



## Bioprospecting Consultation Hui Summary of Key Themes



*There is a gross assumption that the Crown owns Te Wao Nui a Tāne (the Great Forest or Domain of Tāne). It does not. We assert ownership of anything that stems from that resource, any benefit, and any fruits. Māori are the original bioprospectors. How do we get back to that position of strength? How can we move beyond the sidelines from being part of reference groups to being the owners and controllers of processes that affect us? ... We (Ngāti Whatua o Orakei) own the Okahu Foreshore and Beach through the Orakei Act 1991. Yet, we have not excluded people from using that resource. We are a sharing people.*

*(Ngarimu Blair, Tāmaki Hui)*

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## Introduction

*Tipu pōhutukawa, tipu pōhutukawa  
Toro tipua, i te whenua, ki te rā...  
Tipu pōhutukawa, tipu pōhutukawa  
E piu, e whai, o kapeka, o kāwai...  
Kia puawai, matotorua i te takutai moana  
tipu...*

The lyrics of this short song, composed by David Kukutai Jones,<sup>1</sup> remind us of the species that are indigenous and unique to this land. The song follows the growth of the native pōhutukawa from shoot to fully-grown tree, swaying in the breeze as it grows, and growing prolifically on the foreshore.

A strong feature of the dialogue that has taken place between Māori and the Crown on bioprospecting (and earlier in the year in relation to climate change) is the clear assertion by Māori of their right to be self-determining and self-sustaining, and as part of that, of the rights and obligations to exercise guardianship over such resources. Māori, through this consultation process, continued to call for a more meaningful relationship with the Crown as Treaty partner and to assert their right to participate on their own terms and for their own purposes in these types of debates both as citizens of Aotearoa/New Zealand, and also as tangata whenua, the indigenous people of this land.

### The consultation process

Māori were asked to respond to discussion documents published by the Government entitled ‘Bioprospecting: Harnessing Benefits for New Zealand’ and ‘Te Mana Taumaruru Mātauranga: Intellectual Property Guide for Māori Organisations and Communities’.

The consultation process involved Government officials from the Ministries of Economic Development (MED), Ministry of Foreign Affairs and Trade (MFAT) and Te Puni Kōkiri (TPK) travelling to fourteen locations around the country seeking feedback from Māori as to whether New Zealand needs a better approach and if so, what the priorities should be. MED was interested in seeking feedback on bioprospecting and also in sharing information about its work programme on intellectual property, mātauranga Māori, and traditional knowledge. MFAT was particularly interested in understanding what might need to be developed at an international level to ensure that New Zealand’s approach has effect offshore and what New Zealand’s priorities should be.

At each hui, a representative, or representatives were nominated to participate in what became the Tangata Whenua Reference Group on 13 September 2007.

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<sup>1</sup>Affected by the way in which ‘our traditional view of the world has changed and how we engage with our environment’, David Jones composed this song ‘at the time of the foreshore and seabed confiscations’, and shared it with the Ministry of Economic Development as part of the Ministry’s work programme on traditional knowledge. The government officials and supporting party sang this song at the consultation hui as part of the rituals of encounter.

## Key themes

From the questions, comments, challenges and ideas of key tangata whenua who gave generously of their time to attend each of the fourteen consultation hui around the country from Kaikohe to Murihiku, we have collated some excellent feedback about bioprospecting, intellectual property, traditional knowledge, matauranga Māori, and certain international work programmes from Māori perspectives. The words quoted on the cover page illustrate some of the key themes that arose during the various hui, and illustrate our approach of allowing the words of the hui participants themselves to express important points.

Not surprisingly there was strong diversity in the views expressed by Māori, and we have tried to capture the key themes in this document. The issues raised during this consultation process went to the heart of the Waitangi Tribunal claim seeking recognition and protection of indigenous flora and fauna (Wai 262), the hearings for which have recently concluded after 17 years. Some hui participants called for a prohibitive moratorium on all bioprospecting until the Waitangi Tribunal report on Wai 262 is released. Others who are already engaging in bioprospecting projects seek the immediate development a more protective framework in which they can continue their operations. In Whanganui, given their historical context, the level of their distrust in relation to the Crown is such that tangata whenua do not want the Crown to play any role in developing a framework for bioprospecting. In other areas concerns were more around promoting integrity in the use of resources. Commercial issues featured in the discussions, but were always tempered by issues of sustainability (such as social, cultural and environmental issues) according to a Māori worldview.

This Summary of Key Themes is not a substitute for the primary sources of information which are the minutes of each hui, including the minutes and the agreed outcomes of the Tangata Whenua Reference Group held on 13 September 2007. The agreed outcomes are also outlined at the end of this summary document.

We attach copies of each of the fourteen consultation hui in chronological order: Tāmaki Makaurau (Auckland); Christchurch; Wellington; Whanganui; Nelson; Murihiku (Invercargill); Tauranga; Hopuhopu (in the Tainui region); Taupō (Waitetoko, on the southern shores of lake Taupō); Tūranganui-a-Kiwa (Gisborne); Hastings; Taranaki; Kaikohe; and Rotorua. Draft minutes were circulated to officials and to hui participants for confirmation and have been amended according to feedback received. Access to the minutes from each hui was provided to the representatives nominated to participate in what became known as the Tangata Whenua Reference Group (TWRG) hui. We attach the minutes of the TWRG hui, as well as some documents such as written submissions and papers that were tabled at various hui.

## **Executive Summary**

### **1. Te Tiriti o Waitangi**

Government officials sought feedback from Māori on some quite specific questions about bioprospecting, intellectual property, traditional knowledge, matauranga Māori, and international work programmes. Responses from Māori were often pitched at a constitutional level - seeking that greater effect be given to the Treaty of Waitangi. The Treaty of Waitangi obliges the Crown to protect Māori in the use of their resources to the fullest extent practicable, and respect for and active protection of rangatiratanga are not optional obligations. That the issues for discussion were situated clearly within the context of the Treaty was a theme that permeated every hui. The Crown-Māori relationship, and issues of rangatiratanga and kaitiakitanga were questions that ought to be addressed before Māori could properly consider any detail.

Much of the discussion about the Treaty provided an opportunity for Māori to convey their lack of trust in relation to the Crown, both domestically and in the international context. Criticism of the Government's stance in opposing the United Nations Declaration of Rights of Indigenous Peoples (DRIP) was consistently heard. Despite the scepticism, however, bioprospecting was seen by some as an opportunity to improve Crown-Māori relations. A Crown-Māori partnership based on the Treaty would move beyond consultation to more meaningful engagement where Māori would have direct influence and involvement in any future policy development. An "ethical framework" in which more meaningful engagement could occur was proposed, and it was strongly recommended that Māori caucus amongst themselves before having a conversation with the Government and for that process to be resourced by the Government.

### **2. Waiting for Wai 262**

The issues proposed for consultation went to the heart Treaty of Waitangi claim, Wai 262, seeking recognition and protection for matauranga Māori and rights in respect of indigenous flora and fauna. The Wai 262 process has been the process in which Māori have provided their views about the use of resources and the control of matauranga Māori, and accordingly that process must be respected. The Waitangi Tribunal's report is eagerly awaited, with Māori anticipating that it will provide some in-depth directions on many of the issues identified for consultation. While waiting for the Wai 262 report, it was said that there ought to be a moratorium on bioprospecting and an audit undertaken to better understand issues around bioprospecting and the extent to which it is already happening.

Some participants, however, urged that work begin immediately on protecting Māori interests, images, and knowledge against exploitation and inappropriate use, and that recognition of Māori interests and rights with respect to flora and fauna needs to be progressed now. Some are reluctant to merely wait for the Wai 262 report given previous experiences with the lack of weight given to Waitangi Tribunal findings by the Crown.

### **3. Active use, development, and opportunities**

While many of the hui focused upon issues of recognition and protection, some called for an immediate response from Government that values the right of Māori to develop and be a part of any innovation going forward. The Government must not view Māori in a one-dimensional way - Māori were the original bioprospectors and want to be leaders in any process going forward, rather than followers. Some Māori are already involved in bioprospecting projects. Not all iwi, however, are at a stage where they are able to participate, and they need to build their capacity to do so.

### **4. Concerns about bioprospecting and the need to design a framework that caters for a Māori world view**

For many, bioprospecting is about exploitation. It is focused on commerce and will lead to the loss of resources and the loss of control by Māori with respect to the knowledge associated to those resources. Any regime is likely to interfere with customary use and there is a critical need to address sustainability of resources so they can continue to be enjoyed by Māori. Some Māori questioned whether the Government is able to reflect Māori beliefs and their special connection to this earth into its policies.

### **5. The role of the Māori Reference Group**

While there was a large degree of scepticism expressed during the consultation process about Māori Reference Groups, the benefits of having them were also recognised by some. Suggestions were offered for improving the operation of such groups, and about the possible role of the Māori Reference Group on bioprospecting in determining international representation.

### **6. Intellectual Property**

A key question discussed was ‘what is the best vehicle for looking at how Māori can do more with promoting, preserving, protecting their traditional knowledge and/or mātāuranga Māori – is it an Intellectual Property (IP) regime, or a new model? More specific questions arose from that such as how, at a practical level, it might be possible to protect mātāuranga with respect to a patent system where knowledge holders do not wish to share knowledge, and how to protect existing knowledge without recording it?

The consultation process provided an opportunity for Māori to understand better the links between bioprospecting, intellectual property issues, and what is happening internationally. Māori confirmed that current IP laws do not adequately protect Māori interests, but there was a strong view that IP law can and should be adapted now to accommodate Māori interests. Some practical suggestions were offered towards that end in relation to advisory committees on patents and trademarks.

## **7. International policy begins at home**

The consultation process also provided a valuable opportunity for Māori to find out what is happening on the international scene. What is the status of various international treaties and instruments? What is the New Zealand Government's stance on certain issues? One of the clearest points to come out of the discussion that followed was that any work on bioprospecting should start at home. We should work out what is ideal for us here in New Zealand given our particular circumstances and that should inform our position internationally. That domestic position should dictate what is done internationally and not the other way around. On any immediate international issues, common themes publicly expressed via submissions to the Waitangi Tribunal during the Wai 262 hearings could be used to inform international perspectives.

Māori were also keenly interested in how Māori interests are represented offshore. It was frequently suggested that Māori determine representation of Māori interests in the various international forums.

## **8. Suggestions for a way forward – some ideas about what to do and what not to do**

In addition to the solutions and suggestions set out under the headings above a number of suggestions and ideas were put forward for consideration in the development of any framework going forward. The suggestions cover a range of issues including: the need for Crown leadership; ideas around registers, codes of conduct, and advisory councils; some specific local examples; sharing resources across iwi; how origins might be acknowledged for the purposes of tracking and compensation; and the need to address the possibility of over-regulation. Suggestions were also made about when access to certain resources might be appropriate or not appropriate.

## 1. Te Tiriti o Waitangi

Government officials embarked on the consultation process seeking feedback on some quite specific questions. The responses from Māori were often pitched at a constitutional level – seeking that greater effect to be given to the Treaty of Waitangi. This longer conversation was the overarching theme that permeated every hui. The issues of bioprospecting, intellectual property, traditional knowledge, matauranga Māori, and the international environment were situated clearly within the context of the Treaty. The relationship between Māori and the Crown, and issues of rangatiratanga and kaitiakitanga were larger questions that Māori highlighted as crucial to look at before looking at the detail.

In Whanganui it was said that:

*The questions being posed don't really take into account the bigger question and more important questions, the hard questions that should be asked and that is about our relationship as Treaty partners with the Crown...*

*(Adrian Rurawhe, Whanganui Hui)*

In its Whanganui River Report the Waitangi Tribunal expressed its clear view that the Treaty of Waitangi obliges the Crown to protect Māori in the use of their resources to the fullest extent practicable, and that respect for and active protection of rangatiratanga are not optional obligations.

That Māori subscribe to this view is demonstrated by the following passages:

*The answer lies in the words of the Treaty itself that are often (deliberately) misquoted. Our people agreed to the Treaty and well knew what rangatiratanga meant, that is how it was sold to them, and they added the prefix tino rangatiratanga, as opposed to kāwanatanga. That was a guarantee of absolute authority over forests, fisheries and all other taonga (me o raatou taonga katoa). The benefits that could have come from accessing the Foreshore and Seabed – I am concerned that those things are slipping by.*

*(Michael Skerrett, Murihiku Hui)*

*Someone once said to me that if you want to be sovereign, you act sovereign, you think sovereign. Let's get into that framework. It's ours! We need to get the overall structure right. We have no other relationship with the Crown except for the Treaty - as sovereign nations. It is quite easy. If developers want to go into Apanui, talk to Apanui, the same for Tuhoe. ... We can get down to business, but business is no good unless the foundation is secure.*

*(Rikirangi Gage, Tauranga Hui)*

*The bottom lines are that we don't want people to take our taonga without our permission. We should make any decisions on how to protect our taonga and this may vary from iwi to iwi...We must be aware not to focus too much on ownership and property rights. If we do, we might forget our kaitiaki obligations which exist irrespective of ownership. We can exercise control over things even if we don't own it, such as DoC lands.*

*(Tina Porou, Taupō Hui)*

## **1.1 Crown-Māori relations– the Government's lack of integrity in its dealings with Māori**

Much of the discussion about the Treaty provided an opportunity for Māori to convey their lack of trust in relation to the Crown. At every hui we heard about the Government's lack of integrity in its dealings with Māori.

*We wanted our Foreshore and Seabed protected and it wasn't. That has left us wounded and on the back foot. We are still mamae (hurt) about it and will be forever. Why would we want to contribute to a kaupapa that might hurt us yet again? We have already lost so much. It is hard to trust the government when talking about our taonga.*

*(Melanie McGregor, Nelson Hui)*

Similarly, in the international context, another common theme was that the Government's opposition to the United Nations Declaration of Rights of Indigenous Peoples (DRIP) was inconsistent with what the Government officials were saying in the current consultation process:

*In terms of the Treaty of Waitangi, how do agencies make good on the statements that there will be a Treaty framework given the constitutional situation in NZ and the stance the NZ Government is taking internationally (DRIP). What the Government is doing is different to what you are saying?*

*(Catherine Davis, Kaikohe Hui)<sup>2</sup>*

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<sup>2</sup> Since the completion of the consultation process, the Declaration of the Rights of Indigenous Peoples has been accepted by a majority vote. New Zealand was one of four countries that voted against the Declaration.

## 1.2 Looking forward – an opportunity to improve Crown- Māori relations

*There will always be scepticism until the issue of Treaty Partnership is addressed.*

*(Mark Solomon, Christchurch Hui)*

Despite the scepticism that was voiced time and again about the Crown's lack of integrity, bioprospecting was seen by some as an opportunity to improve Crown-Māori relations. A Crown-Māori partnership would involve Māori and the Government working together both on the design and in the decision-making around bioprospecting, intellectual property and the international work. This would mean moving beyond mere consultation to more meaningful engagement where Māori would have direct influence and involvement in policy development. At the Wellington Hui, Maui Solomon counsel for some of the Wai 262 claimants proposed an “ethical framework” in which such engagement could occur.<sup>3</sup>

*The Crown can help to empower us, we want an enabling relationship with the Crown where we can share skills and share resources...Ngāti Kahungunu advocate strongly for improving engagement with the Crown on issues of national interest based on Treaty partnership.*

*(Bill Hamilton, Hastings Hui)*

*... are you engaging with Māori as Property right holders in knowledge and relationship with flora and fauna or simply on the basis of consultation because of Treaty principles?...What is the role of Māori in decision making? I didn't see that in the presentation today. I am allergic to words like consultation and advisory when it means others make decisions about our knowledge and interests. Crown thinking needs to change from being paternalistic. Empower and provide mechanisms to allow people to protect and develop for themselves. Let the iwi, hapū and whānau make these decisions for themselves.*

*(David O'Connell, Christchurch Hui)*

It was suggested that the Crown consider commissioning an independent report in conjunction with Māori so Māori have a say about who undertakes research that involves Māori. Māori frequently stressed the need to caucus amongst themselves before having a conversation with the Government and for that process to be resourced by the Government. In Tauranga it was suggested that a forum be established at the call of King Tuheitia, and in Hastings, the paper provided by Bill Hamilton proposed something similar to the Hirangi Hui model that had been established by the late Sir Hepi Te Heuheu, Ariki of Tūwharetoa.

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<sup>3</sup> That framework is included as part of the minutes from the Wellington hui.

## 2. Waiting for Wai 262

The claim to indigenous flora and fauna was brought by Ngāti Kuri, Te Rarawa, Ngāti Wai, Ngāti Porou, Ngāti Kahungunu and Ngāti Koata who seek recognition and protection for matauranga Māori and rights in respect of indigenous flora and fauna. In Nelson, Roma Hippolite, the son of one of the original Wai 262 claimants stated that as far as Ngāti Koata is concerned, the claim is brought on behalf of all Māori. The claim calls into question the protections given by the intellectual property regime, the Protected Objects regime, aspects of the education system, the environmental decision-making regime, those parts of the health system that involve rongoa, and also the wider decision-making process including the way in which the Crown negotiates international instruments on behalf of New Zealand.

A very strong theme heard at almost every hui was that the issues raised in the consultation process went to the heart of the Wai 262 claim. The Wai 262 process has been the process in which Māori have provided their viewpoint and there is a need to respect that process and to recognise and acknowledge the concerns that have been expressed through the claim about the use of resources and the control of matauranga Māori. The Waitangi Tribunal's report is eagerly awaited and is anticipated that it will provide in-depth direction on many of the issues discussed at the hui.

*For the past 17 years we have been pursuing the Wai 262 claim and hearings have just been completed, we find this timing for the bioprospecting consultation a bit weird, a bit eerie - when the tribunal findings have not yet been considered. ...We saw the Wai 262 claim as the matua or grandfather of all claims. It is about our whakapapa and the things that emanate from that.*  
(Ngahiwi Tomoana, Hastings Hui)

*If the 262 claimants and their view about tino rangatiratanga (control and decision making ability regarding bio resources) are upheld by the Tribunal, that will turn this process/policy on its head. In the Tribunal, claimants gave evidence on the status quo. This is a different forum and the focus is upon looking forward. Are we not being disingenuous by saying that we will wait for the Tribunal report, and the development of a policy here that takes Crown control and management for granted? Can you fairly say that you can do both? Your discussion document has certain assumptions. Wai 262 goes directly to the point of who has or should have management and control....It is not just about ownership. There are questions about partnership also.*  
(Leo Watson, Wellington Hui)

Some participants sought comfort that the bioprospecting consultation process would not prejudice any response to the pending report of the Waitangi Tribunal:

*We are awaiting the Wai 262 report with anticipation, and the findings that the Tribunal comes up with. But there are some things that could be done, so long as they don't encroach on the Wai 262 findings or recommendations.*

*(Angela Hansen, Hastings Hui)*

## **2.1 What can be done in the meantime?**

Some recommended that in the meantime there be a moratorium on bioprospecting and an audit undertaken to better understand what research is actually being done: who holds collections, who manages those collections, and what potential might our unique resources hold?

Some participants urged for work to begin immediately on protecting Māori interests, images and knowledge against exploitation and inappropriate use, and that recognition of Māori interests and rights with respect to flora and fauna needs to be progressed now. For some, there is a sense of nervousness in waiting for the Wai 262 report given previous experiences with the lack of weight of Tribunal findings by the Crown.

*I don't think we should wait for the Wai 262 report to come out. Firstly, we don't know what the report will say. Secondly, Waitangi Tribunal recommendations are often ignored by the Government. Here in Taranaki for example the recommendations in our Waitangi Tribunal Report were not given respect. The Government and the various Ministries need to start thinking seriously now about how they can recognise Māori interests to flora and fauna and how Māori can benefit from any opportunities from bioprospecting.*

*(Jamie Tuuta, Taranaki Hui)*

### 3. Active use, development, and opportunities

Most hui focused upon issues around recognition and protection, but there was a point of view that must also be considered in relation to active use and development. In three or four hui the message not to wait was heard strongly. It was said that there is a need for a response from Government now that values development and innovation, particularly the right of Māori to develop, and that given the sense that innovation will continue, it is vital for Māori to be part of it.

*My main concern is the restricted view of matauranga or Traditional Knowledge, it reeks of the Fisheries Acts of the past. It is all about preservation and protection. Promotion is only at the margin. The CBD is all about protection mechanisms, but where is the recognition of ownership rights and development of our ownership. We are protecting our culture out of existence. The CBD also refers to approval and involvement of knowledge holders. No one can use this or that. I have a different opinion. I'd like to see more of our images and designs in children's books. I recall the idea of the Adidas Rugby boots, people learned some Māori words, and I wanted a pair – there is pride in wearing our designs. I am afraid that in the international delegations they focus on protection. Protection should recognise our rights and to protect so that we may use them.*

*(Craig Pauling, Christchurch Hui)*

#### 3.1 Māori Artists

Māori artists, for example, seek exposure in international markets, but also seek a framework of protection:

*I work in the area of the arts, and I am aware of the tension between the protection of our Māori arts and the promotion of those arts. Our Māori artists are constantly solutions focused. They can carry on and replicate what our ancestors did, or they can draw upon those things and create new material that will wow the world... This is the challenge - to balance opposing views – to balance the tension between promotion and protection... There are two types of matauranga – that which is kept in the pataka, and that which is created from innovation around that matauranga. For Toi Māori we take Māori art to the world, we need a return for the quality of work that we do internationally. How can we make this sustainable?*

*(Garry Nicholas, Wellington Hui)*

### 3.2 Existing bioprospecting projects

Some Māori already have quite a lot of experience around issues of bioprospecting and traditional knowledge and some of those experiences have been positive. In their feedback, there was a sense that there is a need for more than goodwill to regulate the use of traditional knowledge. At the Rotorua Hui, Jim Gray spoke in detail about the experiences of the Tikitere Trust's research project, noting that research funding was critical to the success of getting that project off the ground, and that having rights for Māori enshrined in contracts is a key practical tool. In Murihiku it was shared that:

*[W]e have a research project with the department of Zoology regarding the sustainability of tītī, and the properties in tītī oil. When we first entered into it there was a clause that all traditional knowledge was owned and remained with iwi. For 12 years that has worked for us.*

*(Jane Davis, Murihiku Hui)*

But in that same hui it was also noted that some of these projects last many generations, and therefore it is important to get the process right from the beginning.

*Memoranda of Understanding are all very well but we need something stronger, like legislation, it is not just goodwill that makes things happens. They might be nice people one day but they might not be nice the next day.*

*(Stewart Bull, Murihiku Hui)*

### 3.3 Building capacity

In Taupō, the point was made clearly that not all iwi are at a stage where they are able to participate:

*Māori need to have an opportunity to build our capacity on this issue. Many of us are still coming to grips with the issues and the problems. We are not at the same level of others – we need to catch up before we can even consider solutions. But we are keen to look and listen to what other Iwi or Indigenous peoples are doing.*

*(Tina Porou, Taupō Hui)*

For some participants it was seen as important to acknowledge the revitalisation of mātāuranga Māori, the development of IP and the need for Māori to capture for themselves the richness of their knowledge before thinking about how others want to access it, and that mātāuranga is a living thing and should not be frozen in time:

*The business of mātāuranga Māori is big business. This whare is named for Rukupo, a famous carver and innovator. He was one of the first carvers to use metal files in traditional carving and was criticized for that, for deviating from the form. Apparently Te Arawa adopted that form.*

*(Maever Moeau, Tūranganui-a-Kiwa Hui)*

### **3.4 Māori as the original bioprospectors – leaders as well as guardians**

Māori challenged the Government not to view Māori in a one-dimensional way. There was a very clear message that Māori knowledge belongs to Māori, and that Māori, as the quote on the cover sheet demonstrates, were the original bioprospectors and want to be leaders in any process going forward, rather than followers:

*Māori seem to be confined to the kaitiakitanga space. Jim's presentation shows Māori in the kaiwhakahaere space. There is a capital investment issue and converting our resource equity into cash to protect the resource and the IP and capitalizing on that...Māori and Pakeha have similar values in the economic area – don't box us into the area of traditional knowledge only.*

*(Tupara Morrison, Rotorua Hui)*

#### 4. Bioprospecting in the context of a Māori world view

*To me, it seems that bioprospecting is about depleting Papatūānuku, Tāne Mahuta and Rongomatāne to get the organisms for the benefits of large pharmaceutical companies for money. We had management plans back in the old days.*

*(Hayden Henry, Tauranga Hui)*

One of the most common concerns was that the term *bioprospecting* gives a sense that it is really about exploitation, that it is focused only on commerce and that it will once again exploit Māori. The views about bioprospecting ranged from an outright rejection (such as that heard in Whanganui), to unease about bioprospecting in the context of sustainability of resources. A commonly held concern is that bioprospecting will lead to the loss of resources such as rongoa and the loss of control by Māori with respect to that knowledge. Any regime is likely to interfere with customary use and there is a critical need to address sustainability of resources so they can continue to be enjoyed by Māori.

There is also unease that access to biological resources and knowledge is dependent upon the morals of the group who is researching, and concern that the role of international companies is driving research in New Zealand and international involvement acts to the detriment of tangata whenua.

*Each iwi will have their own karakia around these resources such as pingao and raupo, and around whakapapa. Our resources are being depleted, not only our weaving resources, but also our sealife. We have heard promises made by Government officials so many times, but our position does not seem to change. We must retain our mana, and not lose it to overseas interests.*

*(Whero-o-te-Rangi Bailey, Taranaki Hui)*

In terms of designing a policy framework, many Māori questioned whether the Government is actually able to reflect Māori beliefs and their spiritual connection to this earth into its policies, and whether the Government has the tools to even have this conversation:

*You ask what we think, but unless you truly understand our world view, you can never understand what we think...This isn't something that you can protect. This is something you need to help us to protect. Recognise that and give us the resources. There is no submission that we can write that can give you a true understanding of our issues and our concerns. We are not talking about bioprospecting separate from Intellectual Property. We don't separate things out the way you do. Our interests cannot be related through Crown policy...We may seek economic benefits, but we don't support individuals doing that...We want protection mechanisms and the right to create those mechanisms for ourselves, because you can never understand and can never cater for that.*

*(Nancy Tuaine, Whanganui Hui)*

It was said that Māori do not subscribe to notions of individual ownership but rather collective and perpetual ownership. In the end, Māori saw the need for solutions to be found by Māori for Māori rather than driven by Government or by international processes.

*The best analogy I can think of is that this is trying to fit Rangi's foot into Cinderella's slipper. Nō tetehi ao kē a Cinderella. Kāore e ū. He mamae. (Cinderella is from another world. The shoe does not fit, it hurts). Your quote that you took from FOMA is right. You need to find a glass slipper that fits Rangi's foot. What you are doing, the words themselves don't fit - words such as property. Our property is imbued with certain values. Inside that there are certain players. Problems arise when hapū are not recognised. Hapū represent the collective aspect of Māori society. There is a place for individuals such as tohunga, ae. But in the house there is tikanga involved. A carver would never come back and say "that is mine". We don't want our world view compromised for the sake of a dollar. The main thing is to 'tiaki te taonga o te Māori' (care for the treasures of Māori)<sup>4</sup>*

*(Rikirangi Gage, Tauranga Hui)*

Hui such as those in Rotorua and Murihiku demonstrated the diversity of different regions and different iwi, and the very practical examples that exist in different parts of New Zealand. While these regions are already actively engaged in bioprospecting projects, their views about bioprospecting were tempered within a context of sustainability – with social, environmental, and cultural values being of primary importance:

*I grew up here in the Whakarewarewa Village and have witnessed scientists who have long been coming to our village to explore the opportunities in our resources. I have seen the evolution of 'mud packs'. Many of the patents that have been granted are now available world wide but no benefits have come back to Te Arawa. We need to be more in control in these processes and there needs to be a framework of engagement not just for bioprospecting, but for any situation where external agencies come and work with us... What is the vision for Te Arawa being involved in bioprospecting? What do we really want in the long term? I want nga uri (our descendants) to be able to enjoy what we enjoy now, the things our tupuna enjoyed, and for those things to still be there, not just for the memory of them, and also enjoying any commercial benefits that may flow.*

*(Roku Mihinui, Rotorua Hui)*

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<sup>4</sup> The 'FOMA' quote referred to in this passage was included in the presentation made by officials on Traditional Knowledge, Matauranga Māori and Intellectual Property referring to differences in values between these concepts and terms: "The coming together of two separate cultural world views Māori and Pākehā has created a conversation that exposes different thinking and values". FOMA submission Wai 262.

## 5. The role of a Māori Reference Group

From the very first hui in Tāmaki Makaurau, we heard that Māori reference groups do not always work. The Water Programme of Action was used as an example. Lack of trust in relation to Māori Reference Groups seems to be directly linked to the Crown's lack of integrity in its dealings with Māori and the strong call by Māori for more meaningful engagement with the Crown as referred to in section one above - Te Tiriti o Waitangi.

While there was a large degree of scepticism expressed during the consultation process about Māori Reference Groups, the benefits of having them were also recognised by some – such as the benefits that flowed from the Māori Reference Group on climate change who came together to make key statements as a collective directly to officials, and were then invited back to discuss feedback directly with Ministers.<sup>5</sup> In Ngāi Tahu, suggestions were offered for improving the operation of such groups including the need for specialist representation and full accountability back to the iwi or rohe that put them forward.

*Māori seek acknowledgement from officials and Ministers that Māori will be at the decision making table in the forming of policy and constructing of any regime going forward.... If a Māori Reference Group is formed as suggested, then I would like for this group of officials to take back to the Government, to the Ministers a request that the MRG actively participate in the developing of any regime and that the MRG be resourced to do that – this is a critical issue.*

*(Roger Pikia, Hopuhopu Hui).*

Suggestions were also made about the possible role of the Māori Reference Group in determining international representation:

*I recommend that members of the Māori Reference Group themselves be part of international delegations and have an opportunity to participate in international forums to speak to these issues. That would be a good investment in Māori and raise our capacity to speak on our own behalf.*

*(Lee-Cherie King, Tāmaki Hui)*

Those participants who attended the hui on 13 September, chose the name Tangata Whenua Reference Group (TWRG). The agreed outcomes that were decided upon at that hui (which are set out in section 9 below), send a clear signal that the TWRG sees a role for itself going forward.

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<sup>5</sup> The Māori Reference Group on climate change issues has gone on to nominate an executive group, the MRGE, to work with senior government officials and an Iwi Leaders' Forum. The MRGE is being resourced by the Government to participate fully in the second round of consultation on climate change issues scheduled for October/November 2007.

## 6. Intellectual Property

One question posed for discussion by Government officials was ‘what is the best vehicle for looking at how Māori can do more with promoting, preserving, protecting their traditional knowledge and/or matauranga Māori – is it an Intellectual Property (IP) regime or a new model?’ Māori artists, for example, want exposure to overseas markets but they also want protection. How at a practical level, is it possible to protect matauranga with respect to a patent system where knowledge holders don’t want to share knowledge and how to protect existing knowledge without recording it?

In Nelson the point was made that IP law can and should be adapted now to accommodate Māori interests. Māori confirmed that currently, IP laws do not adequately protect Māori interests. In the context of an example concerning LEGO, Māori had urged LEGO to reconsider the use of the word *tohunga* on toys. That challenge was about the inappropriate use of names and appropriate recognition rather than blanket opposition. It was suggested that Government could look for opportunities to use IP systems proactively for the benefit of Māori, rather than focusing on the constraints that might exist:

*Conceptually the answer is simple. You can create an exception in IP law which says that unless you have an approval, any IP is owned by the people of this country. If that is indigenous knowledge, then it is owned by the indigenous people. If this exception is included in legislation, then everyone knows what the playing field is. It is that simple - acknowledge the Treaty in the law. This government created a system for the Foreshore and Seabed overnight – that involved common property rights. Why can they not do the same for indigenous property rights and common property rights in IP?...*

*The differences in this table are not impossible to overcome. One example that you didn’t put up was the LEGO example. We are not about excluding, we are happy to share, and for the children of the world to know about Māori. But we want to ensure that our names and images and knowledge are used appropriately and we want recognition of where that knowledge came from, and to receive part of the profits as owners of the knowledge. LEGO recognised that but couldn’t get everyone on board from their end. We don’t have issues with international companies. Our major issues are with our own government.*

*(Roma Hippolite, Nelson)*

## 6.1 Common concerns about Intellectual Property

*How original is original when talking about IP? We have research about weaving fibres. We had a situation where scientists were excited about their findings, but there was nothing in what they found that I didn't already know. But I think this knowledge will be claimed by others, and Māori are not going to gain. The flow on has implications, because this resource is being decimated. How do we protect the resource and claim the IP because we already know what they (the scientists) think they are discovering?*

*(Ranui Ngarimu, Christchurch)*

*We need protection for our knowledge, whether that knowledge is in the public domain or not. Just because information may have been placed in the public domain by an individual, we want to make it clear that that does not mean ownership is ceded to that information.*

*(Adrian Rurawhe, Whanganui)*

*I have concerns also about the way other people tell our stories. They publish totally wrong versions of our traditional stories, about our maunga and rivers. We have not published our stories, but others do and they make additions that breach the integrity of the true versions and of our knowledge. This includes guiding on the maunga. How can that be protected?*

*(Bubs Smith, Taupō Hui)*

*There is limited protection to stop people who tell wrong or inauthentic stories of Tūwharetoa. We need a framework that allows us to authenticate views that are told to people outside of our rohe. This is over and above our copyright – because sometimes our people do not want our stories committed to writing.*

*(Tina Porou, Taupō Hui)*

*Our art has a very spiritual aspect which the laws in this country don't seem to be able to cater for.*

*(Tuatea Smallman, Taupō Hui)*

## 6.2 Practical Solutions

Some practical suggestions were offered in relation to the discussion of intellectual property, traditional knowledge, and matauranga Māori:

*The Discussion Document refers to an overseas example of an existing patent being revoked (Indian). There has been an enormous amount of patents taken out. We request a review of all patents on flora and fauna and we may request that some be revoked that are inappropriate.*

*(Roger Pikia, Hopuhopu Hui)*

It was said that sometimes advisory committees work, sometimes they do not.

*(a) I am aware of the Māori Advisory Group for trademarks and its scope to assess offensiveness. But their scope is not to determine ownership. Will they have that power in the future? We need to look beyond offensiveness to ownership. I am also concerned that there is no scope for the MAG to apply powers retrospectively, so they can't remove trademarks from the register if they are obviously offensive.*

*(b) In terms of looking at patents, and possible sui generis systems and a Māori body to look at that, will their scope be narrow again? The members on those groups are highly qualified. Have faith in these advisory groups and the experts on these groups to have wider powers. Don't make them 'Claytons Groups'.*

*(James Baty, Tūranganui-a-Kiwa Hui)*

Intellectual property is a highly complex and specialist area and the consultation process provided an opportunity for Māori to understand better the links between bioprospecting, intellectual property, and what is happening internationally:

*[W]here an organism is isolated and patented, is it correct that there are laws that would prevent our access to that resource?...There is a fair amount of misinformation about indigenous rights and patents. There needs to be engagement with tangata whenua. What lead have other countries taken? Has it been to develop a domestic policy and seek acceptance for that internationally?*

*(Whitianga Peehikuru, Kaikohe Hui)*

## 7. International policy begins at home

The consultation process also provided a valuable opportunity for Māori to find out what is happening on the international scene in terms of who represents Māori. What is the status of various international treaties and instruments? What is the New Zealand Government's stance on certain issues? One of the clearest points to come out of the discussion that followed, was that any work on bioprospecting should start at home, we should work out what is ideal for us here in New Zealand, given our particular circumstances, and that can inform our position internationally. For the MFAT people it was important to hear that the domestic should dictate what is done internationally and not the other way around.

*In term of priorities – we can regulate and control who comes in and what goes out in terms of bioprospecting. I don't think that the international process is working quickly enough to address these issues. That is why I think domestic issues are more important. In the international arena, we shouldn't necessarily put forward a staunch position on where we are at. We could advocate what we develop domestically in terms of how we react internationally. I don't think the international fora will be able to offer us enough protection.*

*(Liana Poutu, Wellington Hui)*

The other key theme concerned representation: who and how are Māori interests represented offshore? This was also connected to issues of consultation and the credibility of certain processes. It was said that there is a need for the Government to acknowledge that Māori are the global authority on things Māori. Māori ought to determine who represents their interests in the various international forums. Representation could include members of the New Zealand Māori Council (NZMC), the Federation of Māori Authorities (FOMA), kaumatua, and the proposed Māori Reference Group:

*...some of what is being talked about and some of the terms being used today have already been bedded down in international forums, and the presence of MFAT here confirms that. Much of that international discussion is going on without our presence, and without us. We need to get our people over there in those forums, and not filter our whakaaro through the Crown. We need to be standing with the Crown as Treaty partners.*

*(Dale Takitimu, Tauranga Hui)*

On the immediate international issues, although the Waitangi Tribunal report has not yet been released, there are some common themes that are publicly known via the Wai 262 submissions. These could be used to inform international perspectives.

## 8. Suggestions for a way forward

In addition to the solutions and suggestions set out under the headings above the following suggestions and ideas were put forward about what to do and what not to do:

*If you are developing a framework, it should focus on how we advance matauranga Māori in today's economic environment and what are the likely barriers that we will face. Te Arawa is entrepreneurial in moving forward.*  
(Jim Gray, Rotorua Hui)

### 8.1 Crown leadership

In developing any regime, it was said that the Government must show leadership. Concerns were raised, and practical solutions offered regarding the *ex situ* collections held by Crown Research Institutes, and the Department of Conservation's role in managing access to resources:

*The majority of the research organizations in this country are owned by the Crown – they need to be brought on board in acknowledging and identifying resources that are indigenous. There are differing opinions about what is indigenous. But, if it is not found elsewhere in the world, then it is indigenous to NZ. Crown Research Organisations must be forced to partner with Māori... The lion's share of indigenous flora and fauna in this country lies in the DoC Estate – and trying to get whenua back from DoC is like trying to wrestle steak off a lion. There must be a requirement for DoC to talk to Māori before they engage in any international agreements on who might come into NZ.*  
(Roger Pikia, Hopuhopu Hui)

*With regard to ex situ collections – this was raised in Wai 262 as well. We are aware of the collections held by Scion, NIWA, Crop and Food, Landcare and so on, they are vast and will be significant in bioprospecting. It was recommended that these collections should be held on trust.*  
(Maui Solomon, Wellington Hui)

### 8.2 Registers, codes of conduct and advisory councils

One mechanism used overseas in relation to bioprospecting and discussed during the consultation process was to have a register or database in relation to traditional knowledge and/or matauranga Māori. We heard clearly around the country that Māori are not very enthusiastic about registers, that the transmission of knowledge is a very regulated activity in Māori culture.

*More specifically, in the paper there is reference to a register of Traditional Knowledge. I have been involved in putting together inventories for RMA, following consultation. I am not sure whether I should have done that, because I*

*am not sure where the information will end up. Alarm bells ring. I want to know how that will be protected...The system of silent files for identifying waahi tapu in our Takiwa (region) is a better way of protecting our information. We draw a circle around an area, and we say to developers, if you want to know something about that area, come and talk to us. We don't want to be too specific because of past experience. We are reluctant about central registers. ...We are protective of Traditional Knowledge and resources but we (Te Rūnanga o Ngāi Tahu) are also a half billion dollar commercial organisation, so if there are commercial opportunities, we are interested.*

*(Donald Couch, Christchurch Hui)*

*In terms of the suggestions in your presentation –*

- The idea of a code of conduct is a nice thing to do but a bit redundant. It creates a moral obligation but little else and most science organizations already have something in place.*
- A register – I think most Māori would be unhappy with the idea of a central register, but they might be happier if there was support and funding for tangata whenua to develop their own registers which they could use and access the resources in their own rohe and put together their own protocols for themselves. These could be used to engage with elements of the bioprospecting framework as appropriate such as new patents.*
- I support the concept of Māori Advisory Councils/bodies at all key decision making points, access and use, development and commercialization and patenting.*

*(Maui Hudson, Rotorua Hui)*

### **8.3 Some specific local examples**

In Taranaki it was heard that the system of permitting for petroleum and processes around that is not a good model for the Government to use in what to do next.

And at the Hopuhopu Hui, it was said that:

*We do not want any thing that resembles the current permit and prospecting process for minerals. That system does not work. We should be reviewing that process now.*

*(Tim Manukau, Hopuhopu Hui).*

At the Wellington and Tauranga hui the Mataatua Declaration was promoted as being directly relevant to the issues proposed for consultation, and the Mataatua Declaration is explicitly supported in the Te Roroa submission tabled at the Hopuhopu Hui. On the East Coast of the North Island, Ngāti Rakaipaka tabled its submission on developing a comprehensive bioprospecting policy that reflects Ngāti Rakaipaka Tikanga values.

## 8.4 Shared resources

It was noted in a number of hui that there are internal Māori issues that have to be dealt with, such as the rights of each iwi when there are resources that are shared:

*I am wary that we do not want a framework that is divisive of Māori. This is a challenge for Māori themselves. Some plant species cover all of Māori. We don't want more conflict amongst ourselves.*

*(Tim Manukau, Hopuhopu Hui)*

## 8.5 How origins might be acknowledged for tracking and compensation

*I see in the discussion document the term Biopirates – that there is stuff being taken without fair compensation and so on. Those are the things that should be put into the framework. One of the methods is to copy what computer programmers do, identify where things come from and make people pay a royalty. If they can do it in computers, surely they can do it here.*

*(Kahikatea Dickinson, Taupō Hui)*

## 8.6 The fear of over-regulation

There is a challenge in designing a system that doesn't over-permit and over-regulate, but still stop inappropriate use.

*...We handle these resources, we use them. They are part of our lives. But I can only get six paua. Whose fault is that? I didn't build the big boats. We get so much taken away from us, how much more do you want? ... I might have to get a license to gather puha or poroporo.*

*(Mako Jones, Taranaki Hui)*

## 8.7 Access

Some practical suggestions were offered regarding the circumstances in which access would be appropriate or not:

*There should be no bioprospecting in or around areas where there are sites of significance identified by our marae. Hauraki has bogs and peat lands which are only found there – there should be no bioprospecting in those areas just to make tyres last longer for example, but if it is to save a life, then our view might possibly be different.*

*(Julian Williams, Hopuhopu Hui)*

## 9. Outcomes of the Tangata Whenua Reference Group hui

The Tangata Whenua Reference Group met on 13 September 2007 in Wellington. This group consisted of a number of representatives from each consultation hui. These representatives met first as a group to discuss the issues that had arisen during the consultation hui, then they met with Government officials to present their feedback which consisted of a number of agreed outcomes that are outlined below:

### It was declared that:

1. Tangata Whenua own all indigenous flora and fauna (biological material) including all *ex situ* collections and databases, including those held by the Crown.
2. Tangata Whenua exercise tino rangatiratanga as both kaitiaki and kaihautu (leaders of innovation) of all biocultural resources.
3. Tangata Whenua own matauranga Māori.
4. Tangata Whenua have rights and responsibilities to develop and determine a rights-based approach to a framework for biocultural heritage at both a regional and national level.
5. The Tangata Whenua Reference Group asserts the Declaration of the Rights of Indigenous Peoples and consider that the New Zealand Government's non-support seriously calls in to question the Crown's credibility to act in good faith towards Tangata Whenua.
6. The Tangata Whenua Reference Group does not support the New Zealand Government entering into any binding international agreements that could prejudice the domestic policies being developed.

### It was requested that:

7. The New Zealand Government establish an annually budgeted fund that will enable the ongoing representation of Tangata Whenua in international forums with such representation being determined by Tangata Whenua.
8. The current timeframes for consultation and submissions be extended to 30 June 2008 to allow point 9 to be achieved.
9. The New Zealand Government provide immediate resourcing to enable Tangata Whenua to engage with Tangata Whenua to:
  - a. develop a framework so that Tangata Whenua can achieve an outcome or outcomes that reflect the diverse views of Tangata Whenua including those who want to wait for the Wai 262 Report and those who want to develop their bioprospecting and intellectual property opportunities; and

- b. discuss and affirm the rights and responsibilities of all Tangata Whenua to respect our shared whakapapa.
10. The New Zealand Government commit to undertaking research in order to take stock of what is happening in the bioprospecting area.
  11. Key Ministers meet with the Tangata Whenua Reference Group prior to the Cabinet meeting to receive the report from officials.
  12. The Tangata Whenua Reference Group view and provide input into the report by Government officials to Cabinet on bioprospecting, intellectual property (IP), and the Convention of Biological Diversity (CBD), and that there be consultation with Tangata Whenua prior to the report being provided to Cabinet.
  13. The New Zealand Government establish a fund for the purpose of building Tangata Whenua capability, partnership, engagement, and science research in the areas of bioprospecting and biological diversity.

*Note:* The term ‘own’ in this context means to have the sovereign right to approve or disapprove access to and control the sustainable use of resources and occupation of space within the rohe of Tangata Whenua.

## 10. Minutes and Appendices

### 1. Minutes

1. Tāmaki Makaurau (Auckland)
2. Christchurch
3. Wellington
4. Whanganui
5. Nelson
6. Murihiku (Invercargill)
7. Tauranga
8. Hopuhopu (in the Tainui region)
9. Taupō (Waitetoko Marae, on the shores of lake Taupō)
10. Tūranganui-a-Kiwa (Gisborne)
11. Hastings
12. Taranaki
13. Kaikohe
14. Rotorua
  - a. (together with a summary of views from a preparatory hui on 23 August 2007)
15. Tangata Whenua Reference Group hui
  - a. Final version of the UN Declaration on the rights of Indigenous Peoples.
  - b. Wilderswil Declaration on Livestock Diversity
  - c. Te Huia (Bill) Hamilton, “Te Mana i Waitangi *The promise of two peoples to take the best possible care of each other* Improving Crown-Tangata Whenua Dialogue”

### 2. Other Documents

1. Te Iwi o Rakaipaka Inc. Submission to Developing a Comprehensive Bioprospecting Policy, August 31 2001
2. Waipoua Forest Trust and Te Iwi o Te Roroa “Bioprospecting in New Zealand” Submission to the Minister of Economic Development, prepared by Alex Nathan and Stephen King March 2003
3. Mataatua Declaration