23 October 2007

Bioprospecting Review
Ministry of Economic Development
PO Box 1473
WELLINGTON

Tēna koe

RE: NGAI TUHOE SUBMISSION ON BIO-PROSPECTING

INTRODUCTION

This is the submission of the Tuhoe Putaiao Trust.

The Tuhoe Putaiao Trust is mandated to speak on behalf of Nga Hapu o Ruatoki on environmental matters.

Ngai Tuhoe people determine and maintain their own culture, traditions and relationships with our ancestral lands, resources and other taonga to ensure that these relationships, heritage values and customary rights endure for future generations.

Ngai Tuhoe is one of nine Mataatua iwi that signed the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples in 1993. The Declaration sets out very clearly the aims and objectives Ngai Tuhoe and other Mataatua Iwi. This is a longstanding Declaration and we are surprised that you don't seem to be aware of the document. The Declaration was published by Te Puni Kokiri and we urge you to read this document in unison with our submission.

REVISION OF THE PATENTS AND PLANT VARIETIES REGISTRATION ACT

We are aware that you held four consultation hui with Maori in 1994 prior to the commencement of the reviews of the Patents Act 1953 and the Plant Variety Rights Act 1987 You said in the discussion documents you sent out in 2002 that Maori had expressed concerns at those hui. It would have been helpful if you had supplied the minutes of these hui, state who attended, who they represented and what they said.

A member of our staff provided comments in relation to the proposed review when it was distributed in 2002. It was made clear in the discussion papers you sent out that our comments, made in the question section of the review papers, were our comments only and they would not be regarded as formal submissions. We heard no more of five years, even when we tried to find out what was happening with the review in 2006.

We had no acknowledgement that you received these comments or incorporated any of them in the two booklets we received in 2007 ("Bioprospecting: Harnessing Benefits for NZ" and "Te Mana Taumaru Matauranga").

In the meantime, it appears that the Government signed a document in Rio that binds NZ to share its genetic resources with the rest of the world. At our recent hui in Tauranga you stated that Maori formed part of the delegation that attended the Rio Conference. Again, we would like to know who they were, who they represented and what they said.

We are also aware that NZ has a unique flora and flora with a very high level of endemic species. It stands to reason that their genetic makeup is also likely to be endemic. Maori currently have a claim before the Treaty of Waitangi Tribunal over Maori rights in relation to NZ's flora and fauna (the Wai 262 claim). Consequently, we feel it is premature to review the Patents and Plant Varieties Act before a decision has been made on the claim.

We consider that the Patents Act and the Plant variety Rights Act are inappropriate ways of protecting Tuhoe's matauranga of the indigenous flora and fauna. Once something is patented or registered it may give exclusive rights to that matauranga for a defined period, then it becomes everyone's right. A few of the examples you have used in your Te Mana Taumaru Matauranga booklet may be acceptable to be patented or registered, but most are not. To use one of your examples, it would be totally inappropriate for an individual, whanau or Hapu to patent a traditional waiata or haka or for someone to be allowed to register a plant variety, while ownership of the species itself is not defined.

Not everything has a price and until the Wai 262 claim is heard, it is not appropriate for anyone to be given the exclusive right to patent or register indigenous biota. It should be a relatively simple matter to enact legislation preventing it e.g. the Government was able to very quickly amend the law in relation to the foreshore and seabed.

The west has a long tradition of explorers gaining access to indigenous knowledge and then exploiting it for their own benefit (think Marco Polo). In each case that I know of, the indigenous people knew the properties of what they had and did not want to give it to the explorers. Inevitably the explorers "acquired" access to the plant(s) in question. In one case explorers tried for almost one hundred years to find the plant that provided cuare for the South American Indians.*

Barry Barclay, the NZ film maker has addressed the issues relating to Maori taonga and intellection property rights in a very lucid manner**and we urge you to read this book before proceeding with these revisions.

* "Plants that changed the world", B.S. Dodge, 1962

** "Manatuturu", Barry Barclay 2005

SUMMARY

In summary:

- We oppose the revision of these Acts until the Wai 262 claim has been resolved
- We request that legislation is enacted to prevent the exploitation of our taonga until the Wai 262 is heard
- We request that you read Barry Barclay's book Manatuturu so that you get a clear picture of the issues that Maori must deal with when trying to protect their taonga. He also sets out recommendations for dealing with and resolving these issues
- We ask that you compile in summary form, all of the statements made by Maori at the RIO conference, at the 1992 hui and the protocols set out in the Mataatua Declaration and provide them to all Iwi.
- We request that you incorporate the principles of "The UN Declaration on the Rights of Indigenous Peoples" within your revision of these Acts

M. Timutimu
Chairman, Tuhoe Putaiao Trust