- Wai 262 -

Release of Wai 262 Report

Roma Marae, Ahipara

Thursday 30 June to Saturday 2 July 2011

Kia rongo i te ha o te whenua

Kia ora i te tai o te ao

Tihei Mauri Ora

Agenda Booklet

Agenda for Thurs – Sat	**2**
Background to Wai 262 Claim – Oliver Sutherland/Murray Parsons	**3**
Essence of the Claim - Extract from Te Tai Tokerau Legal submissions, July 2007	**12**
"A Tikanga Maori Framework" (M Solomon) – extract of proposed framework for resolution of claim by Te Tai Tokerau Claimants	**13**
Draft Press Release – to be discussed during the hui	

Nga mihi mahana ki a koutou, e te hau kainga, e nga ringa wera, tena koutou katoa. Thank you to the organizing committee, the Roma Marae Committee, Pare and Buddy Nathan, Sheridan Waitai, Haami Piripi and Te Runanga o Te Rarawa representatives.

Release of the Wai 262 Waitangi Tribunal Report – Agenda

Thur 30 June	
9am	The Tribunal will release an embargoed report electronically and will provide a limited number of hard copies to claimant representatives (2 for each claimant iwi)
Remainder of day	• Counsel and claimants will be reading and digesting the report. • The New Zealand Film Archive are available to present some historical visual images at Roma Marae • Oliver Sutherland is available to present an account of the background to the Wai 262 claim • Whakawhanaungatanga
Evening	We anticipate a general korero in the evening at Roma Marae concerning the report and its implications.
Friday 1 July	
General	We will continue to read and understand the Tribunal's report.
5pm	Powhiri and Kawe Roimata • We welcome ope of claimant supporters to Roma Marae. We understand this will include bringing on whakaahua of those who have kua mate along the Wai 262 journey.
Kai	
7.30pm	Wananga – all welcome • Summary of report • Claimant comment and reaction • Discussion of Saturday's ceremony and finalizing details • PR and media strategy

Sat 2 July	
7am	Clean up wharenui and prepare for hui
11am	Powhiri to Waitangi Tribunal and manuhiri
12pm	Ceremony for Handover of the Report • Karanga from haukainga into the wharenui • Opening Karakia • Korero from Saana Murray • Statement of Findings – Waitangi Tribunal Director • Claimant Response: o Ngati Kuri, Ngatiwai, Ngati Koata, Ngati Kahungunu, Ngati Porou, Te Rarawa • Handover of Reports to each of the claimant iwi • Closing Karakia
2pm – 4pm	Hakari
Evening	Opportunity for general korero among claimants as to next steps

The Background to WAI 262

Prepared by Oliver Sutherland and the late Murray Parsons in conjunction with Moana Jackson and the whanau of claimants, June 2011

He Poroporoaki

John Hippolite
Witi McMath
Tama Poata
Del Wihongi
Murray Parsons

Gina Rudland
Martin Dawson

The Native Flora and Fauna Claim, WAI 262, had its origins in the ideals and visions of a group of land rights activists of the 1970s and before – Saana Murray (Ngati Kuri), Del Wihongi (Te Rarawa), John Hippolite (Ngati Koata), Tama Poata (Te-Whanau-o-Ruataupare), and Witi McMath (Ngati Wai). Acting as individuals, and with the assistance of lawyer Moana Jackson (Ngati Kahungunu), they lodged the Native Flora and Fauna Claim – WAI 262 - in October 1991. Of these, the two women of the Far North, Saana Murray of Te Hapua, Te Rerenga Wairua, and Del Wihongi of Otarihau, Hokianga, were to become the unshakeable champions for the claim.

For many years Saana had challenged the actions of the Crown in depriving her people of access to their lands and coastlines. Besides the loss of ancestral land, the denial of access to the native plant and animal life threatened the survival of the skills and knowledge of the traditional arts and crafts and medicinal remedies based on those species. The story of Saana's personal and inspirational crusade to retain and regain the ancestral lands of Ngati Kuri can be found in *Te Karanga o te Kotuku*, published by her long-time friend Tama Poata, for the Maori Organization On Human Rights, in 1974.

Te Karanga o te Kotuku documented, through her correspondence, Saana's struggle to have the issues she raised acknowledged by the Crown, by the authorities and, at times, by her own people. The publication of this work helped to raise awareness about – and to provide documented evidence for - the genuine issues Maori faced, and also the difficulty they had in the late 1960s and early 1970s in having these issues heard and considered. The book provided a major impetus for the 1975 Maori Land March, and one of the reasons that the Land March began in the Far North. The core subject-matter of the book eventually proved to be one of the bases for the development of the WAI 262 claim.

Del Wihongi drew her impetus and vision from the tohunga Toki Pangari who held one of the last whare wananga at Utakura on 26 November 1949. Toki was Del's grandfather, and he passed down a considerable body of matauranga to Del

who lived with him as a child – she later received and re-recorded his extensive writings. These writings are significant to the claim in that the connection to Kupe Nuku is established and represented in the taonga or maaka left by this great navigator. Del was of the view that each iwi has their own version of the Kupe korero, and as such she viewed the claim as belonging to nga iwi katoa. Del believed that the restoration of rangatiratanga, kaitiakitanga, matauranga Maori and traditional knowledge is imperative to ensure future generations will continue to benefit from the wisdom passed down from former generations.

Mid-1970s

- The Auckland Committee on Racism and Discrimination (ACORD), including Oliver Sutherland, established a relationship with Saana Murray, her whanau and the people of Te Hapua, supporting Saana's efforts to retain ancestral Ngati Kuri land at Te Hapua and Kapowairua. Saana's injunction, lodged in 1975, supported by kaumatua Herewini and Neta Paraone, to prevent cross-lease with Crown, led to the shareholders of the Te Hapua 42 Incorporation finally rejecting the Crown's efforts to alienate ancestral lands – Murimotu and Muriwhenua.

- Carmen Kirkwood of the Huakina Trust wrote to Oliver Sutherland at the Department of Scientific and Industrial Research (DSIR) saying 'it's not just finance stopping my people returning to their homes, it's knowledge of what they can do with their lands'. Saana's whanau who were re-occupying their land at Te Hapua/Kapowairua, also wanted to explore options for land use other than the pine plantations of the Northern Pulp Company.

-Entomology and Plant Diseases Divisions of DSIR assisted the Department of Maori Affairs Marae Enterprise Scheme by establishing experimental gardens at Te Hapua. Under leadership of Herewini and Neta Paraone and the guardianship of Saana Murray, her brother Ross & Lucy Norman and Dave & Josephine Neho, trials of pineapples, peanuts and of other horticultural crops were undertaken at Te Hapua and Kapowairua (Spirits Bay).

- 'Te Hapua Traditional Arts and Crafts Trust' weavers' collective was established at Te Hapua. Sales of kete, whariki, piupiu and poi in Auckland and elsewhere encouraged the retention of traditional knowledge and skills, conservation of the associated plants and provided stable, ongoing income for the women of Te Hapua and neighbouring communities for many years. But Crown restrictions (if not outright prohibitions) on the harvesting of pingao, kiekie, hoihere, raupo and kakaho from lands in the Far North were a continuing impediment to the weavers.

- John Hippolite (Ngati Koata) accompanied ACORD on visits to Te Hapua and Kapowairua and so established his links with Saana and Ross and Lucy Norman and their whanau. He stayed with them in one of the traditional raupo whare constructed by Saana which she hoped would one day house an 'Out Post School' for the young people of Otara she was teaching at Hillary College. Like Saana, John was a long-time land rights activist, and was particularly concerned over the actions of the Crown over its the acquisition of Takapourewa (Stephens

Island) by the Crown as a reserve for tuatara and for the Crown's assumption of the right to manage the species.

- In the mid-1970s Del was one of the four women known as 'Nga Hau e Wha', who worked to restore relationships with descendants from the Mataatua waka, known as the Mataatua Confederation. She was also Chairwoman for the Confederation of Chiefs, who were entrusted with upholding the mana of He Whakaputanga, the Declaration of Independence, 1835.

- Meanwhile, Witi, Tama, Saana and John were all active participants in the 1975 Land March, led by Whina Cooper, and in the fight for Maori land rights which led up to it.

1980

- *The Social Responsibility of DSIR at Mt Albert* was published by Oliver Sutherland and others, arguing for greater responsiveness of government science agencies, particularly DSIR, to the needs of Maori. It was the first challenge to the monocultural policies of the department.

1983

- Botany Division of DSIR established a relationship with weaver Cath Brown (Ngai Tahu, Taumutu Marae, Te Wai Pounamu) and the 'Aotearoa Moananui-a-Kiwa Weavers' (including Saana, Emily Schuster, Digger Te Kanawa and Te Aue Davis) particularly to ensure conservation of harakeke, pingao and kiekie and to protect and promote traditional knowledge regarding the arts and crafts which utilized these plants. A year later, in 1984, DSIR botanists attended a weavers' hui at Te Teko which focused on the availability of plants traditionally used for weaving, and on access to those plants.

1985

- Māori leaders from the north, including Saana Murray, Carmen Kirkwood, Nganeko Minhinnick, Titewhai Harawira, Hon. Matiu Rata, Jim Nichols, Sir Hugh Kawharu, Rev. Maori Marsden, Dr Ranginui Walker, Neville Baker Sir Norman Perry and Pita Rikys, met for the first time ever with Director General and other senior leaders of DSIR at Mt Albert, at a hui jointly organised by Sir Graham Latimer and Oliver Sutherland. The hui aimed at bridging the gulf between Maori and the scientific community and focused on ways in which government science agencies, particularly DSIR, might direct some of their efforts towards issues of importance to Maori, especially the utilization of land to provide work and income for some impoverished rural communities. For the first time, DSIR acknowledged that its functions and activities should be based on the principles of The Treaty of Waitangi.

1987

- Plant Variety Rights Act passed, opening the way for commercial plant breeders to gain proprietary rights to 'new' varieties of native species

22-28 February 1988

- Commonwealth Science Council Hui on Ethnobotany, *Nga Mahi Maori o te Wao Nui a Tane*, was held at Rehua Marae, Christchurch. The five-day, landmark, *International Workshop on the Traditional Uses of Plants* brought Saana Murray (of Te Hapua Traditional Arts and Crafts Trust), Del Wihongi (of the Pu Hao Rangi Trust) and John Hippolite all together for the first time, along with two hundred other Maori, Pacifica and Commonwealth kaumatua and leaders. It was organized by Warwick Harris, Murray Parsons, Geoff Walls and Oliver Sutherland, all of DSIR, and Promila Kapoor, of the Commonwealth Science Council. The hui showcased Barry Barclay's film *The Neglected Miracle*, which exposed the commercial exploitation by multi-national seed and horticultural companies of traditional plant varieties, particularly those from South America. The hui also revealed publicly the fate of ancient kumara, especially DSIR's sale of the large collection of kumara varieties assembled by Dr Douglas Yen, to a research institution in Tsukuba, Japan. Both Saana and Del voiced their concerns at the risks to traditional knowledge and at the commercial exploitation of native plants. The hui recommended:

- the principle that science must flourish for the benefit of all people, not for the profit of a few;
- the conservation of species of importance to Maori and other indigenous people, and the retention and protection of traditional knowledge regarding the utilization of these species;
- the need for consultation with Maori prior to any further commercial exploitation of native plant species;

1988 – November

- Del Wihongi led an ope including Jerry Moana, Adelaide Cherrington and Hori Sutherland, representing the Pu Hao Rangi Trust, to Japan to retrieve nine of the ancient kumara varieties transferred from DSIR to Japanese researchers at Tsukuba Science City in 1964. Their mission was ridiculed by politicians who refused to support it, as did other conservation organisations. In the end, the well-known TV botanist Dr David Bellamy provided funding for the trip and was present when the kumara were welcomed home at Te Puea Marae in late November 1988.

March 1989

- Following concerns over the 'patenting' of native species under the new Plant Variety Rights Act (e.g. pohutukawa 'Carousel') and the activities of DSIR in the international commercialization of a number of native species, especially koromiko, manuka and puawananga, Murray Parsons, Oliver Sutherland and John Hippolite met with Moana Jackson at Nga Kaiwhakamarama I Nga Ture in Wellington to discuss ways of protecting native plants and animals and their genetics as well as the traditional knowledge pertaining to them.

- John discussed the issue with his army and trade union mates, Tama Poata and Witi McMath, both of whom had long had concerns regarding the actions of the Crown in alienating ancestral land and 'managing' threatened and non-threatened native species in their rohe. Witi for years had challenged the Crown regarding its confiscation of Hauturu (Little Barrier Island), and the eviction of the island's tangata whenua, to turn it into a reserve for tuatara. Meanwhile,

Tama had actively pursued tino rangatiratanga issues since the early 1970s through his roles with the Maori Organisation On Human Rights and Te Roopu Matakite o Aotearoa, and was also concerned in general about the creeping (and sometimes not so creeping) erosion of Maori rights by the Crown through legislation and executive power unfettered by any deference to Maori tino rangatiratanga, as guaranteed by the Treaty. Saana, Del and Kataraina Rimene (who represented Ngati Kahungunu on the original claim) were equally concerned over Crown control of access to, and commercialisation of, taonga plant species. Prohibitions on the 'cultural harvest' of traditional foods such as kereru and kuaka, and the appropriation of ancestral lands by the Crown to create 'reserves' to conserve species such as the flax snail, pupu harakeke, was a major concern for Saana.

- Moana Jackson began drafting **WAI 262** in March 1989; Claimants: **Saana Murray**, **Del Wihongi**, **Witi McMath**, **Tama Poata**, **Kataraina Rimene**, **John Hippolite.** Each claimant to focus on one particular area of interest/species as the basis for a co-coordinated claim. The six claimants acted collectively, but as individuals, not representing their various iwi. In most, cases their own iwi were skeptical over the claim, as were other iwi, even though it was a claim which would benefit nga iwi katoa.

1990

-Del Wihongi and the Pu Hao Rangi Trust established *Te Wao Nui A Tane National Ethnobotanical Garden* at Mangere. Del was successful in gaining government science funding for a research programme to propagate and study the pre-European kumara she had retrieved from Japan, and she established a mara at Mangere. Tubers of the different varieties grown by Del were given to those who wanted to help safeguard and grow them. Del's supporters at the time in Pu Hao Rangi, a community-based Trust, were Jerry Moana (Chairman), Te Pere Curtis, Solomon Tipene and Brownie Williams.

- DSIR 'Maori Responsiveness Committee' established, including Del Wihongi, John Hippolite, Murray Parsons and Oliver Sutherland. The Committee advised the Crown regarding the roll-over of DSIR's Maori-focused initiatives during the disestablishment of DSIR and the creation of ten new Crown Research Institutes (in July 1992).

- Work continued on drafting of WAI 262 claim. Moana Jackson and Del Wihongi attended Indigenous Intellectual Property Conference in New York, to discuss international implications of claim and broader issues of intellectual property it raised. Del continued to highlight the issue outside New Zealand, e.g. as keynote speaker at the World Indigenous People's Peace Conference in Oregon USA, accompanied by her daughter Hema Broad and Te Pere Curtis.

- At the same time, Tama Poata and John Hippolite (who had both been arrested earlier when demonstrating for the return of the Raglan golf course (Whaingaroa)) joined forces with Eva Rickard and, again with the assistance of Moana Jackson, drafted and lodged a claim for the 'Queen's Chain' (WAI 172) in October 1990. The claim asserted that the Crown had no authority to establish

the Queen's Chain, as it had not approached the various iwi, hapu and whanau in their tribal areas. The claim is in abeyance. As with WAI 262, Tama, Eva and John were acting as individuals in a claim which was not iwi-based but which would ultimately benefit all iwi.

October 1991

- Native Flora and Fauna Claim (WAI 262) lodged with the Waitangi Tribunal. Saana and Del, particularly, explained the basis of WAI 262 at hui around the motu but gained very little support for the kaupapa. National Maori organisations, such as the New Zealand Maori Council and the Maori Congress were largely unsupportive of the claim.

The Original Claim

A CLAIM relating to the Protection, Conservation, Management, Treatment, Propagation, Sale, Dispersal, Utilisation and Restriction on the use of and transmission of the knowledge of New Zealand Indigenous Flora and Fauna and the genetic resource contained therein.

The claimants argue that they have been and are prejudicially affected by the actions and omissions of the Crown and its representatives in denying the tino rangatiratanga o te Iwi Maori, and particularly seventeen points relating to tino rangatiratanga and breaches of the Treaty of Waitangi.

Seven representative plant and animal species are named in the claim, together with all the indigenous forests of Aotearoa. Examples of breaches relating to these species are:

- The DSIR disposing of the known **kumara** varieties to Japan and the Crown's actions and inactions removing the ability of Maori to preserve biodiversity and denying Maori control of the intellectual cultural property rights in flora which are an inherent part of te tino rangatiratanga.

- With **Pohutukawa** the action of the Crown in vesting proprietary rights in species, or varieties of species, specifically the grant of Plant Variety Rights over the Pohutukawa Var. 195 "Carousel" is contrary to the Treaty of Waitangi and a denial of te tino rangatiratanga o te Iwi Maori as it relates to indigenous flora.

- Permitting the sale, export and commercial exploitation of *Hebe* species **Koromiko** by New Zealand and overseas interests is a denial of te tino rangatiratanga.

- Permitting the selling, disposal and export of the species **Puwananga** or *Clematis* spp. and thereby subjecting it to the application of genetic modification (in this case plant cross breeding) is a denial of conservation, proprietorial and development rights.

- Actions by the Crown to adopt conservation measures in relation to indigenous timbers are the denial of te tino rangatiratanga prevents Maori exercising kaitiakitanga in relation to **indigenous forests.**

- Actions and inactions by the Crown remove the ability of Maori to preserve **biodiversity** within indigenous flora and thus deny Maori control of intellectual and cultural property rights in flora, which are an inherent part of te tino rangatiratanga.

- The policies of the Crown prevent Maori exercising kaitikitanga in relation to **Pupu harakeke**, the flax snail; the establishment of scientific reserves and protected areas prevent or inhibit Maori access to the species Pupu harakeke and is a denial of the right to maintain those cultural and spiritual concepts which are an inherent part of te tino rangatiratanga o te Iwi as it applies to indigenous fauna.

- The export of **Tuatara** for scientific or diplomatic purposes have been carried out without negotiation or input from Maori; the establishment of scientific reserves and protected areas prevent or inhibit Maori access to **Tuatara** and the passage of the Wildlife Act 1953 and all other legislation for the protection of **Tuatara** are a denial of te tino rangatiratanga.

- Crown actions that prevent Maori exercising kaitiakitanga over **Kereru**, the passage of the Wildlife Act 1953, the establishment of scientific reserves and protected areas which prevent Maori access to **Kereru,** are denials of te tino rangatiratanga.

THE GENERAL CLAIM is that the Crown dismissal of te tino rangatiratanga, as a sovereign political authority exercised by the Iwi, is a breach of the Treaty of Waitangi. Such a dismissal can only be remedied by Crown acknowledgement and recognition of te tino rangatiratanga as reaffirmed in the 1835 Declaration of Independence, and as recognised in the Treaty of Waitangi.

The REMEDIES SOUGHT are:
(i) The **acceptance** by the Crown of **te tino rangatiratanga** as adumbrated [or represented] in Maori law, as reaffirmed in the 1835 Declaration of Independence, and as recognised in the Treaty of Waitangi/ Te Tiriti o Waitangi
(ii) **Compensation**, the extent and degree of which shall be negotiated between Iwi and the Crown
(iii) **Control of indigenous flora and fauna** in a manner which recognises te tino rangatiratanga o te Iwi Maori.

1993
- The nine tribes of Mataatua convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples (12-18 June 1993) in Whakatane, which led to the *The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples (1993).*

- John Hippolite died in Nelson, 17 November 1993.

- First Amendment to WAI 262 elaborated on the information about the species of the original claim and added International Law - Gatt:Trips Agreement,

Intellectual Property Rights Law Reform Bill, a list of other Legislation and International Agreements, International recognition of Indigenous Peoples Rights and associated protocols.

1995
- The claim WAI 262 was given urgency.

1997
- The first hearing occurred in the Far North on 15 September 1997.

1998
- Witi McMath died on 26 August 1998.
- Second Amendment to WAI 262 - Concerning Ngati Porou.

2000 May
- Third Amendment to WAI 262 **-** Concerning Ngati Kahungunu.

2003
By early 2003 all the claimant evidence had been heard and the Waitangi Tribunal was expected to develop a Draft Statement of Issues by mid-2003.

2004
- The Tribunal intended to put out a draft Statement of Issues for consultation with claimants and the Crown, after which a final definition of the issues would be made.

2005
Tama Poata died 9 November 2005.

2006 July
- The Tribunal released the final version of the ***Statement of Issues***. Hearings in the inquiry subsequently resumed, with claimants' refresher evidence having been heard in August-September 2006, interested persons or groups evidence in late September 2006, and finally Crown evidence in December 2006 and January 2007.

2007 June

- Closing submissions. Tribunal entered into its report writing phase.

In 1991, the claim was seen as revolutionary. Now the World Intellectual Property Organisation (WIPO), through the IGC (Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge, and Tradition Cultural Expressions), has been addressing the issues surrounding the protection of biological resources, traditional knowledge, and traditional cultural expressions. The Convention on Biodiversity is one of the outcomes of this process. WIPO has also set in place deadlines to advance treaties for the protection of traditional knowledge and traditional cultural expressions.

In 2005, the Government proposed some amendments to the Patents Act in the Patents Amendment Bill 2005 to help address the issues raised in the WAI 262 claim. The Bill introduced a 'Maori Consultative Committee', which will advise the Commissioner whether an invention draws from Maori knowledge. If so, the Committee must advise whether exploitation of the invention is contrary to Maori values. The Bill gives no legislative backing to the findings of the Committee, and the Commissioner could ignore the advice given. In addition, there is no benefit sharing provisions in the Bill.

2008 26 July

- Del Wihongi died on 26 July 2008.

2011

- Murray Parsons died 10 May 2011**.**

2011 2 July

- The Waitangi tribunal releases its report on WAI 262. **Saana Murray** is the only claimant left to hear the Tribunal's findings.

Essence of the Claim (extract from Te Tai Tokerau legal submissions)

Whakapapa and tino rangatiratanga are at the heart of the Wai 262 claim. Whakapapa is what connects the claimants to their taonga and tino rangatiratanga (in all its dimensions of rights and obligations), it is what enables them to give full expression to their relationships with these taonga. They are essential to the claimants' culture and identity.

The importance of whakapapa to this claim featured prominently throughout claimant evidence. Mrs Hema-Nui-a-Tawhaki Wihongi (Mrs Del Wihongi) for Te Rarawa, opened her evidence to the Waitangi Tribunal in 1997 with this statement which captured the essence of the claim which is bound together by whakapapa:

> "In my korero I wish to explain the holistic relationship between the cosmos of the universe, the Gods, plants, animals and Maori. This relationship describes the rights and responsibilities Maori have to the other partners within this relationship. This relationship is particularly important to our customary practices and norms".

From whakapapa comes the rights and responsibilities of being *tangata whenua – people of the land*. Those rights and responsibilities are encompassed in a world view, a way of existing according to tikanga, customs and laws, which include the following key concepts: kaitiakitanga, tapu, manaakitanga, mana, aroha, whanaungatanga, wairua and mauri.

The authority to live according to that world view is tino rangatiratanga, which was guaranteed under Te Tiriti o Waitangi/Treaty of Waitangi 1840. Te Tiriti was a constitutional guarantee that tangata whenua would be able to live in accordance with their world view for as long as they wished to do so, and that the Crown would actively protect those rights and responsibilities.

The concept of tino rangatiratanga is inextricably linked with kaitiakitanga. As Mrs Saana Murray has said in her evidence, tino rangatiratanga for her and Ngati Kuri means *"Maori control over things Maori."* The extent to which the control will be exercised will depend on the nature of the taonga concerned, the Iwi, the parties involved and a host of other factors. These factors will not necessarily be predetermined from the outset but are matters of ongoing discussion, negotiation and elaboration. Tino rangatiratanga embraces a wide spectrum of rights and responsibilities.

This guarantee in Te Tiriti o Waitangi is central to the mauri (the life essence, survival, growth and well-being) of the culture, reo, matauranga and identity of whanau, hapu and iwi. Enhancing the well-being and mauri of tangata whenua has significant consequences for the well-being of all of the peoples of Aotearoa. Enhancing the well-being and mauri of tangata whenua has significant consequences for the mauri of all species of indigenous flora and fauna. The Wai 262 claim is about restoring and enhancing *Te Ao Mauri.*

"Tikanga Maori Framework"
A Framework for Protection, Use, Control and Ownership of Matauranga Maori me o Ratou Taonga Katoa

Maui Solomon

It is argued here that a framework and process relating to the protection, use, development, ownership and control of Matauranga and all other taonga guaranteed protection under Te Tiriti o Waitangi needs to be agreed and developed by Maori and for Maori in consultation with the Crown and other stakeholders.

A Tikanga Maori Framework for Matauranga Maori me o ratou Taonga Katoa (The Tikanga Framework) could have some or all of the following features:

- The Tikanga Framework to be developed by Maori after full consultation among Maori following a series of regional and local hapu, Iwi and national hui. There would also be a need for consultation with Crown agencies and other relevant private sector stakeholders and interests groups (eg nursery groups, design groups, and intellectual property groups etc);

- Any system designed should be based primarily in tikanga Maori, reflecting Maori cultural values and practices but also taking into account existing legislative and regulatory frameworks and the interests and views of the business communities sectors;

- Implicit would be the expectation that the NZ legislative structures would need to be altered and amended to accommodate a Tikanga Framework. A series of options could evolve under this model including utilizing, developing and strengthening existing tikanga models and customary laws, development of sui generic mechanisms and adapting existing laws and processes;

- Inherent in this system will be the acknowledgement; protection and promotion of rights and obligations to control, manage, protect, utilize, and develop resources in accordance with Maori cultural values, protocols and tikanga;

- Whatever structure or structures are settled upon will need to be flexible enough to take account of issues that affect Maori at a Iwi, hapu, whanau, individual and national level (i.e. issues that have generic application for many or all Iwi/hapu). The structure must also accommodate the rights of individuals such as Maori artists, carvers, musicians and designers;

- A national structure or body would be appointed by Maori with representatives of the original Wai 262 claimants forming the nucleus of a body to widely consult with Maoridom on the establishment, form, structure, functions and administration of any such national body;

- In terms of the resourcing of the framework, the claimants would seek an allocation of funds from the Crown (as part of their remedies package), to

undertake nationwide consultation with tribes and urban Maori to discuss the formation of an appropriate structure or structures.

- Resources and Funding would also be needed to develop, implement and administer the Tikanga Framework on an ongoing basis;

- The Tikanga Framework would be responsible for developing mechanisms for protecting and promoting the use of Matauranga Maori me o ratou taonga katoa taking into account:

    1. Te Tiriti o Waitangi/Treaty of Waitangi
    2. Tikanga, customary laws and values;
    3. NZ legal system, government policy and regulations;
    4. International customary laws, and conventions (eg Declaration on Rights of Indigenous Peoples, Mataatua Declaration, WIPO draft objectives and guidelines, Convention on Biodiversity etc) ;
    5. Relevant codes of ethics and research guidelines both national and international.

- In order to enforce compliance with this Tikanga Framework, some form of legal recognition and protection will be necessary within the current New Zealand legal system. But there may also be non-legal codes of ethics, guidelines and protocols containing rights and obligations, designed to educate and persuade voluntary compliance with the Tikanga Framework.

The Tikanga Framework could have some or all of the following responsibilities for:

- Acting as a national point of contact and referral body to *Iwi*, *hapu* or *whanau* or individuals, once it is determined at which level of Maori decision-making the relevant issue is most appropriately dealt with. Where it was obvious that certain issues affected particular tribes, the issue would be referred to that tribe to deal with. If it was a matter which affected Maori at a national level, then a national body as contemplated above could deal with and undertake research at that level;

- Acting as a resource support body for tribes and organisations to help empower them in undertaking of their own research over which they would have control;

- Liaising with government departments, private enterprise, local authorities and other bodies who have responsibility or decision making regarding Matauranga Maori me o ratou taonga katoa;

- Consultative body with Maoridom. This would be a key component of the Tikanga Framework. Hui and consultation with Maori would need to take place on a regular basis;

- Development of policies, codes of ethics, compliance issues, research guidelines, educational and awareness programmes, etc in relation to respect for cultural values, access, use and identifying circumstances in which matauranga Maori may be appropriately commercialized and circumstances in which it should not be commercialized. Such policies will need to take into account tikanga values,

national and international regulatory and customary regimes and instruments, customary laws and tikanga and the development of any sui generis systems in Aotearoa/NZ;

- Any such national body could act as a 'Principal Point of Contact' for those commercial operators and research institutions both in New Zealand and overseas who wish to access traditional Maori knowledge for commercial and non-commercial purposes;

- Education about Maori cultural values and their application within a modern day context. This might include the general public, government agencies, research institutions and the private sector;

- Overseeing and advocating for legislative and regulatory change;

- Acting as an advisory body to various government departments dealing with TK/IPR issues and issues relating to genetic modification;

- Determining and advising on how the interface between TK and IPR can occur in a practical manner including the development of codes of conduct and ethical guidelines for the commercial sector etc.

Acknowledgments

Janke, Terri *Our Culture: Our Future* – Report on Australian Indigenous Cultural and Intellectual Property Right

DRAFT PRESS RELEASE – to be discussed and finalized during our hui