



Office of Hon Dr Nick Smith

MP for Nelson

Minister for the Environment

Minister for Climate Change Issues

Minister for ACC

19 November 2009

Mark Solomon
Kaiwhakahaere
Te Rūnanga o Ngāi Tahu
PO Box 13 046
Christchurch

Dear Mark

WITHOUT PREJUDICE

AFFORESTATION PROPOSAL

Thank you for the proposal Ngāi Tahu submitted earlier in the year suggesting a possible mechanism through which Ngāi Tahu could be given the right to use Crown-owned land for the purpose of carbon sequestration. I very much welcome Ngāi Tahu's constructive engagement on issues around the introduction of the Emissions Trading Scheme (ETS) and the effort taken to prepare that proposal.

I must reiterate our verbal discussion that Treaty settlements are full and final, and that the Crown retains the right to take future action that will adversely affect the value of existing Treaty settlements, just as it may take actions to adversely affect the values of assets held by all New Zealanders.

We are aware that Ngāi Tahu is considering legal action against the Crown over the requirement to disclose all material information about forestry land used in that settlement, and it is within this context that we seek to resolve any issues by way of agreement.

I have carefully assessed that proposal and am supportive of the general concept of providing iwi with rights to use conservation land for carbon sequestration. However, there are a several aspects of it that I would like to suggest an alternative approach to.

This letter sets out my alternative proposal for the design of such an afforestation mechanism. I have discussed this proposal with my key cabinet colleagues and have their support for it.

I propose that an afforestation mechanism be established along the following lines:

- Ngāi Tahu establish a new commercial entity with the other four iwi that settled Treaty claims before the NZ ETS legislation was first introduced (Waikato Tainui, Te Uri o Hau, Ngati Awa, and Ngati Tuwharetoa (Bay of Plenty)).
- The Crown will deal solely with that entity, leaving the five iwi involved to determine their respective roles and how to distribute any units earned.
- As agreed a total area of 35,000ha of land will be made available, while I am open to exploring the availability of suitable land in the rohe of each of the affected iwi it is my preference to find suitable land located in Ngāi Tahu's rohe. (Further work will be needed to identify a specific block or blocks of land. But I am confident that that area of suitable land exists.).
- The commercial entity will be given the right to enter into a Crown Conservation Contract over that 35,000ha for 70 years. The entity will be eligible to retain 100 per cent of any NZUs earned while the Contract is in place. After that 70 year period, all rights to this land will revert to the Crown.
- The commercial entity will be free to decide the type and level of forest management activity it wishes to undertake (such as removal of scrub or pest control), subject to approval from the Department of Conservation to ensure that the proposed management approach is compatible with the maintenance and enhancement of the existing conservation values of the site and adjoining conservation land. The costs of any activity undertaken will be fully met by the commercial entity.
- The existing rights of access would be retained for all conservation land involved. Similarly, all other existing restrictions over use of the conservation land involved would remain in place.
- On opting in to the ETS, the commercial entity will face all of the standard rights and obligations of a post-1989 ETS participant. In particular, it would be liable to repay any units previously earned if the carbon stock in the forests covered by a Conservation Contract fell at some stage in the future (for example, if pest control measures proved inadequate and increased grazing led to carbon stock reductions).
- I do not consider that this proposal involves the transfer of any value or redress in consideration of the settlement of historical claims. However, to remove any uncertainty over this issue I am seeking Waikato-Tainui and Ngāi Tahu's formal agreement that any financial value provided to any iwi under this scheme does not count for the purpose of the relativity mechanisms under their respective Deeds.
- I am aware that Ngai Tahu have claimed that that the Crown failed to fully disclose relevant material at the time of negotiating Ngāi Tahu's Treaty settlement. As you know, the Crown does not accept these claims.

- However, as part of this proposal the Crown seeks the agreement of the five iwi involved that they will not make any claims or further claims to the Government for compensation in relation to the introduction of the ETS, including claims such as those alleging a failure to disclose during negotiation of their respective Deeds of Settlement.

I look forward to discussing this proposal with you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Nick Smith', written in a cursive style.

Hon Dr Nick Smith
Minister for Climate Change Issues