler climates is not possible as many on the island centuries for protection from invasive predators." So, my questions around those were that the Crown would need to act now if it was to do anything to protect these tuatara. Would you agree?

A. Yes, based on those studies, but I think the question of ability of species to migrate in response to climate change is a very good one and I think in the adaptation technical working group, we talked about that in terms of pathways of migration for species will be important to because there

may be parts of Aotearoa Tuatara can still thrive but as you point out if they're on an island then they cannot move.

Q. And as the report says that migration is not possible as due to predators.

A. So, we're talking about that specific example on those specific islands then yes, I agree. But that's not very specifically about those islands rather than all tuatara, I just want to, you know, like which may be in cooler locations.

Q. So, 90 percent of our tuatara population is found on Ngāti Kōata's Takapourewa island.

A. Yes.

Q. There are populations on other islands in the Marlborough Sounds as well, who suffers from the same impacts. Ngāti Koata, as signalled in their evidence, have been – what's the word they use – have been – have been moving the tuatara to other areas of New Zealand but there is a risk with that in that they don't know how they will do there and it's not like the tuatara can return because they may bring with them diseases and affect the rest of the population on the island still. So, they're very limited in what Ngāti Koata can do to work on to help protect the tuatara, you would agree?

A. Yes.

Q. So then you would agree that Ngāti Koata, who are kaitiaki of this taonga species, have a particular interest in climate change policy decisions?

A. Yes.

Q. And you're not aware of the Crown having those discussions with Ngāti Koata about protecting the taonga species on Takapourewa, are you?

A. No. I mean, I think everybody in New Zealand should care about climate policy because the implications are significant.

Q. Absolutely. But you would accept, wouldn't you, that where Crown policies are not ambitious enough those policies can directly contribute to warming conditions which will affect the tuatara.

A. That's a slightly more difficult point because they will be contributing but obviously global emissions are a significant fraction of the cause of warming that we receive.

Q. Okay, and then we go back to my previous question about how New Zealand can still lead the way.

A. Yes.

Q. Okay. Thank you Dr Dean, it was really helpful, thank you.

A. Sorry for my confusion.

JUDGE MILROY:

Thank you Ms Rongo. We are now up to questions from Ms Te Whenua. It's over to you Mrs Te Whenua, your time for questions. No, we can't hear you, reading lips at the moment.

MS TE WHENUA:

Tēnā koe, Ma'am. Aroha mai for that slight glitch in the tech, can you hear you now?

JUDGE MILROY:

Yes, we can with relief.

(11:22) MS TE WHENUA TO DR SAMUEL DEAN:

Q. Mōrena, Dr Dean. My name is Ms Te Whenua and within this inquiry I represent Te Urunga o Kea who are the Te Arawa Climate change committee and also Ngāti Uepōhatu who are based in the Waiapu catchment in Ruatōria. It's a pleasure to be engaging with you today over this kaupapa nui, this important kaupapa for both of our claimant groups. I just wanted to start my particular questions by the point that you make at paragraph 64 of your brief, your original brief of evidence, where you acknowledge a gap in dedicated studies of climate change on taonga species. Do you have that paragraph before you?

A. Yes.

Q. And I just wanted to check, by taonga species, do you generally mean New Zealand's native biodiversity flora and fauna?

A. In the context of this work, yes, that would be right.

Q. And would you accept that the absence of data is not the same as evidence of no climate impact?

A. I very much agree with that.

Q. And also that from many taonga species we simply do not know yet the impact and the extent of the impact of climate on them do we agree?

A. Yes, I agree. I think that's probably a theme in my evidence that I would empathise, yes.

Q. So, with respect to the role of the Crown and It's serious entities in seeking to note the impacts of climate change on our taonga species, is there a nationally coordinated system for monitoring the responsive taonga species to climate change?

A. Not that I'm aware of. I guess there are pieces of work within ministries that are – such as yesterday we had MPI talking about some of the fisheries where they are monitoring some species, but I don't think there's any coordinated national programme to monitor those or to understand the impact that climate change is having on them.

Q. Do taonga species have multi decade climate response data sets available?

A. Generally, no. There are some data on some species I believe but not really my – there is definitely a lack of long term understanding of monitoring of those species and I think the point I made early about variability, they will be varying naturally and because of other things but understanding that's really hard if you don't have long records of their populations.

Q. Thank you. You say – I'm noted that point and I will seek to come back to it also, your point on variability. I wondered, with those data sets that you are aware of, are you aware of how frequently they may be updated?

A. No. Sorry, I can’t answer that question.

Q. No, that's kei te pai. So, is it correct that many if not all taonga species in New Zealand have little to know term monitoring data?

A. As far as I am aware, that is correct.

Q. Yes, with respect to your awareness, NIWA is the primary Crown Research Institute in New Zealand responsible for understanding climate change, isn’t it?

A. Yes, although that's from the domains in which it covers So there is significant – It doesn't cover the land based ecosystems. So, earth sciences, the oceans and the rivers and the atmosphere.

Q. Okay.

A. But other earth like plant and food and land care research which are now the called something else. The biological something. Anyone know? Sorry. it's embarrassing. Carry on.

Q. But with respect to NIWA's role you play a key role in advising the Crown by providing scientific research evidence and data to support policy development, don't you?

A. Yes, certainly, particularly in the rivers and in the oceans.

Q. Now, on this point you earlier noted that there may be issues and distinguishing climate change impacts on taonga species from other impacts such as habitat loss, run off, pest increase and alike. Would you accept that in fact the issues should not be considered separately or in silos, but are inextricably linked to climate change?

A. I don't know if all those pressures are linked to climate change. But some of them may well be. So, sedimentation into rivers and estuaries may be linked to climate change or it may be simply related to removal of forestry in replacement with pasture or something. So, it's – which may not be a climate change related thing per say. But I take your point that you cannot consider climate change in isolation, that these you have to – when considering these ecosystems, all these things matter, and climate change is influencing a number of them.

Q. I suppose, just reinforces the need and necessity for an integrated approach, not a solute approach one which is more, for example, in national monitoring system which allows collaboration across Crown entities, would you agree with that?

A. Yes.

Q. Now, you also noted when you talked about the knowledge gap, if I can refer to it as such, that there's definitely lots of interest in understanding that – I just quote you back, if that's okay, I took that from your answer to my learned friend that I think it was Mr Bennion – actually I think it was in your summary today, sorry. Now, in terms of the interest that NIWA has

in properly informing itself and better understanding impacts of climate change on taonga, has the Crown funding been sufficient to enable NIWA to study the full range of climate impacts on taonga species?

A. As a scientist, I think we'd always like more funding to study the impacts of climate change on taonga species as a critical and important. There certainly has been some work. But I think we've already discussed that there is a lot we don't know, and it would be great to be able to work on that. But Crown funding is a decision for the Crown. So, I guess it's their choice to make.

Q. Thank you. But would you accept that knowledge gaps may reflect – they may reflect funding limitations and policy priorities that directed are by that Crown on to NIWA?

A. To some degree, yes. NIWA – or earth sciences also has some funding that is core funding or sift funding they call it which is quite able to be decided within earth sciences as to what it is spent on. So, to some degree there's a sort of the way the funding system work there is competitive funding, there are targeted funding and there is core funding. So, funding that earth sciences decides how to spend itself and there are some large – within the sift funding there is some large – within the centre I lead, there is a $600,000 project which is focused on climate change impacts on Māori and there's about six projects a year funded by that. Some of them are looking at taonga spirit species. There's also a large endeavour programme that is looking at taonga species. So, there's certainly work going on, but as a scientist who works on climate change and worries about how this will impact the things we value, then I would love to see more money being spent on that, yes.

Q. So knowledge gaps may reflect funding limitations.

A. Of course.

Q. Is NIWA directed by the Crown to monitor the impacts of climate change on taonga species?

A. I don't think so.

Q. Is NIWA enabled by the Crown to monitor the impacts of climate change on taonga species?

A. In a sense that it receives funding from the Crown, yes.

Q. And it's encouraged to do so.

A. The Crown does not currently take a strong interest in what's funded in science, so it has a lot of contestable programmes where people put forward ideas and those are reviewed and then MBIE funds them with some lens of government priorities. But largely that's a competition of ideas process, that's our endeavours and smart ideas and that's a large chunk of the science funding system. And then it provides direction to earth sciences via its letter of intent is to how its funding should be allocated and that occurs at a relatively high level. Although a lot of science reforms currently underway are about how much direction the Crown will take in its funding and the implication is that there'll be more direction around how funding is allocated within the system. And so, that could be good. So, it is a good time to consider what the priorities are for funding in the science system if the Crown is to take a larger role in directing where those resources are spent.

Q. Yes, so in terms of that direction, just coming back to the Crown's role and directing the focus of CRI research, is it the case that there's sufficient direction to monitor the impacts of climate change on taonga species?

A. I'm not aware of specific direction to monitor taonga species within the Crown's requirements on earth sciences with its funding. But there is some internal funding that is allocated as a result of earth science as internal processes that reflect a valuing of climate change impacts on taonga.

Q. Thank you, and there's certainly – in the evidence of our claimant groups, for example, the impacts of climate change on the Raukūmara ranges and the Waiapu catchment with respect to our Ngāti Uepōhatu claimant groups, the impacts of the climate change on taonga species within the Rotorua lakes on our Te Arawa and Te Urunga o Kea claimant groups. There's at place knowledge of the impacts of climate change on taonga species. Is it fair to say that the lack of direction from the Crown to adequately monitor and understand those climate impacts is a lack of acting with sufficient urgency, it’s not acting with sufficient urgency, is it?

A. I don’t know about urgency, whether they're acting with urgency. If there was more funding for monitoring taonga species there would be more

monitoring of taonga species. I guess, like, it's a funding is in a competition of priorities internally and from the Crown, and that's – at the moment funding has been reduced so decisions are about what to do less of. So, that is challenging, and it would be fantastic to have more resources for monitoring taonga species.

Q. Thank you.

JUDGE MILROY:

Ms Te Whenua, I'm sorry to say you've come to the end of your time. I presume you may have some questions to put in writing.

MS TE WHENUA:

Āe, certainly can. Thank you, Ma'am. And thank you Dr Dean for our engagement today, that was very helpful.

DR SAMUEL DEAN:

Thank you.

JUDGE MILROY:

Thank you. So, Mr Lyall or Ms Swedlund, you are next.

MR LYALL:

Tēnā koe Ma'am.

JUDGE MILROY:

Tēnā koe.

(11:40) MR LYALL TO DR SAMUAL DEAN:

Q. Kia ora. Dr Dean, can you hear me and hopefully you can see me okay.

A. Tēnā koe. I can.

Q. Kia ora. So, my name is Lyall. I represent four claimant groups in this inquiry, Te Waimate Taiamai ki Kaikohe, which is an alliance of claimants. I think best to think about them as having at place claims around Lake Ōmāpere, that area in the Far North and because of that their lake

in their region, has some taonga species which are only found there including some plant species. I also represent Ngāti Ruapani ki Waikaremoana and obviously Lake Waikaremoana brings with it its own sort of challenges for those at place. Te Ūpokorehe who are in the area to the west of Ōpōtiki. So, the Ōhiwa Harbour and Ngāti Porou ki Hauraki in the Coromandel. So, the thing that unites all of those that they are groups who are doing the hard yards at place and response to climate change. And it was those claimants who asked Dr Every-Palmer to produce his opinion on whether climate policy at the moment matches the level of ambition required by international clients, client science and policy. And that's the evidence that you've responded to. I guess framing ways first would agree that he was doing a different job for the through his evidence than you were an effect he was looking at a level of ambition that's required and bringing some of the more political or policy aspects into that analysis. While you are more robustly focused on this science itself.

A. Yes, that's correct, yes.

Q. And I think you've said this in broad terms. But broadly You don't take issue with the science or that part of the brief where Dr Every-Palmer sets out the baselines as he sees them in order to get what that level of ambition is. It's just, we might call them some quibbles that he have all some clarifications so that it's a more robust approach.

A. Yes, that's right. He makes one error on the temperature. But otherwise it's all clarifications, where I felt might give broader context or and sort of highlighting the sort of a choice whether you include forestry, and he obviously considers that in his evidence.

Q. In that specific example that you've pointed to, in fact he was too conservative and his possessimative help what the last year was is it turns out.

A. That's right.

Q. I think given where we are in there the hearing this week. I'm gonna be forced to put some of my questions in writing and hopefully that won't be too much of a burden on you. There's just a few matters to tidy up.

A. No problem.

Q. But to run, well trying to get a few of those out of the way while I can. At your paragraph 72, if you have your brief of evidence there.

WITNESS REFERRED TO #A132, PARAGRAPH 72

If you could just keep me a confirmation when you reach that paragraph.

A. Yes. So, they're discussing one of the graphs that Dr Every-Palmer producers in his evidence and it shows an atmospheric concentration of two at the Moana Law Observatory in Hawaii. Really question about, and asking for your expertise, that it is indicative of the global trend in CO2 concentrations. Why does the southern hemisphere lag behind those of the northern hemisphere, if we know, and what effect is that have, if any on the way, that forecasting or modern works in Aotearoa.

Q. It's not a very important point. It's just that the majority of CO2 emissions from anthropogenic sources occur in the northern hemisphere, and there's a time delay in the mixing across the equatorial barrier and then there's also large sinks of CO2 in the southern hemisphere. So, a lot of the CO2 is going into the Southern Ocean, taken up into the ocean there where you've got cold low CO2 waters and obviously like large forest like the Amazon which take up additional CO2 in with fertilisation which increases the leaf area of the forest. So, you've got this sort of natural sort of, sorry, you've got this free win in the climate system. We're about half at least half of the emissions we produce are currently being taken out of the atmosphere by the oceans and by the biosphere and so to concentrations would be much higher if we didn't have that service, of that natural service and some of those absorptions may decrease in the future which was some of the tipping point questions we talked about earlier. So, you just have a CO. And the final part of your question was what consequences do they have? Very little. There's a slightly lower greenhouse gas effect – greenhouse effect that goes on in the southern hemisphere because of that but that warming is mixed from the northern hemisphere quite effectively anyway. So, it's not a very important point.

Q. Given what you've just described there, the ability of the oceans and some of the biomes still absorb the carbon at the moment. In effect that does allow for a lack of ambition presently to be masked, doesn't it?

A. Well, it masks the true consequence of our emissions, yes, they are. We are not – the full effect of all our emissions is not being felt in warming.

Q. It masks – perhaps better put as it, it masks a lack of ambition and reducing emissions at source because we have the ability to almost hide those emissions in those areas present.

A. Well, in New Zealand, we use forestry to offset emissions within our system and I would be happy to talk about earth sciences and forestry but that's again a choices to whether you include forestry. I would our forestry system, what we do at the moment is we can't only the carbon in the tree, right, so that we go out measure the trees and estimate how many trees there are a measure the carbon, but there's a lot more to it than just that. Plantation forest tree trees are darker than grass services so there's a significant warming effect when you plant trees that isn't included in the accounting system. So, the true effect of trees is different depending on where they are planted and the full ecosystem behaviour of the CO2, absorption is more complicated. I'm happy to talk about all that if you want to talk about –

Q. Well, I was going to ask you about – exactly that when we, I guess, question the analogy of the blanket that Dr Every-Palmer relied on because those forests are darker, so there is a question there. But I think that might be one for in writing given our timing. I did want to take you to your paragraph 79 though.

WITNESS REFERRED TO #A132, PARAGRAPH 79

Here I think we're get into the cranks of what some of the more political issues or policy issues are than the pure science. But you have said there it may be a reasonable policy choice for Aotearoa to make less effort in reducing agricultural methane if it's balanced by relatively more ambition on carbon dioxide reductions. I guess the flip side there is, I mean it does – an example of carbon dioxide productions might be clean car discount. It might be government investment and decarbonising industry fund. All of the types of things that we have seen removed in the last term of government in particular but by no means exclusively by this government. If there is an ambition in cupbin doxide reductions and that is in reduction in agricultural methane, then we're heading for coalimity aren't we?

A. Again, whether we're heading for calamity is really a consequence of global emissions and global agreements and structures as to whether countries and monitoring of countries to see whether they do, what they say they're doing, to achieve significant reductions of emissions of the sort of 60percent, reaching net zero within 20 years that would be required to avoid significant warming. So, New Zealand's policy choices are relevant, unquestionably, but they don't, on their own, make any difference to what on their own You know, I mean.

Q. They do. Some of the other things that have come up through other witnesses, however because the question of those big players, United States of America or Republic of China emissions dwarves those of some of the others. If the smaller admit is like Aotearoa led the way and banned it together on that, they can make an outsize difference. Are you aware of those sorts of modelling?

A. No, a leadership is, well participation obviously. Meeting now we made a commitment under the Paris Agreement – meeting that commitment would be important for the Paris Agreement, yes.

Q. And it might be selling I'll come back to and writing because I can't find the exact figure, but there's a group or a body of small admitters who join add up to around I think 30 percent of emissions. So it's not nothing.

A. No, I think it's, yeah. Collectively the small limit is matter, absolutely.

Q. Yes, and that's the point I'm driving at. And looking at time, and given the kōrero about Dr Every-Palmer, I just put two propositions to you from his evidence because I think really there's not a lot of difference in the broad position. So he says: “That a temperature rise of 1.5 degrees Celsius in it of itself will still cause considerable harm. Over limiting to that rate or significantly reduce the risks, adverse impacts, losses and damages from climate change.” Do you agree with that statement based on your expertise?

A. Yes.

Q. And I think we've heard from Crown witnesses this week that1.5 is the goal but somewhere about two would be a safer – still be a safe landing area if I can paraphrase what the kōrero has been. But Dr Every-Palmer's view is that even if we can't limit warming to 1.5 degrees Celsius, and this

is his paragraph 30, “Every tenth of a degree from their matters, and every tone of emissions matters.” Do you agree with that?

A. Yes, these sort of these temperature levels are not – I mean they matter, but to the climate system, New Zealand's already out there on – Aotearoa, New Zealand is already substantially different from what it was 150 years ago. The climate is different, the stresses on ecosystems are different and we haven't hit 1.5 degrees yet and everything we go above from here matters . And we're currently on target I guess – I mean the best estimates I've seen is probably about 3 degrees, if everyone based on current policy settings and that seems - But so that seems – you know, the world is not yet managed to figure out how to stay below two degrees and it won’t stay below 1.5 degrees. None of this is good, right, none of this is good.

Q. So just to unpack that last statement, when you say if everyone contributes on current policies that's a global view that you're referring to.

A. Yes, that’s correct.

Q. Ka pai. Well, I think given timing a I'll leave my questions there but thank you for your kōrero today.

A. Thank you.

JUDGE MILROY:

Thank you Mr Lyall. It's now time for panel questions. I'll just ask Matua Kevin, do you have any questions?

(11:56) KEVIN PRIME TO DER SAMUEL DEAN:

Q. Good afternoon. Were you present in the room yesterday when we were asking questions of Mr Smith and – that’s right, Mr Mandal-Johnson. Were you in the room then?

A. I was not in the room, sorry my mic was muted. But I did listen yesterday.

Q. My question is, do you think that we are on target for the emissions against offsets limit?

A. We're not on target to meet our Paris Commitment for the first – to 2030. We will have a large – but this is modelling done by other agencies. It's

too early to say whether in terms of reaching net zero which is our longer target, it would be too early to say whether we were on target for that.

Q. Okay. No, that's fine. Those are my questions.

QUESTIONS FROM PRUE KAPUA – NIL

(11:58) BASIL MORRISON TO DR SAMUEL DEAN:

Q. Thank you and thank you Dr Dean for your evidence and certainly I find, with interest, the responses that you've given to some of the question. We heard, we've heard over the week, I can't attribute it to anybody at this stage, sorry, but New Zealand is pretty much the only country the world that has an economy that is so much screwed towards food production as against the rest of the world. Is that – do I recall that from earlier evidences, that your view with the world is?

A. We are unusual in that approximately 50 percent of our emissions from are agricultural methane and other agricultural emissions, yes.

Q. Okay, right, you mentioned earlier on that in the agricultural sector we could probably do better with other lots of other things like electrification of plant and machinery et cetera of fertilizers and all of those sorts of things. I've asked the question of others and had some response to it. But in your experience and knowledge with your colleagues and that the development of grass – new grass cultivars and techniques and other products to reduce methane. You have much of an experience or knowledge in that area of new grass cultivars and breeding of cattle in itself?

A. Not - I don't have a lot of expertise. I did sit on the agricultural gas research centre board for a few years where we were given presentations and information about progress on the investment that the government made into alternative grasses vaccines for cattle. So I know a bit about it.

Q. Okay, how is it tracking? Is it being picked up by the industry? Are they actively recognising the issue and that they have to do my term better?

A. My impression would be that the industries very conscious of those issues in the potential of different grasses and different and feeds and for

reducing methane emissions. And they are encouraging to some degree, to some level. I mean, getting large reductions will be difficult, but I think they're encouraging signs for some technologies, yes.

Q. Okay.

A. You'll be better talking to the farming community about that because, yes, they've could be very conscious.

Q. Yes, I do get that in my ear. Look, thank you for that. I'm just mindful of with **(inaudible 12:01:35)** grasses now, how the farming practices with green feed maze, using that as you know 10 or 15 percent of the farm land mass actually not having a cow stand on it now because it's an annual rye grass which is cropped and then it's put into green feed maze and that is fed out. So, I'm just wondering how that is progressing and whether it's making a real difference. That was the question. I thought you might've had some knowledge of how those new techniques are farming.

A. No. Yes, like you've heard about these new techniques as their potential. In terms of how much uptake there is, I don't know. How much has actually been implemented and what difference that's making to emissions, I could look into it but it's probably early days.

Q. Yes, all right, look, thank you most sincerely. Thank you.

(12:02) PROFESSOR DAVID WILLIAMS TO DR SAMUEL DEAN:

Q. Tēnā koe. Now you've got David Williams. Just firstly, supplementary to Mr Lyall's question to you. The evidence I'm sure is that some people say New Zealand can't make a difference because we're less than one percent of the global emissions, but that the countries that collectively all of them have less than 1 percent contribution, but they total just over 30 percent. Is that likely to be right?

A. I can't remember if it's 30 percent, but it's significant, yes, that the small emitters collectively are a significant proportion of emissions and that logic that we're so little we wouldn't make a difference is definitely a fallacy in many ways, yes.

Q. Look, thank you for your evidence. Just really nice here in a scientist who's actually been working on this since the 1990s and so I've got no

questions about your substantial evidence which I think is great. Just some couple of questions about the responses to claimant witnesses. I just checked it up Dr Every-Palmer – sounds really grand, doesn't it? His doctorate is in artificial intelligence and legal reasoning. So, you've tripped him up on statistics. So, a doctorate from Canterbury might be pretty good too. But of course where you trip him up is that he minimised the impact. Is that correct?

A. Yes, he just made a mistake in understanding the data. He's someone who's pulling data and information from all sorts of places and in that case he made a mistake but it's not a criticism, he just made – he's not a climate scientist.

Q. But you made some remarks that said that overall you didn't substantially disagree with his evidence.

A. No.

Q. And you made the same remark with respect to Professor Naish

A. That's right.

Q. and with Dr Bertram you said – you didn't substantially disagree with them on climate science. You may have disagreed with them on some other issues, is that what that meant?

A. No, I don't think I disagree with anything he put, but obviously my expertise is climate science and so I wasn't judging his policy perspectives.

Q. Right. Okay, thank you. That's very good. Thank you very much.

(12:05) JUDGE MILROY TO DR SAMUEL DEAN:

Q. I was just interested in your comments about how forests actually are dark and there's a warming effect there. And one of the things that struck me was that I've always thought that a pine forest is darker on the land than indigenous forests.

A. It is.

Q. So there's a difference in the warming effect between them, would say?

A. There is.

Q. So, we've heard – Māori have a lot of issues about how indigenous forest gets dealt with because it takes up less carbon in the first however many

years than pine does. But I would've thought the the lesser warming effect ought to have been taken into account too in terms of how you allocate the units.

A. So, I did see your question yesterday of the forestry, EDS people, and about indigenous forestry and that it might take up more carbon. And so I can talk about earth sciences and its research and to carbon syncs. here are obviously other research within New Zealand that goes on in different organisations but from earth sciences we look at the atmosphere and we look at how carbon is absorbed – we measure it in the atmosphere. So, we're looking at the sources in syncs as it comes out into the atmosphere. So, we're literally what the atmosphere sees. The way the carbon accounting system works is the sort of botten up approach where you go out and count the number of trees and measure the tree trunks and estimate the carbon stored in the trees on the basis of that. And when you do that approach, yes, the indigenous forests grow slowly and so they grow small trunk they still carbon relatively slowly in their trucks. But we do observe that mature indigenous forests are a large sync of carbon from the atmosphere. We're not entirely sure why that reason is and there are experts who question it's veracity. But if we could understand why they are such a large carbon sync, then it may well be possible to build that into the accounting system in a way that incentivisers permanent indigenous forest which would be a good carbon storage source. So, that's a reason why you might want to keep forestry in an ETS system. I have previously published on this question of albedo and the fact that darker pine forests warm, they are cool at the surface, but they warm above. So, they have a warming effect that is counter to their carbon uptake. And this is understood but it is not included in the accounting system because it's a complexity trees and it depends where they are and what environment they're in. There is a, I guess – So, there's that sort of question of the how you would – And the third thing I was going to add is fire risk. So, I published quite a lot and we've written papers about this on parts of the country become extremely high fire risk in the future central Otago and East Coast of the South Island Marlborough that planting those with plantation forest may be a – not necessarily a good idea

because they will be a high fire risk. So, the simplicity of the carbon off setting is a good question in terms of what the full climate system – what's really going on and what the full carbon story really is and what – there's both an opportunity there in terms of indigenous forests and some concerns about the current system and the risks because if those forests burn you'll have to pay for that carbon which really will require some sort of parametric insurance or something to cover. So yes, it's a complicated – forestry is both an opportunity and a challenge.

Q. Because I always understood as well, being a non-scientist and knowing not that much about forestry, that indigenous forests were much longer lived as well than pine forests.

A. Yes, and pine forests left to it's own will seed itself and new trees will grow.

Q. Yes.

A. But a managed pine forest is on a rotation and that rotation length affects the carbon storage and they have to go to considerable difficulty to account for that. But indigenous forest do seem – in New Zealand do seem to, for whatever reason, whether it's related to carbon burial in the soil or erosion or ecosystem function, we do observe that they take up a lot of carbon, where exactly it goes as a good question.

Q. So, is there any work being done on that, you know, research into indigenous forest as carbon syncs.

A. Yes. And there's a carbon watch research programme that has been run from earth sciences looking at trying to understand these questions of where carbon is going in both urban and forest environments. And we did put in a proposal to be funded to look explicitly at indigenous forests and what's going on there, but unfortunately it wasn't funded but it is definitely an area we are fully committed to, and think is important.

Q. And are you able – you mentioned that you're into a competitive funding processes now in terms of being able to apply for funding for different research projects, and that it's determined a lot by the government's priorities as to what gets funded first. Are you able to tell us where climate change might sit in the list of priorities?

A. I think I said that the government would be – actually the government's concern is that the funding isn't directed enough at their priorities. So, some of these competitive processes don't – aren't strongly driven by the government's priorities. They're driven by the reviews of whether the science is excellent and the impact that it might deliver. And so, I think the government would like to see stronger influence over where that funding is going and whether it's delivering to its priorities. I'm not sure what it's priorities are for climate change.

Q. All right. Well, thank you for those answers and thank you very much for your evidence to us. Like Professor Williams, I think, like the whole panel it's always a pleasure to have the scientist give evidence. So, thank you for that. I'll just see if Mr Fong has any questions for you by way of re-examination.

A. Thank you.

MR FONG:

One thing, which is in questioning there were a lot of questions directed at Dr Dean about funding or Crown Research. Obviously, Dr Dean's evidence is about scientific masses, but just the flag that the next hearing week, your Honour might already know that there will be a witness from MBIE who will be giving evidence specifically on Crown funding and Crown Research and there will also be two witnesses from the Department of Conservation who will be giving evidence on current research relating to climate change *vis a vis* it's impact on biodiversity species and ecosystem so the panel can expect further details and sort of witnesses who can speak more directly and closely to these issues.

(12:14) MR FONG TO DR SAMUEL DEAN: (RE-EXAMINATION):

Q. Now Dr Dean, I've just got a very simple question for you. You might recall Professor Williams asked you about to do what extent you agree with disagree with Dr Bertram's evidence and you've made the point that you speak from the vantage point of being a climate climate science. So, you're just speaking to climate science issues and not policy perspective. In the same spirit, I want to get clarification from you is in cross-

examination my learn friend put to you in terms of where they broadly agree with the evidence of Dr Every-Palmer and your answer from my memory is, yes, but can I get you to clarify again whether your agreement is related to climate science, rather than policy perspectives and decisions as set out in evidence.

A. I mean primarily, in terms of the climate science. I think I did try to check his numbers. So, but he obviously makes, what I would consider, policy choices in his arguments, yes. I'm not judging.

Q. So, when you said yes to the question your answers direct science rather than policy choices and perspective, is that your position?

A. I read the evidence last night and I mean, the information I put in my expert evidence is focused on responding to the climate science within his evidence, that's right.

Q. Thank you for that clarification.

MR FONG:

I've got the question for you.

JUDGE MILROY:

Thank you Mr Fong. And thank you again, Dr Dean for your evidence before us. I found it very interesting and helpful. Thank you. We'll just take a microbreak and come back for Dr Old's evidence.

MR PREBBLE:

You're honour, actually we to just ensure the seamless running of the day we're going to, instead, have Mr Ward who is here. Dr old is coming down from Auckland, so it just might be that there is a delay otherwise. So, we will have him instead and my colleague, Mr Fong, will introduce him as well. Thank you.

JUDGE MILROY:

All right, thank you. So, Mr Ward first, all right. Good.

HEARING ADJOURNS: 12.18 PM

HEARING RESUMES: 12.20 PM

JUDGE MILROY ADDRESSES RICHARD WARD – MIHI, ACKNOWLEDGEMENT (12:20:04)

(12:20) MR FONG CALLS

RICHARD WARD (SWORN)

Q. Can you confirm for the Tribunal that your full name is for Richard Ward.

A. I can.

Q. And that you've prepared brief of evidence for this inquiry dated 30 September 2025.

A. Yes.

Q. And that you have prepared some talking points to guide the Tribunal through your evidence, is that correct?

A. Yes.

Q. I invite you now to go through your talking points.

A. Kia ora.

(12:20) RICHARD WARD: (#A119-(b))

REFERS TO #A119(b)

My name is Richard Ward, and I am the General Manager of Local Government Policy, Partnerships and Operations at the Department of Internal Affairs.

My evidence sort of covers:

- DIAs function and the water quality and environmental regulatory regime for the treatment and supply of drinking water.
- The impact of climate change on water services
- Local Water Done Well reforms; and
- Water supply to marae and papakāinga.

DIAs function and the regulatory framework for the safety and environmental performance of water services

- DIA provides advice to the Minister of Local Government on key strategic policy issues facing the local government sector portfolio, including the key areas of water services reform.
- Following the Havelock North water contamination event in 2016, a government inquiry recommended the establishment of a dedicated water regulator.
- In 2020, the Water Services Authority – Taumata Arowai (**the Authority**) was established by the Water Services Authority – Taumata Arowai Act 2020.
- The Authority regulates drinking water suppliers for safety and quality and oversees the environmental performance of stormwater and wastewater networks. DIA monitors the Authority, on behalf of the Minister of Local Government.
- The drinking water regulatory framework, which is enforced by the Authority, was established by the Water Services Act 2021 (**the Act**). The main purpose of the Act is to ensure drinking water suppliers provide safe drinking water to consumers.
- The Act requires drinking water suppliers to:
    - have a drinking water safety plan
    - comply with legislative requirements (such as drinking water standards)
    - provide a source water risk management framework that enables risks to source water to be properly identified, managed, and monitored.
- The Act provides mechanisms that enable the regulation of drinking water to be proportionate to the scale, complexity, and risk profile of beach drinking water supply.

Climate change impacts

- There are systemic issues with water infrastructure and service provision in New Zealand that are leading to:
    - poor compliance with drinking water regulatory requirements with associated public health risks;
    - poor environmental and customer outcomes;
    - a lack of resilience in the face of climate change and natural hazard risks; and
    - persistent under-investment, resulting in deteriorating asset quality and the accumulation of a large infrastructure deficit.

- The effects of climate change exacerbate these issues, with extreme weather events damaging drinking water and wastewater infrastructure, disrupting services, increasing contamination risks and reducing water availability.
- Māori communities, especially in rural areas with private or small-scale communal systems, are particularly affected due to limited resources and higher vulnerability to drought, flooding, and contamination.

Addressing the water infrastructure challenges – Local Water Done Well reforms

- Local Water Done Well is the current government's plan to address water infrastructure challenges. The policy continues council ownership of water services and recognises the importance of local decision-making and flexibility for communities and councils. At the same time, the policy strengthens regulatory oversight and ensures financial sustainability of water service providers.
- My brief of evidence sets out the background to the key pieces of legislation that implement Local Water Done Well.
- The key point is that under the Local Government (Water Services) Act 2025, one of the objectives of local government water service providers (councils or water organisations) is to provide water services that are

resilient to external factors, for example, climate change and natural hazards.

- The Act provides that all persons must act consistently with Treaty settlement obligations in performing and exercising functions, duties, and powers under the Act.

Territorial authorities' obligation to assess communities' access to drinking water.

- Under the Water Services Act, councils must assess community access to drinking water every three years, or earlier if concern are raised. Councils must notify the Authority of any:
  - suppliers that are failing to meet such tree obligations;
  - risks arising from absence of or deficiency in a drinking water service or a supplier that is at risk of ceasing to provide a service.
- Councils must consider their assessment findings in relation to a water services strategy/statement of expectations, district plans, and public health duties.
- Water service providers must ensure water supply when existing suppliers are facing a significant problem.

Wastewater and stormwater

- Under the local Government (Water Services) Act, councils must assess communities' stormwater and wastewater services, to assess their adequacy from a public health perspective.
- My brief of evidence sets out the detail of mechanisms that are provided under Local Water Done Well legislation in relation to wastewater and stormwater.
- Changes to wastewater and stormwater environmental performance standards and development of infrastructure design solutions are intended to:

- reduce regulatory burden by ensuring environmental regulation in water services legislation is proportionate to risk and benefit;
- deliver greater standardisation of treatment systems;
- reduce and provide greater certainty of costs in design, build, and operation of wastewater systems; and
- support more consistent national monitoring.

- At the time of preparing my brief of evidence, the Authority was developing national wastewater environmental performance standards (the standards) to be in placed by late 2025. In consulting on the standards, the Authority sought feedback on how factors such as climate change should be addressed.
- The first set of standards has now come into force on 19 December 2025. The standards include discharging biosolids to land, overflows and bypasses of untreated or partially treated wastewater, discharging treated wastewater into water and discharging treated wastewater to land. A second set of wastewater standards is currently being scoped to further streamline aspects of wastewater consenting.
- Legislative changes to enable new planning and regulatory tools for the management of stormwater networks, respond to the increased exposure of people and property to flood risks due to extreme weather and urban intensification.

Water supply to marae and papakāinga

- Evidence before the Tribunal has addressed issues with water supply to rural marae and papakāinga and suggests that climate change impacts will mean Māori may not be able to enjoy the customary use of their whenua.
- My brief of evidence outlines the findings of recent advisory groups that have considered issues with water supply to marae and papakāinga.

- My evidence also discusses two funding initiatives established to improve rural marae drinking water infrastructure: the Rural Drinking Water Programme (2022) and Marae Drinking Water Infrastructure fund (2024).

Rural Drinking Water Programme

- The $30 million Rural Drinking Water Programme was established to install upgraded drinking water infrastructure for rural applicants not connected to a town supply. Of that figure, $20 million was set aside to upgrade drinking water systems for rural marae, kōhanga reo, and papakāinga; $10 million was set aside for other private rural drinking water supplies that are not for profit and in areas of high vulnerability.
- The programme provides training and maintenance to support communities to keep their water safe and meet the Authority's drinking water standards.
- Figures about installations have been updated since my brief of evidence was written. As at 31 December 2025, the programme has installed upgraded drinking water infrastructure at 80 rural marae, papakāinga, and kōhanga reo, and 11 other private rural drinking water supplies. Infrastructure at one further marae was installed in January 2026.
- The programme's funding has been fully allocated and applications from marae exceeded the available funding. In February 2023, the programme closed to further applications from rural marae, kāinga, and kōhanga reo. In December 2024, DIA advised the then Minister of Local Government, Honourable Simeon Brown that the applications from rural marae exceeded the available funding. Based on this advice, Minister Brown decided to establish the $10 million Marae Drinking Water Fund.

Marae Drinking Water Fund

- The Marae Drinking Water Fund was originally established as a $10 million programme to provide marae that are not connected to a town supply with upgraded drinking water infrastructure, training, and

maintenance to help them keep their water safe and meet the new regulatory requirements and the Authority's drinking water standards.

- I have the following updates to the information provided in my brief of evidence:
    - Separately, about the same time the fund was established, Te Arawa Lakes Trust (TALT) agreed that $2.5 million previously allocated for activities relating to Three Waters reform as part of an iwi collective, but unspent, would be redirected to marae drinking water infrastructure within their rohe. With the shift to Local Water Done Well, Cabinet agreed to redirect the funding to align with Local Water Done Well;
    - In mid-2025, a further $1.497 million was added to the fund, from Water Reform programme underspend;
    - In total, the fund is now $13.997 million.
    - As at 31 December 2025, 29 plants have been installed. We anticipate installing 35 to 40 sites, and a further six to eight within the TALT rohe, with most of the remaining plants to be installed in late March, early April 206.

Any further funding would be subject to standard Budget processes, noting that water supplies and services are funded locally or by the recipients of private supplies.

(12:32) MR LYALL TO RICHARD WARD:

Q. Tēnā koe **greetings** Mr Ward. Is it Mr or Dr Ward?

A. Just Mr, thank you.

Q. Ka pai. Look, I have 10 minutes or so for questions today and quite a few questions so I think I'll put the bulk of them in writing. But what I thought we would drill down on today is the Water Services Authority Taumata Arowai Act 2020. First in foremost, this is, as I understand it, the Act which sets up the regulator for drinking water generally.

A. Correct.

Q. And, as a way of ensuring that the Māori interest is represented, listened to, and taken into account, a part of that regime is to have a Māori Advisory Group providing input and advice.

A. I believe that was the case, yes.

Q. Okay.

MR LYALL TO REGISTRAR – ONLINE SHARE SCREEN

Just at the top of this page, you will see it says, Taumata Arowai – Water Services Regulator Act 2020. This is the pre-amendment version of the Act that you discuss in evidence and here it is section 17 and hopefully, you can see that clearly. I'll make it a little bigger.

A. Yes.

Q. This is this section which sets out the role of the Māori Advisory Group. Are we still within your area of expertise here? You're comfortable speaking to this.

A. Very limited. That is a Taumata Arowai. Yes, it probably depends on how specific you want to get.

Q. Okay.

A. It's not a DIA area.

Q. I guess the issue that we have in doing our job is working out where to get into these issues or who to get into the issues with and I think your evidence is the most square way to get there. So here, we have the older Act which sets out the role of the Māori Advisory Group. The role includes there the matters which are set out at section 2, so we have giving effect to Te Mana o te Wai, providing advice on how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised, any other matters expressed by the Board, and then the Board in turn must have regard to the advice of the advisory group, demonstrate how it has had regard to that, and provides an opportunity for commentary. That is based on the memorandum of understanding and you will see I have highlighted that there.

If we then turn to – and I'm going to scroll down so apologies – the Water Services Authority – Taumata Arowai at 2020. I guess the first obvious point to note is this is in line with this current iteration of the Crown's view that English must be first in statute names so we've had a reversal there.

But drilling down into the complementary section 17 Role of Māori Advisory Group, you will see at 2 there: "The Māori Advisory Group must provide advice under subsection(1)(a) from a Māori perspective." We lose there, don't we, all of the reference to mātauranga, tikanga, all of those descriptive terms. I wondered if you were in a position to comment on the difference that that guidance would make at a practical level and, from what you have said, it may be that you are simply not. But do you have a comment on that?

A. At a very general level, what you saw was a significant change between the previous Government's Three Waters reform programme and the current Government's Local Water Done Well sort of programme both structurally, but also from a government sort of perspective. A number of sort of amendments I guess were made to better reflect what the current Government's view and perspective sort of were. The detail of those changes, no, my apologies. But we can follow-up with that and we can talk to Taumata Arowai to find out exactly what that may change from their perspective though.

Q. Yes, I think following up in writing will be the pathway there. But while we have it up and while we are here, just also to note now at 3 we move from a situation where the Board "must have regard to" to a situation where it "takes the advice into account". These are somewhat legal terms of art. Are you able to discuss what the difference and practice is between at a policy level taking something into account or having regard to?

A. Yes. From a policy perspective essentially "take into account" means that you must have given it consideration. "Have regard to" would be a stronger from a policy perspective and that you would need to be able to demonstrate a link that you have given regard to what that advice would be.

Q. Āe. I think given the rest of my questions were going to get probably more into the detail of things, I might be better to put those in writing and you can seek advice on that. So I'll leave my questions there today. Ngā mihi.

(12:39) MS TE WHENUA TO RICHARD WARD:

Q. Tēnā koe Mr Ward.

A. Tēnā koe.

Q. Tēnā koe. My name is Ms Te Whenua. Within the present inquiry, I represent Te Urunga o Kea Te Arawa Climate Change Committee whose collaborative work you have referred to in your evidence and is acknowledged with respect to the DIA.

I today want to focus specifically on stormwater development as a kaupapa that was presented by a Te Arawa witness Kerri Anne Hancock to the inquiry panel within this inquiry. Just as a bit of context, I won't bring up the evidence or tend to take you through it. It just by means of context. Ms Hancock deposed that Te Arawa's primary climate aspirations are to protect the natural waterways within the rohe of Te Arawa, to have safe healthy waterways for taonga species, to have clean healthy waterways for whānau to swim, drink, and engage in, and to have clean healthy waterways where whānau can engage in customary mahinga kai in safe ways, and that's not an exhaustive list. But following on from that, the primary position of the Te Arawa Climate Committee strategy is a degrowth position as opposed to a sustainable growth position. It is a de-escalation and de-scaling of growth activities and policy around that, such as urban development, and that's the connection here with your stormwater evidence. The position of Te Arawa in this respect is that increasing urban development puts further pressure on their aspirations as an iwi. Would you care to comment on that?

A. Yes, I would agree with that. Yes, there is no doubt about it urban development does impact very heavily on stormwater and on the natural environment.

Q. And that urban development puts further pressure on flood risk. Is that also correct?

A. Yes.

Q. In those circumstances, is it correct that a stormwater management becomes more of a Band-Aid to climate related flood risk which is exacerbated by development rather than a mitigation strategy? Would you agree?

A. Yes, stormwater management is very much sitting in the adaptation space rather than the mitigation space.

Q. Yes, because stormwater systems are designed to manage run-off as opposed to prevent run-off entirely. That's correct, isn't it?

A. Yes.

Q. And they don't replicate natural hydraulic systems in full.

A. Yes, correct.

Q. Urban development increases impermeable surfaces, like roads and roofs. That's correct, you would agree.

A. Yes.

Q. And that reduces natural infiltration of water into soil.

A. Yes.

Q. I mean I think you agree the overall proposition without me going through all of these impacts. But I guess the important thing for Te Arawa is therefore whether the Crown has considered de-scaling and de-escalating urban development as a strategy to adaptation and mitigating the impacts of climate change, particularly on natural waterways and flooding.

A. I think, to be honest, ma'am, that was probably a question that was better directed to the MfE people from the overall climate change adaptation perspective. From where we sit and the work that we are involved in stormwater and urban development sort of are almost conflicting in that sort of regard. So what you will see through the water services legislation and the regulatory sort of instruments that are coming into play are the requirements for things like Stormwater Network Risk Management Plans, Stormwater Network Bylaws et cetera to manage the risks and to manage the hazards, yes. So that is not at a policy principle sort of perspective. That is just saying that: "This was something that is there that is going to need to be managed and it does create risks."

Q. Right. It is more of a directive limiting the degree to which you can explore those other options at least at the DIA level, de-scaling and de-escalation for urban development for example.

A. Yes. It may be that a stormwater risk plan essentially says that development is not able to be satisfactorily managed or flood risk

management in this particular area which may then result in planning changes which means that no development happens in that particular area. But that is not I guess a big picture principle.

Q. No. Okay, I think that brings me to the end of my specific questions on stormwater development and your roles. I thank you very much for your time.

MS RONGO ADDRESSES JUDGE MILROY – QUESTIONS IN WRITING (12:45:15)

(12:45) PROFESSOR DAVID WILLIAMS TO RICHARD WARD:

Q. So I've asked questions of other witnesses this week that focus on remote/rural marae in particular and I was very interested reading through your evidence about this rural drinking water programme and then the marae drinking water fund and the work that you were doing in setting priorities by the February of 2025 and the expenditure of those funds. Early in the week from the Ministry for the Environment, we heard some evidence from Ms Rangi and Ms Haira about a marae drinking water project that was implemented at Mitimiti at Matiti Marae and the school and 45 dwellings at Mitimiti. Do you happen knowing thing about that?

A. No, I do not I'm afraid.

Q. It looks almost exactly like the marae drinking water fund that you were talking about but it was described by those witnesses for MfE as a climate resilience project. So I just wonder whether the climate, and that is the issue for us in this inquiry, whether climate resilience is part of the thinking behind the sort of projects that you choose as part of your drinking water funding.

A. Not directly and not visibly as part of the criteria for these two funds. However, indirectly, yes. What we are trying to address through these two funds essentially are responding to the impacts and the effects in many cases of climate change. No, it is not deliberately set up to do that but it will do that by its very nature.

Q. Right. It's not just Havelock North and the bad water outcomes there. You do have that wider perspective.

A. There is a wider perspective. Especially, for the marae drinking water fund, one of the criteria that we looked at for that one was around civil defence and emergency management sort of hubs.

Q. Yes.

A. That was one of the prioritisation around who was selected. Four marae that had suffered extreme weather events they sort of went up higher in the priority order.

Q. And also enable them to better host the people that comes to seek sanctuary at a time of emergency.

A. Yes.

Q. Good. Thank you that's consistent with the sort of enquiries that I had. Thank you for your evidence.

QUESTIONS FROM KEVIN PRIME – NIL

(12:49) PRUE KAPUA TO RICHARD WARD:

Q. Just following on from the last questions, and I guess it is the last part, the update you have got in your talking points. First of all, that report you refer to in the footnote I had a little bit of difficulty locating that. It is not attached to your evidence, is it?

A. No. There is just a footnote with hopefully what is a URL that will take you through to the NIFF website. The report is only six pages long.

Q. All right. Yes, no, I did go onto the NIFF website but I couldn't actually locate that report but that's fine. Just in relation to those issues, do I take it, that that outlines rural drinking water infrastructure, installations, including marae Māori installations? Is that it all of them?

A. It picks up both of those two funds, yes. The earlier rural drinking water and the later marae drinking water fund and it puts the two together and gives you a progress of how they are going and where they are up to.

Q. Okay. When you refer to the further six to eight within the Te Arawa Lakes Trust rohe, I just wanted to understand that point, the 29 plants that have been installed, are they all within Te Arawa Lakes or are they generally?

A. No, they are not.

Q. Right.

A. And that is across the country in terms of the marae drinking water fund how many have been installed.

Q. Yes.

A. They are anticipating they will get to 35 to 40 overall with a further six to eight within the Te Arawa Lakes Trust rohe.

Q. Right. How many are in the Te Arawa Lakes Trust to date?

A. I don't know that we have specific. I do have a little bit more information if you will just bear with me for just a moment. I don't think we have it necessarily right down to Te Arawa Lakes rohe. We do have numbers. There are 18 across the Bay of Plenty and five across the Waikato.

Q. Thank you. Just following on from the questions relating to Mitimiti, do you have discussions with Ministry for the Environment in relation to these projects? Is there interaction between your two agencies?

A. Yes, there is. But our programmes are sort of closed off in that regard. They have finished. There is no further sort of applications in there. So it is now very much into the implementation phase of the site assessments, the feasibility, the design solutions, and then actually making them happen. I would've probably expected if there was I guess more sites available, more funding available, then, yes, we would probably pick those conversations up with them.

Q. I gather from that there is no proposal to reopen applications currently.

A. Not at the moment. It would require further sort of government funding and budget decisions to allow that to happen.

Q. Okay, thank you. Thank you for your evidence Mr Ward.

(12:53) BASIL MORRISON TO RICHARD WARD:

Q. Thank you Mr Ward. Just a query in regard to liability. Where you have a small rural water supply with half a dozen houses, papakāinga housing, a marae, and the Crown through this proposal advances resources for a water supply that will meet ACE national standard, okay, where does any liability sit or does it sit with the ownership of that supply as it is or does that fall back on the Crown? If that supply isn't maintained and if it's not maintained or when is it maintained and who monitors that to make sure

there's not a breakdown in this system? And if there is a breakdown in this system because it hasn't been monitored, hasn't been maintained, where does the liability sit?

A. I would have to check the legal or go back and actually check what the contracts would say for that. With these programmes, it is five years of, I guess, the partner that is working with NIFFCO in terms of installing and putting in these plants. They have a five-year training sort of and ongoing maintenance sort of programme.

Q. Okay.

A. At the end of that five years, it is then handed over and it becomes the responsibility of the marae to continue to sort of maintain and operate it.

Q. Okay.

A. The funding and everything is there for that five-year operational sort of period. The idea of being to upskill, to train et cetera.

Q. Okay. And after that, you're on your own.

A. Would suggest that you would be on your own, yes.

Q. Is it monitored by the local authority health officials?

A. It depends probably on the size because the very small ones are largely operating independently and have a much lower threshold in terms of coming to the attention of regulators. Larger ones, yes, they will be required to be registered and will be required to be monitored and tested

Q. Because we all understand, you may have a rural marae with generally limited resources, they have a major tangihanga or an event there, and there might be 500-600 people turn up there for a weekend or for an event, and there is a breakdown in the system and a lot of people get sick and end up a bit like a Havelock North situation. I just wondered where that is stopped in regard to any liability to the local authority who has a health responsibility in regard to water (and I understand under the new legislation) and then Health New Zealand (or whatever that's called these days) and then the marae operators themselves because they are outside of the five-year in which they have received advice and coaching. I just wonder where that would sit because obviously it could be a major event.

A. Yes.

Q. Okay. So we don't see that sitting with local government that responsibility to make sure that marae is meeting their water standards like it would be council supply.

A. Yes, it's different. Yes, private supplies the responsibility sits with them.

Q. Okay.

A. Yes, council supplies the responsibility sits with them.

Q. Okay, thank you.

(12:57) JUDGE MILROY TO RICHARD WARD:

Q. Just following up a little bit more on that. In the training part of it, I'm presuming that includes how to test the water for testing purposes to see that it's all safe as well.

A. I will say, yes, and I will confirm if that is not the case.

Q. All right, thank you. I just wanted to ask about: “Design solutions are intended to reduce regulatory burden by ensuring environmental regulation in water services legislation is proportionate to risk and benefit,” and I need to understand that a bit more because we've just been hearing from Dr Dean for instance and we've heard from other witnesses about the increasing issues that climate change is going to bring more rain in certain places and more drought in other places and so on and so on. How is that taken into account in terms of the regulations and the standards that are expected? Are we going to have to have higher standards later on I suppose or?

A. I think the answer is hopefully not. The slight diversion I think in New Zealand we have a lovely pattern of looking for bespoke infrastructure solutions be it schools, be it hospitals, be it wastewater treatment plants, be it drinking water plants. One of the ways to reduce costs is to try and standardise a lot of the infrastructure that you are actually sort of building.

There are about 334 public wastewater treatment plants across New Zealand and you have 55 to 60-odd per cent of those need to be reconsented in the next 10 years. Now that is a very, very large sort of cost and you have got about 44% of your drinking water plants that would also need to basically be reconsented in that regard. One of the ways to

reduce the cost is to try and almost issue a model sort of design that will meet the required standards but able to be replicated and rolled out for suppliers and reduce the costs albeit councils or private water suppliers. But it is largely councils in this case to be able to put that in.

The answer I think is that everything is still going to be a little bit site specific so how high it may be or potentially the size that it may need to be will still need to be site specific. The standards as a whole I think should be designed in a way that does mitigate against or adapt to provide that adaptation for climate change, but you may need particular differences in particular sites that won't be captured by these.

Q. All right. In terms of the national monitoring, does that mean that councils aren't going to be monitoring themselves? It will be DIA or somebody who goes out and does it.

A. Yes, this was one of the big failings following from Havelock North was that the regulatory regime and the oversight in the monitoring wasn't particularly great and it led through into the Three Waters reform programme and now Local Water Done Well. That is where a key role does come in for Taumata Arowai as the Water Services Authority that will be doing that general oversight and monitoring. Council and regional councils in particular still have key roles in monitoring consent sort of conditions. Yes, but Taumata Arowai as the Water Services Authority has a key role here.

Q. All right. Well, thank you. Those are all my questions.

A. Thank you Ma'am.

RE-EXAMINATION QUESTIONS FROM MR FONG – NIL

JUDGE MILROY ADDRESSES RICHARD WARD – MIHI, ACKNOWLEDGEMENT (13:02:00)

MR PREBBLE ADDRESSES JUDGE MILROY – TIMETABLE UPDATE (13:02:20)

HEARING ADJOURNS: 1.02 PM

HEARING RESUMES: 1.58 PM

JUDGE MILROY ADDRESSES DR ANDREW OLD – MIHI, ACKNOWLEDGEMENT (13:58:49)

(13:58) MR PREBBLE CALLS

DR ANDREW CHARLES OLD (SWORN)

Q. Tēnā koe Dr Old. Can you please confirm you full name for the Tribunal?

A. Kia ora. Andrew Charles Old.

Q. Thank you. Can you please confirm that you have signed a brief of evidence dated 29 September 2025 in this proceeding?

A. I can.

Q. Do you have that before you?

A. I do.

Q. For the record just noting that is at #A134 and the appendices are #A134(a). I also understand you have prepared some talking points that were filed last week and you are aware of that document.

A. I am.

Q. Just for the record that is #A134(b). I also understand you have provided an updated set of talking points which were filed last night dated 19 March 2026. Do you have that in front of you?

A. I do.

Q. For the record that is #A134(c). Thank you Dr Old. If you could please read those talking points to the Tribunal.

A. Thank you.

(13:59) DR ANDREW OLD: (MIHI, #A134-(a), (b), (c))

REFERS TO #A134(C)

Tēnā koutou katoa. I whānau mai au i Kirikiriroa. I tipu ake au i Te Papaioea. Kei Tamaki Makaurau ahau e noho ana. He Pākehā ahau. Nō Ingarangi me Kōtirana ōku tūpuna. Ko au te Deputy Director-General ō Te Pou Hauora Tūmatanui ki te Manatū Hauora. Ko Andrew Old tōku ingoa. Tēnā koutou katoa. **Nil.**

Thank you for the opportunity to speak today. My evidence focuses on the health-related risks posed by climate change in Aotearoa New Zealand, the disproportionate impacts of these risks on Māori, and the actions being taken across the health system to strengthen climate adaptation. As Deputy Director-General of Health for the Public Health Agency within the Ministry of Health, I provide leadership across public health strategy, policy, surveillance and system stewardship. This informs the perspective I bring to the Tribunal.

In addition to the Ministry's oversight role, Health New Zealand is the national, publicly funded healthcare Crown entity in Aotearoa and manages the day-to-day running of the health system. It replaced the country's 20 former District Health Boards and assumed the Ministry of Health's previous operational functions, such as managing contracts, to create a unified national health service. Health New Zealand also houses the National Public Health Service, which brought together public health units from across the country and Te Hiringa Hauora – Health Promotion Agency.

Climate change is widely acknowledged as one of the most significant global health threats. Here in Aotearoa, we are already experiencing rising temperatures, sea level rise, more frequent droughts, and increasingly severe storms and flooding, such as those seen recently in the upper North Island and with *Cyclone Gabrielle* in early 2023. These changes have direct health impacts, including injury, illness, heat related conditions, and mental health effects. They also have cascading impacts that arise from stresses on the social determinants of health, such as housing, water security, food security, livelihoods and social cohesion. These cascading effects can be profound and may intensify as adverse events become more frequent, leaving communities with less time and fewer resources to recover.

Māori are disproportionately affected by climate change. Climate change impacts mauri ora (individual wellbeing), whānau ora (family and community wellbeing) and wai ora (environmental wellbeing), affecting both wellbeing and

identity. We know that many Māori communities are located in coastal, rural, or remote areas that are particularly exposed to flooding, erosion and sea level rise. Māori are also heavily represented in climate sensitive industries such as agriculture, forestry, and fisheries. Structural factors — including income levels, access to infrastructure, and constraints related to land governance under Te Ture Whenua Māori Act and ongoing inequities in health and housing — can affect how quickly Māori communities are able to adapt or recover. At the same time, climate impacts affect the cultural connection to whenua and taiao, which I understand are fundamental to Māori identity. Māori leadership and mātauranga Māori are essential to developing effective adaptation responses, as demonstrated by iwi and hapū led efforts following events such as *Cyclone Gabrielle*.

The health sector's climate responsibilities are framed by several key strategies, including *Pae Tū: Hauora Māori Strategy*, the New Zealand *Health Strategy*, and the *Rural Health Strategy*. These documents emphasise equity, resilience, whole of government collaboration and strong partnerships with Māori. They collectively articulate the need for the health system to be prepared for more frequent adverse events and to ensure that community led and Māori led responses are enabled. The *Government Policy Statement on Health 2024-2027* and *Health* New Zealand *Statement of Intent 2024-2028* further reinforce the expectation that the health sector must strengthen its readiness for additional pressures, including climate change induced events.

In October 2024, the Ministry of Health published the first *Health National Adaptation Plan 2024-2027* (HNAP), which sets the strategic direction for health focused climate adaptation. The Plan was developed jointly with Health New Zealand – Te Whatu Ora and was informed by engagement with a number of iwi, hapū, hauora Māori partners, researchers, community organisations, and local and central government. Te Aka Whai Ora the Māori Health Authority, since disestablished, was also a key member of the governance and engagement teams alongside the Ministry of Health and Health New Zealand. The HNAP aims to ensure the health system can provide climate-resilient health services, while also addressing the broader direct and indirect or

cascading effects of climate change on the health of communities. This also includes those effects that sectors outside the health system contribute to. The Plan identifies young people, rangatahi, children and future generations, Māori, Pacific peoples, disabled people, rural populations and people living with high levels of socioeconomic deprivation as priority populations most affected by the impacts of climate change.

In addition to co-developing the HNAP with Health New Zealand, the Ministry of Health works closely with Health New Zealand on implementation to enable knowledge and information sharing, and to ensure a systems approach is taken. Health New Zealand leads the operational delivery of HNAP actions at national, regional, and local levels, while the Ministry of Health provides strategic leadership, delivers selected actions, and monitors overall implementation of the Plan.

Several HNAP actions across the health system are already underway. Ongoing work includes strengthening partnerships with local government, iwi, hapū and local communities, embedding climate considerations into national decision-making, and supporting regional planning for extreme weather events. Completed or well-advanced projects include research into the health and wellbeing impacts of the 2023 extreme weather events in Te Tairāwhiti and Hawke's Bay, and a national vulnerability and adaptation assessment to quantify climate related health risks. Work is progressing on developing a national heat warning system, summer mortality surveillance, reviewing disease vector monitoring, and assessing the mental health impacts of climate change. Health New Zealand has also released its first Emissions Reduction Plan and is developing both a Climate Adaptation Framework and a Climate Response Plan.

I am aware, from several claimant briefs of evidence, that questions have been raised about the level of dedicated resourcing to implement the HNAP. Within the Ministry of Health, a small number of staff contribute to HNAP implementation as part of their roles. Health New Zealand has a dedicated Principal Advisor Climate Risk and Resilience within its sustainability function,

who works closely with colleagues in the National Public Health Service to deliver the HNAP actions for which Health New Zealand is responsible. A number of actions relevant to climate adaptation were already underway prior to the development of the HNAP, and the first iteration of the Plan provided an opportunity to bring this work together at a national level. Many HNAP actions therefore align with business-as-usual activities across both organisations. On this basis, we consider current resourcing to be sufficient to deliver the actions scheduled for completion within the timeframe of the first HNAP, that is, by the end of 2027.

Some claimants have also referred to the $500,000 allocated by the Ministry of Health to commission a national climate change and health vulnerability and adaptation assessment. This is correct. It has been suggested that this assessment should have informed the HNAP. The vulnerability and adaptation assessment has been commissioned and is due for completion midway through this year. Initial results indicate that it will deliver the comprehensive outputs anticipated. This assessment will inform the next iteration of the HNAP, due at the end of 2027. The first HNAP 2024-2027 was, however, informed by a range of New Zealand-based sources, including the recently published healthcare sector scenarios which highlighted system risks and vulnerabilities.

While responsibility for many determinants of climate-related health risks lie outside the formal health sector, we have a critical role in informing, partnering and influencing the wider system to ensure adaptation efforts support equitable, healthy futures for all communities. The HNAP marks a significant step in this direction, strengthening system resilience, and supporting effective Tiriti aligned responses to the growing challenges posed by climate change. Tēnā koutou katoa.

(14:08) MR LYALL TO DR ANDREW OLD:

Q. Kia ora. My name is Lyall, and I represent some of the claimant parties before this Tribunal. They were the claimants who asked Dr McMillan to prepare her evidence and that is in part I believe what you have been

responding to in your speaking notes when you get to the $500,000 figure and the resourcing. First, can I just check that you can hear me okay?

A. Yes I can.

Q. Ka pai. I think to the extent that there is further questions on those, it might be best that I come back in writing, given that we got the speaking notes relatively recently. I will just drill down on some of the broader themes in your brief during the time that I have with you today.

At your paragraph 6 you're talking about the Ministry of Health's recognition of the need to act holistically and that effectively there, you say, it is a practical expression of the health sector principles articulated in the Pae Ora (Healthy Futures) Act 2022. I think I might bring that up on the screen. That is probably the quickest way to do it. On the screen now you should be able to see a document and at the top there is Pae Ora (Healthy Futures) Act 2022.

A. Yes.

Q. Can you see that on your screen.

A. Yes.

Q. Ka pai. This is the version at 15 January 2026. If I just scroll down to section 7 here, we have got the health sector principles that you are making reference to there. Before I take you to those though, I thought I would just begin with section 6 the Te Tiriti o Waitangi section there. The purpose of taking you there is to note that those principles are one of the ways in which the Crown's duties under Te Tiriti o Waitangi are given recognition under this framework. Is that the way that you view it?

A. Yes, that is correct.

Q. Āe. If we go down to the health sector principles that you are talking about – and really this is a quick sweep through so that people watching and those that haven't had a chance to go through this in detail are acquainted with this section – there is a recognition that the health sector should be equitable including ensuring Māori and other populations and that the health sector should engage with Māori and other population groups. We see that the whole way through and what I wanted to flag there is that the way in which this section is framed really centres the health needs of Māori and other population groups, doesn't it?

A. It does.

Q. It does so in a way which is going to ensure that the whole health care system is guided by that approach, putting Māori and other population groups at the centre of decision-making or policy-making processes. Would you agree with that statement?

A. Yes.

Q. Is it your view that these guidelines have valuable and meaningful way in which decision-making and policy-making are currently guided? These aren't just window dressing, are they?

A. That is correct.

Q. Without these guidelines in place which guide the Minister, all agencies, the sector generally, there would be a step change in the way that those decision-making processes or policy-making processes would take place away from the voices articulated here.

A. I'm not sure I would characterise it quite in those terms. The health sector principles as articulated in the Pae Ora (Healthy Futures) Act 2022, as you have pointed out, centre voices and role of Māori in the system. So that is true. The Pae Ora (Healthy Futures) Act 2022 is not the only place that those expectations are put on the health sector to respond to Māori. We have a number of health strategies: the *New Zealand Health Strategy*, the *Pae Tū Hauora Māori Strategy*, the *Rural Health Strategy*, and a number of plans, including relevant to this hearing the HNAP which I am sure we will talk about. Certainly, the health sector principles of the Pae Ora Act they do provide that frame but they are not the only place that the health sector gets direction as it relates to Tiriti action.

Q. But it is you that has pointed us to those guidelines as a way of showing the holistic decision-making or practice that the department seeks to bring to this and then apply that to climate change –

A. Correct.

Q. – so I have taken you through that. I think this brings us to probably an issue because it is fairly arbitrary for us to have this conversation without acknowledging that that entire section is going to be repealed under the Amendment Act which has just passed its second reading, isn't it?

A. That is my understanding, yes.

Q. While the Waitangi Tribunal doesn't have jurisdiction over Bills in parliament, and I'm not going to take you to a legal point here, do you accept that it would have been more forthcoming on your part to traverse that as a potential issue for the Tribunal's benefit?

A. I think in the context of when the original brief was put together and the context of framing the way that the health sector is responding to climate change with a particular focus on the development of the HNAP. I hope it is evident in the Health National Adaptation Plan that the sort of considerations and framing that we point to in the Pae Ora (Healthy Futures) Act are the principles and framing that have been applied and the way that the health sector is approaching the issue of climate change.

Q. I think my issue here is that this removal of the guidelines section, which you have said isn't window dressing and is important and is relied on, while we don't have jurisdiction at the moment to make comment on that in a report, but it is part of a wider pattern, isn't it, within health and other areas of either watering down or completely removing Crown statutory Treaty responsibility?

A. I probably can't speak to sort of government decisions in that way. But from my perspective and from the health system's perspective, there are a number of guiding documents in addition to the Pae Ora (Healthy Futures) Act that provide frameworks and requirements for us to act in a certain way as it relates to working with Māori and working in ways that give effect to Te Tiriti o Waitangi. Again, as I hope is evident in the Health National Adaptation Plan, we have taken steps and serious consideration of both Te Tiriti o Waitangi and Māori health equity in the development of that plan. That plan is the plan that is guiding health sector action and that will continue to be the case.

Q. Well, given time constraints, perhaps we turn there now. HNAP is that the preferred abbreviation for the document?

A. It seems to be, yes.

Q. Okay. That was developed in the response to the first national adaptation plan.

A. Correct.

Q. In that national adaptation plan it says that it is expected to be completed by the end of 2022. Why did it take so long to get this published?

A. That is a very good question. We did start work on the Health National Adaptation Plan (HNAP) in early 2022 when the requirement was provided. People may be aware that in 2022 the health system underwent a once-in-a-generation reform which brought the 20 district health boards together and significantly downsized the Ministry of Health with a number of functions moving out to Health New Zealand as I covered briefly in my brief of evidence. I think it is fair to say that that sort of reorganisation and restructure of the health sector combined with the tail end of dealing with the COVID-19 Pandemic did delay a lot of other work, including the HNAP. Once the system had reorganised itself with a little move stability, we did really begin or pick up that work again and took I think an appropriate amount of time to make sure that we were developing a really good document that took into account a wide variety of interests and the best available evidence at the time. Yes, it was due in 2022. It was published late in October 2024.

Q. I don't want to misstate what you said, but I think we could sum it up by saying that you consider that te ao Māori and tikanga Māori were taken into consideration in development of this document.

A. I think to the best of our abilities, yes.

Q. My understanding is that consultation with Māori on it was limited to one targeted workshop, is that correct?

A. My understanding is there were five general workshops and one targeted workshop, but there were a number of other engagements with different community groups that did include Māori groups.

Q. Was it rolled for widespread public engagement?

A. No, it didn't have wide public engagement. It had targeted engagement which was partly a response I guess to your earlier question that we were conscious that it was delayed and we needed to get it out. It was the first of these and we felt it was important to get it out into the world. It was a decision to balance the engagement on the one hand with the time involved. I think the team that developed it did undertake some targeted

engagement that did ensure that there was good engagement with Māori interests.

Q. We have just traversed the delay and the several years of interim between the NAP and the HNAP, why wasn't that time seized upon to conduct that broader style engagement process? Isn't it a missed opportunity?

A. No. Sorry, I would refer you to my previous answer which is that the reason for the delay was really because the health sector at that time was significantly distracted with both the tail end of the COVID-19 Pandemic and this once-in-a-generation restructuring. It wasn't a situation that there were people with time on their hands who would be able to sort of go and do that work. It was effectively that the work itself was delayed. And then, as I say, when the work was able to be picked up again a deliberate decision to undertake targeted engagement as opposed to that sort of wide public engagement. But I am confident that the targeted engagement did ensure good engagement. Obviously, if there had been more time and we had done wider engagement, then that would have allowed for wider voices. But I think the targeted engagement was appropriate, as you have pointed out, given that this plan was delayed. It was important to get it out and to start using it to start framing action on climate change.

Q. I am just going to bring that document up. You will understand there are people following online in particular the claimants so it can be helpful to do it this way so bear with me. But this what I have put up here is the Health National Adaptation Plan that we have been discussing. I should have said at the outset, for the record it is MOH.001.1464 for those combing through the transcript later. I think we are at this page 3, section 2.2 upholding te Tiriti o Waitangi or it referred here to an action plan and a strategy, but would you agree with me in terms of concrete action or actually spelling it out for the purpose of the HNAP the cupboard is relatively bear here? This is not telling us much, is it?

A. I'm not sure I understand the question.

Q. In terms of the how the HNAP upholds Te Tiriti o Waitangi, I mean there is no plan here, there is no concrete data. All it is referring to the Hauora Māori Strategy and Māori Health Action Plan. Why aren't we

drilling down into the details of how HNAP will actually uphold Te Tiriti o Waitangi? Why aren't we setting out the relative principles? Why aren't we making this explicit here?

A. So that section in the context of the introduction sets out some of the background that sort of has gone before the HNAP. I'm talking specifically about the Pae Tū: Hauora Māori Strategy and Whakamaua: the Māori Health Action Plan so those were the existing sort of frameworks that were relevant at the time that this was developed. If you went further into the document when we start talking about particularly the principles-

Q. Just pause there. By principles, you don't mean Treaty principles do you?

A. No. Sorry, I mean section 4.2 the principles are the principles for the HNAP specifically which have built-on – this is section 4.2 page 10 of that document. These are the principles that draw on the principles from the Pae Ora Act that you referred to in your opening question. These are, I guess, the sort of follow on from that initial statement about Te Tiriti o Waitangi saying: "Well, that was sort of the background so we are the start of them." As we went through the process, these were the four principles that we felt relevant for this for the HNAP specifically and they speak to – well, you can read them there because I appreciate they are not on the screen for people – whanaungatanga, equity, kaitiakitanga, and flexibility. That is the expression of the principles coming through that way.

Q. Yes. I mean it is an interesting approach, isn't it, because you have Treaty principles which have an established body of jurisprudence behind them and meaning which is being articulated and indeed is referenced in other plans and here we are borrowing Māori terms to fashion new principles on which to rest the HNAP on. Is the analogy to making reference to the Treaty principles in this document?

A. No, I wouldn't characterise it that way. But what I would say is that the HNAP was developed in the context of I guess the guiding documents for the health sector that were available to us at the time. Those were the sort of overarching directional pieces that were looked to in terms of saying: "How do we through this work translate those other documents."

Rather than this document referring to te Tiriti directly and the principles or articles, it looked to where the health sector had previously effectively done that translation and had (inaudible 14:28:26). Both in the Pae Ora Act and the Māori Health Strategy and the action plan that piece of legislation and those health sector plans have made interpretations of Te Tiriti o Waitangi as it relates to the health sector. When we were developing this plan that was the guidance I guess because for us this sits under those, if that makes sense.

Q. But unlike the Pae Ora Act where guidelines, as we have explored, really centre Māori into the decision-making matrix, the principles that are listed at section 4.2 are much more concerned with all New Zealanders. I mean there is marginal mention of Māori really, isn't there?

A. I wouldn't characterise it as marginal. I think you are correct that this section does relate to the plan as a whole and therefore to all New Zealanders. But we have attempted in those principles to capture the specific responsibilities to Māori and specifically to ensure statements like: "Especially to ensure that iwi, hapū, and hāpori Māori can exercise decision-making authority over how to adapt to climate change and under kaitiakitanga understanding and supporting the close relationship that people, especially Māori have with the land." So yes, these are general principles but the intent is to make it clear that there is a very strong expectation in the development of both this plan and the actions that flow from it that, as I say, Māori can exercise decision-making authority in how they adapt to climate change. Yes, that sort of Māori are centred in that process.

Q. I take it you have a copy of this in front of you.

A. I do, yes.

Q. If you go down the page to 4.3 the objectives there: "In short term in 2024-2027 objectives, there is no mention there of Te Tiriti o Waitangi obligations at all, is there?

A. That is correct.

Q. Why is that? What has driven that? Shouldn't that be a non-negotiable for all objectives there?

A. I think what you are seeing in those short term objectives is they are quite generic. Specifically, that main short term objective for this first one is about the health system having a comprehensive approach and action plan and so within that that we are working to build a shared understanding and we're building climate and health adaptation into more work programmes. I think in the context of these being quite generic high-level objectives for this part of the plan that that is why you don't see that specificity there. My expectation for this work and when we refer to the specific actions within the plan that we are monitoring against is that is where some more of that specificity and expectation comes through.

Q. I think I have probably gone well over the time that I have asked for. I do have a couple of sort of minor matters that I would like to put in writing but I hope it doesn't trouble you too much to respond to those.

A. No.

Q. Those are my questions today.

A. Thank you.

(14:32) MS TE WHENUA TO DR ANDREW OLD:

Q. Tēnā koe Dr Old.

A. Tēnā koe.

Q. Tēnā koe. My name is Ms Te Whenua. Within this inquiry, I act for two claimant groups. On the one hand, Te Arawa Climate Change Committee Te Urunga o Kea and on the other hand, Ngāti Uepohatu, who a Ruatōria-based hapū. The evidence or the line of questions which I would like to put to you today are particularly centred around the evidence that was provided in support of the Ngāti Uepohatu claim by Dr Reece Jones. Are you aware of Dr Jones?

A. I am. Yes, I know Dr Jones.

Q. Great. And you are aware that he is an academic at Auckland University who specialises in climate change impacts in particular on Māori and Māori health.

A. I am. Yes, I think he may have even been one of my lecturers at one point.

Q. Well, that is interesting to note. He was also my son's lecturer. Yes, and very recently which is in fact how I know him, so there you go. He is very reputable and he has provided a brief of evidence. Have you had an opportunity to consider that brief?

A. I have, yes, and I do have it in front of me today.

Q. Excellent. Thank you. Now I just want to focus on Dr Jones' approach, which is more of a transformation approach to the health system, to give effect to meaningful and more equitable health outcomes for Māori with the threats to them imposed by climate change. And if we can just compare that to the existing system, I'm going to look at your paragraph 26 just here where you say: "Māori communities are disproportionately affected due to their geographic locations," and in your presentation today you extrapolated that you meant coastal, rural, and remote areas where they live. Now from Dr Jones' perspective a statement like that, which are statements that are often made I concur and concede, I understand, but a statement about Māori communities being disproportionately affected due to their geographic location risks overlooking the more nuanced externalities brought about by structural and systemic inequities. For example, and I am referring to those affecting climate impacts within those locations, things such as the provision of adequate, robust, and resilient infrastructure. Would you agree? For example, roading in the Waiapu Catchment area which is the Tairāwhiti area and stormwater infrastructure in other rural locations. Would you agree with that position?

A. I'm just thoughtful about how I respond to that. I think one of the big challenges with climate change for us in the health system is that the Ministry of Health has a responsibility for the health system and we don't have responsibility for the wider social determinants of health, so things like roading infrastructure and erosion prevention and all of those sorts of things sit outside of our jurisdiction. While we do engage as much as we can with other parts of government who have those responsibilities, I guess within our swim lane, if you like, we are responsible for how the health system responds. And so your question about sort of infrastructure I would answer so from a health system perspective I would say

absolutely. We need to make sure we have climate resilient health infrastructure that is accessible to all the communities in Aotearoa and that is definitely part of the health infrastructure planning. And then more generally, you will see the reason that the Health National Adaptation Plan is framed in the way it is, as I say, because we have got a relatively narrow area of direct influence which is over sort of health systems and we need to partner with other agencies when it comes to addressing some of those sort of wider issues that you are traversing that Dr Jones was touching on in his brief.

Q. Yes, thank you. I take the point you make. I guess from Dr Jones' perspective and my proposition is that despite that, you each have your own areas of responsibility. The system as a whole is a Crown system, isn't it?

A. Correct.

Q. Dr Jones posits at paragraph 126 of his brief that because climate injustice is rooted in the Crown's colonialism climate justice cannot be achieved within existing colonial political systems. Do you have any comment to make on that?

A. I don't have a comment to make on that, I'm sorry. I would say within the bounds that I am here speaking is on behalf of the Ministry of Health. I don't think that is something that I can take position on.

Q. Sure. I will just go on to layout his position, Dr Jones' position which is that climate justice and equitable health outcomes for Māori as a result of climate impacts are really only attainable through reform of governance and constitutional arrangements to enable the full expression of indigenous rights. He puts that at paragraph 127. And then finally just on this contextual matter at 128 he says that: "Despite that, he also recognises the possibility of interim measures to advance justice within the constraints of existing, prevailing governance structures and social, political, and legal systems." I guess against that backdrop I would like to ask you, would you agree that the health system has made repeated commitments to improving Māori health outcomes, including those which you outlay in your evidence?

A. Yes, I can confirm that the health system has made repeated commitments to improving Māori health outcomes and that remains something that the health system is broadly committed to.

Q. And that despite those commitments, Māori continue to experience worst health outcomes across most indicators, correct.

A. Correct.

Q. The existence of policies within the colonial system as it stands has not translated into equitable outcomes for Māori, has it?

A. I think what I would say and what I think much of Dr Jones' brief covers is that many of the determinants of health – in fact you could argue most of the determinants of health – exist outside the remit of the health system. The health system has a strong commitment to Māori health outcomes and is committed to taking action where it can within sort of the confines of what the health system can achieve but recognises that most of the impact on health actually comes from those sort of wider social determinants which are outside the remit and role of the Ministry of Health.

Q. Would accept that the present system which produces consistently unequal health outcomes for Māori is not likely to be able to tackle climate health inequity as well? Isn't that an additional layer?

A. I'm not sure that's a question that I can answer in this setting.

Q. Okay. Well, the public health agency is the lead advisor to the government on public health and mental health. That is correct.

A. Correct.

Q. And today you have set out the strategies that in your words: "Steward the health sector on Māori health and climate change."

A. Yes.

Q. Can you point to specific structural changes such as funding redistribution or governance reform that have resulted from those strategies?

A. I think when the health system was restructured in 2022 and as a result of the Pae Ora (Healthy Futures) Act in the previous line of question we were talking about, that restructure certainly created a lot of both expectation and redistribution in terms of centring Māori health. Speaking for the Ministry of Health specifically, the creation of the

Public Health Agency we have in our creation sort of documents Pou Whirinaki, which was referred in my brief, we talk about the importance of achieving Māori health equity as a guiding principle and I guess the creation of the Public Health Agency within the Ministry with that mandate and expectation is an expression of putting resource towards that endeavour.

Q. Thank you. But is it fair to say that many of those measures focus on guidance and statements of intent rather than meaningful change?

A. I think the role of our Ministry as a government department is to provide advice to governments. We obviously provide that the best that we can and in the freest and frankest way that we can. But ultimately decisions about that advice, decisions about the way the system is structured, those are decisions for government.

Q. Your advice will impact those decisions of government though. That is correct, isn't it?

A. I would hope so.

Q. Yes. Let's drill down to some of those impactful decisions such as funding and resource allocation in the areas of health. You acknowledged that Māori will be inequitably impacted by climate change and health.

A. Yes.

Q. That is correct.

A. Yes, that is correct.

Q. Is funding consistently allocated in the proportion of need? Is funding consistently allocated to the proportion of that need?

A. Yes, thank you, I understand the question. I am not sure that I have that information to be able to answer that today, but I would be happy to come back on that question. It is just I don't have that information to hand.

Q. Thank you that would be helpful. Would you agree that without equitable resourcing policy commitments cannot be effectively implemented?

A. Yes that is a fair statement.

Q. So, a funding does not match need, the system is not structurally aligned with equity, is it?

A. I think matching funding with need is a different question than matching funding with policy. I think we know there is a lot of unmet need out there

and we should be doing our best to align resources to where the need is in pursuit of more equitable health outcomes. But I think if I refer to your previous statement I think where we make policy decisions and where government makes policy decisions, then absolutely we need to ensure that the resources are aligned to giving life to those policy decisions. I think it is also fair that we don't have policy direction or decisions that cover every element of unmet need. So I think that is just making the distinction between those two points.

Q. Thank you. And for policy provisions to be effective, do you accept that they must ensure that benefits and risks are equitably distributed?

A. Yes. I think when any new policy is enacted it is important to understand the needs of the populations for which that policy is being enacted, such that you can ensure that you focus on the areas that have the greatest need and, as we have established, very often that means specifically looking at Māori.

Q. Great. And with respect to looking at Māori and going further and enabling Māori participation, would you accept that Māori participation is recognised as important in the health system? That is correct.

A. Yes I would.

Q. But with respect to decision-making balanced against that participation final decision-making authority still largely rests with non-Māori institutions, doesn't it?

A. In the system that we work in, decisions are largely made, depending on the nature of the decision, in a policy sense by government. So yes, that is true.

Q. And in terms of that decision-making authority, how are Māori involved?

A. Look, I'm not an expert on sort of our constitutional arrangements so I'm probably not the best person to speak to that. Certainly, from the health system perspective and from the Ministry of Health perspective, we take very seriously our obligations and expectations to make sure that we are partnering with Māori as and when we can. When we are developing up whether it is when we are working on our advice, when we are developing these sorts of strategies and plans to make sure that Māori voices and aspirations are integral to our planning.

Q. When you say “partnering” you don’t mean shared authority, do you?

A. Again, I think in the context that we work in, as a government department and the system that we work in, we can partner with Māori in the development of plans and of proposals and those sorts of things. But ultimately, as we have covered, the decisions about sort of the final versions of those things or the final decisions that are made are often taken elsewhere.

Q. That's right. So Māori are able to partner in the development of plans but they're not empowered to control outcomes in the current system. Is that correct?

A. As I say, that is sort of outside my area of expertise in terms of the broader arrangements. But in a Ministry of Health context, then yes that is correct.

JUDGE MILROY TO MS TE WHENUA – TIMING

Q. Okay. Well, it has been a pleasure engaging with you, Dr Old and thank you for your time.

A. Likewise. Ngā mihi **thank you**.

(14:50) MS RONGO TO DR ANDREW OLD:

Q. Tēnā koe Dr Old. My name is Eve Rongo.

A. Tēnā koe.

Q. I represent Ngāti Kōata who are iwi at the top of the South Island. I have a few questions just to help me drill down and what exactly you mean when you talk about climate change affecting hauora Māori. Have you had the opportunity to read the evidence of William and Ngawai Webber, that is #A090? That is okay if you haven't. They just gave evidence about their own experiences.

A. No, sorry, I don't. I haven't got that evidence.

Q. Okay, that's all right. They gave evidence particularly about a large storm that occurred in August 2022 that caused widespread flooding and slips in the Marlborough Sounds. They say that the one in a hundred year storms are now happening multiple times a year which is a consistent theme throughout all the claimant evidence. Now Bill and Ngawai are in their 80s and they live in French Pass which is, I don't know if you know, the Marlborough Sounds.

A. Not really.

Q. It is extremely isolated, it is rural, a coastal section. They gave evidence about their concerns for their own safety, their home and the whenua around them due to climate change and how this has impacted on their mental health. But it's not just them two, it is the Ngāti Kōata whānau that are living in other areas that worry about them living there on their own and worry about their whenua in that area as well and their taonga that are found there.

In your evidence at paragraph 19, you do talk about the direct impacts of mental health and wellbeing from climate related disasters. You would agree that Bill and Ngawai's evidence, the example that I just shared, is a prime example of extreme whether events having direct impacts on mental health, wouldn't you?

A. Having not read the brief but relying on your summary, then yes that seems reasonable.

Q. Yes. I also wanted to talk about what you meant by anticipating climate impacts. The claimants gave evidence about now if it rains heavily for more than two days they start to get worried. "Is this another one of those events? When is the next big storm coming?" Those sort of anticipatory anxiety that is what you're talking about there, isn't it?

A. Yes.

Q. Now your evidence recognises that climate change affects mauri ora, whānau ora and wai ora and so it is not just the physical health but the mental health as well. Ngawai shared evidence that she used to swim every morning in the moana, which is just you cross a little road and the moana is right there. She used to swim every morning outside her whare but after that storm there was a period of time where she just couldn't make it in there. It wasn't just the fact that there had been contamination and it would have disseminated by then, but just the fact that the mauri had been affected. That is what you mean, isn't it, when you talk about the mauri and how climate change has impacts on the mauri ora, the whānau ora?

A. Yes that's a good example.

Q. Yes. Have you heard me question other witnesses this week?

A. I have not.

Q. Okay. Ngāti Kōata are kaitiaki of Takapourewa Island which is an island in the Marlborough Sounds almost sitting in the Cook Strait. It is very rural, isolated, really rough. But it contains a number of taonga species, one of them being the tuatara. 90% of the world's tuatara population are on that island so Ngāti Kōata are seen as the kaitiaki and they take that role really seriously. The thing with the tuatara is that its sex is determined by the temperature of the soil and as it now stands 60% of all hatchlings are male and it is anticipated that by 2085 all hatchlings will be male. This has huge impact on Ngāti Kōata's mental health, their anxiety. It affects their identity too. They ask themselves: “Who are we, if we lose this important taonga under our watch?” That is exactly what you mean when you talk about wai ora, mauri ora, whānau ora, isn't it, affecting the mental health?

A. Yes.

Q. Would you accept that for Ngāti Kōata whose identity and wellbeing is so closely connected to whenua, their taonga, and moana that the loss or degradation of those environments and species due to climate change will have a significant mental and cultural wellbeing impact?

A. Yes.

Q. Thank you. Those were all my questions.

A. Thank you.

QUESTIONS FROM KEVIN PRIME – NIL

(14:55) PRUE KAPUA TO DR ANDREW OLD:

Q. Just one question Dr Old. I just noticed in both your brief of evidence and in your speaking notes, you talk about kind of partnership across agencies et cetera. In putting together the documents that you have referred to HNAP or whatever, do you have deep and meaningful discussions with agencies outside the health sector?

A. Tēnā koe. Yes, we do. One of the challenges we have talked about is that a lot of the impacts of climate change and a lot of the impacts on health specifically from climate change are outside the jurisdiction of the

health sector. If we as health people and as public health people want to have an impact on those sectors and hopefully help and have sort of a wider impact on reducing those climate health impacts, then we do need to engage with those other agencies. So that is something that we take every opportunity to do, particularly with groups like the Ministry for the Environment, housing and urban development too in particular but also with others on occasion. Yes, as I say, I think that we recognise that if we're going to be successful in mitigating the worst impacts of climate change on health, then we need to be successful in our engagement with those other agencies. So that's definitely a priority.

Q. So in the actual having some engagement and having some influence I guess or references within your documents. It wasn't entirely clear to me from the documents that there had been that more holistic I guess or relevant relational information there. In your view, in having a number of adaptation plans and so on across a number of agencies, does that tend to result in a little bit more of a siloed approach in that you deal with your own bit and you're getting your funding for your own part that you have to deal with, rather than it being something that's looked across in a wider view?

A. That’s a great question. There is not a perfect way of doing this. My observation would be that sometimes we try and do things across all of government and have a single all of government plan and sometimes those things work very well and other times they work less well. Because trying to coordinate across multiple departments with competing priorities, multiple Ministers et cetera can make those things more difficult, but it is not to say that we shouldn't try. For climate change specifically and the way that the expectation that each sector has its own National Adaptation Plan has been set up, although you're right that it does create silos, I think that what it also does is it means that we are responsible and have the levers that we need to deliver the actions that we're responsible for. So I think from an accountability point of view, it is stronger than some of the all of government activity where it becomes a little harder to pin down who is actually responsible for which bits.

That is not to say that it is not important that we don't continue to engage across other agencies. There will be certainly things where we might be wanting to take an action that is relevant to other sectors, so having that visibility and those discussions is very important. And like so many things I guess in the world a lot of this is based on relationships so it is fantastic that we have had a number of people involved in these sorts of conversations for some time across many agencies. People know each other's' names, they know their faces, they know how to get hold of them, so there is an active sort of network of people across government who are thinking about climate change and from our perspective thinking about climate change and health.

Q. I assume from that though that whatever sector you are in, you would think your area was the priority. Is there a problem there in terms of whether that is shared by those who are making the decisions about allocation and funding?

A. Yes, again, a great question. We have spent a little bit of time this afternoon talking about some of the challenges of working in the system that we work in. It is absolutely true that if we in health want to get housing and urban development to be interested in the things that we are interested in, then that can be challenging alongside a set of priorities that may not include health.

So a lot of that does comes down to the relationships built over time. It comes down to our ability to tell a good story and I think to look for those – it is about looking for opportunities too. I think sometimes things are happening and we are able to say: "Actually, if you're putting up advice on this, can we have this? Can we talk about health please?"

One of the things that I think is a fantastic opportunity for us in climate change (and we touched on it a little bit in the brief) is this idea of co-benefits. If another sector the Ministry of Transport for example is doing work to reduce emissions and encourage active transport and the use of public transport that's a band wagon that we absolutely would want to jump on because that also has health benefits as well from people being more active and those sort of things.

I think there are lots of opportunities to look for those win-wins across different sectors and those are the places where I think we can be most successful. But otherwise, you're right, there are times when things that are important to us just aren't that important to others so that's where falling back on those relationships built over time and those networks I think just helps to keep the conversation alive.

Q. Thank you Dr Old. Thank you for your responses.

A. Ngā mihi.

(15:03) JUDGE MILROY TO DR ANDREW OLD:

Q. I've just got a query in relation to well it falls into the area of emergency management. I'm sorry, being elderly adjacent I do know that there are times where people in those emergency situations may have difficulty obtaining their medications and not necessarily they are elderly either but diabetics and all the rest of it. Is that part of the kinds of things that you're thinking about?

A. Absolutely. Again, referencing back to the previous story about the increasing frequency of storms and things, the health sector has learned, through the experiences of particularly *Cyclone Gabrielle* and more recently the North Island severe weather events, that we are going to have to cope more frequently with communities that are cut-off and may then have challenges with whether it is accessing health care or simple things like being able to stay up-to-date with medications. So the contingency planning for that is very much in the forefront of our minds. That work is led largely by Health New Zealand sort of as the operational arm.

In the wake of *Cyclone Gabrielle*, the Ministry of Health funded some research to look at the health impacts. The recommendations that came out of that, have been shared with the department, the Prime Minister, and Cabinet, National Emergency Management Authority, local councils, and Health New Zealand to sort of say: "Actually, we had a terrible situation, here is what we learned," and said: "Actually, these are things that we need to be better prepared for, so here are some things that can be taken forward."

Again, from our point of view, in the Ministry of Health many of those things are not within our remit to act on. But we very much take the responsibility, having done that work, to make sure that it is sitting in places where people can take action. Because I think, as you say, those sorts of situations are likely to become more frequent, almost certainly going to become more frequent, so having tried and tested ways of responding not only does it help in the immediate aftermath but also those sorts of things can go some way to alleviating the sort of anxiety about weather as well that can start coming through. If people have trust and confidence in the system to say: "Well, even if the road's out for a few days or even this happens, actually, I know that I'll be okay because I'm aware of how the system can respond," then that's again the sort of dual benefit.

Q. My other question really is partly because you said that you collaborated with Māori health organisations and I can think of Te Kōhao Health for instance from Hamilton, from Kirikiriroa, in terms of discussing the development of the HNAP. In terms of the work going forward from that, how are Māori health organisations involved? Well, there is a whole range of areas that you might be willing to address.

A. Look, it's a great question. You will see from the HNAP that many of the actions are delivered locally. A big focus of the plan is actually how do we support and enable local communities to have solutions that work for them. A lot of that engagement with Māori community organisations is done at a local level rather than done by us nationally and often led through Health New Zealand through the national Public Health Service. I am aware there is some partnership work happening in Dunedin between the Dunedin City Council, Health New Zealand, and a local Māori organisation whose name, I'm sorry, I can't recall. Similarly, in Canterbury and some work in Auckland as well. They tend to be focused in specific areas and often on specific things. One of those South Island ones for example is thinking about heat and thinking about what is the risk of having a greater number of severe heat days and the impacts that has particularly on the elderly or elderly adjacent. Again, partnering but doing it doing it in a very local way.

Q. All right. In terms of, for instance, you mentioned that there was work done to analyse what had happened after *Cyclone Gabrielle* and no doubt there are other streams of research and so forth that are going on, in terms of disseminating that to Māori health organisations can you tell me about that?

A. Yes, again, it's a great question. I can't speak to work that has been done specifically to disseminate to Māori health organisations. That's something I would have to come back to you on about how those things have been communicated. Certainly, I know that they are publicised widely. We put them on the website and people who have been involved in the work get notified that the work has been completed and here are the outcomes. But I'm happy to come back to the Tribunal on the question of effectively how we're making sure that those things are getting to those organisations.

Q. Yes. In terms of monitoring how the plan is being put into action, how does that happen?

A. Yes, so again, a great question. We are all far too familiar with lovely looking plans that gather dust on a shelf. Monitoring is a very important component. The Ministry of Health has developed a framework for monitoring the plan. There is a monitoring oversight group that includes people from both Health New Zealand and the Ministry of Health. The plan is monitored quarterly. But also iteratively if things come up that monitoring will also be very helpful in informing the next iteration of the HNAP as well.

At the moment, what are we partway through 2026 so we are sort of in the middle of the HNAP period but coming towards the end, my understanding of the monitoring at the moment is that there aren't any concerns about any of the actions. I know that, although we didn't traverse it particularly today, there were some concerns expressed through claimants evidence of a lack of resourcing for the plan. Certainly, I'm not seeing that. The advice that I get is that the actions that have been committed to are being delivered and they are on track and they will be delivered in this period. But it is a great question. It is very important

to make sure that we are not just publishing a nice locking document and then walking away.

Q. Yes. And back to the funding question. Everybody is aware of how much under stress the health system is and it would be easy to say: "Well, okay, climate change but actually we've got this great big problem over here that we need to deal with." How certain are you that the workstreams in relation to the adaptation plan and so forth will continue?

A. Yes, again, a great question. I can't speak in detail to the resourcing that is applied to the actions from Health New Zealand. I don't have the visibility directly of that. But what I can say is from the Ministry of Health perspective, we certainly have the resourcing that we need to deliver against our actions. From our monitoring of the overall plan, there has been nothing raised to me that suggests that any more resources are needed to deliver the Health New Zealand aspects of the plan and that those are on track. As you say, it is well known that the health system is financially challenged as is all of government. But certainly, at this stage, I haven't seen any indication that the actions falling out of this plan are suffering as a result.

Q. I have to say, I have to keep my fingers crossed about that under the circumstances.

A. Yes.

Q. Those are all my questions.

Q. Ngā mihi nui ki a koutou.

(15:13) MR PREBBLE TO DR ANDREW OLD:

Q. I did have one brief question just on the HNAP as it is being referred to. So you were taken there by my friend Mr Lyall – and again just for the record that is at MOH.001.1464 – and he was talking to you about the objectives at 4.3 and mentioned the lack of a reference to te Tiriti in the objectives. You recall that?

A. I do.

Q. I perhaps understood he was focused on the short term one. So if I just take you over the page which is under 4.3, I would like you just to explain

in your words the reference there to te Tiriti and what you take from that, which it appears in relation to the medium term objectives.

A. Thank you for the question. Yes, so in the discussion with Mr Lyall earlier, we did focus on the short term period of this HNAP and we talked about the objectives there being high level and relatively generic. As counsel has pointed out, if we turn to the more medium term. We have a specific objective in the medium term moving from the health system having a plan to climate change adaptation is embedded across the health system and is a core part of how we plan and deliver and specifically, that the health system meets to Te Tiriti o Waitangi obligations to iwi, hapū, and hāpori Māori by supporting Māori led climate adaptation as a specific objective in that second period. Thank you.

Q. Thank you. Those were the questions from the Crown and thank you again Mr Old for your evidence today.

A. Ngā mihi.

JUDGE MILROY ADDRESSES DR ANDREW OLD – MIHI, ACKNOWLEDGEMENT (15:15:22)

MR PREBBLE ADDRESSES JUDGE MILROY – CROWN WITNESS ATTENDANCE (15:16:10)

JUDGE MILROY ADDRESSES ALL COUNSEL – FILING DATES, TIMETABLE UPDATE, ACKNOWLEDGEMENTS (15:16:31)

(15:18) JUDGE MILROY: (MIHI)

Thank you all very much. I thank all the witnesses who have appeared today and previously in the week. We have had some very interesting and valuable evidence presented to us and we are looking forward to the weeks to come. So thank you all.

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING CONCLUDES: 3.20 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.