

CONCERNING      The Treaty of Waitangi Act 1975

AND                the indigenous flora and fauna and cultural  
intellectual property claim

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**BRIEF OF EVIDENCE OF FRED ALLEN, AN INTERESTED PARTY**

Dated              September 2006

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## INTRODUCTION

1. Ko Taranaki te maunga, Ko Te Ātiawa te iwi, Ko Wi Tako Ngatata te tupuna, Ko Fred Allen toku ingoa. Tēnā koutou, Tēnā koutou, Tēnā koutou katoa.
2. I wish to start with a Karakia to Tane Mahuta.
3. I am the principal claimant for the Claim WAI 740 entitled “The Sustainability of Indigenous Flora, Fauna, Water, Airs and Soils Claims”. (see appendix 1)
4. I own and operate a native plant nursery, Kiwi Plants Limited. I propagate and supply some 1,000,000 plus native seedlings nationally per year. I am passionate about biodiversity and sustainability issues. I regularly attend conferences, Huis, field trips and meetings with local authority officers, Department of Conservation staff and organisations listed in my Curriculum Vitae that are relevant to WAI 262 (see appendix 2). I am involved with many biodiversity contracts and eco system restoration projects.
5. I have undertaken Treaty training at Massey University, governance training with a Maori perspective at Ministry of Health and business studies at Victoria University. I have also studied botany, soil science and plant protection in the Royal New Zealand Institute of Horticulture education framework as a student of Lincoln University. I am not an academic, but a hands-on individual, engaged in a conservation business, dealing with practical concerns of national importance.
6. In this brief of evidence I wish to give emphasis to the principle of sustainability. In the context of Maori customary use, sustainability is using a resource, without destroying the ability for the resource to replenish itself. My Māori ancestors learnt by their errors, and the errors of their Polynesian ancestors, to sustainably manage their own resources before the arrival of the first Europeans.

7. I refer to the previous material that I have filed with the Tribunal in support of the WAI 740 claim. I would summarise my five main concerns as follows:
- (a) Crown legislation, policies and practices need to give greater recognition to and protection of Maori kaitiakitanga, customary practice and traditional knowledge and to reflect sustainability outcomes instead of current protective preservation outcomes. Increased participation by Maori in local government and central government decision-making will help to achieve this goal.
  - (b) The Patent Act does not address Maori cultural practices or traditional knowledge. There should be a Maori Advisory Committee advising IPONZ on these issues, or a 'sui generis' (stand-alone) system developed.
  - (c) There should be a levy or environment Tax on all uses of natural resources in New Zealand, which would go to fund and promote sustainability practices.
  - (d) Genetic modification is contrary to the integrity of Whakapapa and the diversity and interconnectedness of all life. (see appendix 3 )
  - (e) The nomenclature of native plants and recorded biodiversity should in all cases be changed from scientific and common names to Maori names, at least in the first instance. By this, I mean that the Maori name would be the first and principal name, followed by the scientific names and then common names. (see appendix 4)
8. I attach as Schedule 1 a summary of my position on various themes within the WAI262 claim.

## 9. CONCLUSION

- (a) I wish to refer the Tribunal to the Wai 145 amended statement of claim filed in 1995 which states:

1.2 Still today the descendants of all the Chiefs including Wi Tako Ngatata have had to live in a state of sadness through watching their land and taonga being destroyed generation after generation by the people that they welcomed in as partners in their land.

All pleadings to the Crown by the Tangata Whenua on these matters have been ignored. The sadness felt today by the Tangata Whenua is strong and at sometimes overwhelming. It is heartfelt and must be addressed in order for our two peoples to walk forward in peaceful partnerships for the benefit of all within Aotearoa.

- (b) My tupuna Wi Tako Ngatata died in 1887. One hundred years later his mokopuna were still seeking justice in the Wellington – Port Nicholson Block hearings. How many more generations will need to fight for their rights to achieve justice and fair settlement of their claims?
- (c) I leave the Tribunal with a heartfelt message to give serious consideration to the issues I have raised in this brief of evidence and to make recommendations accordingly.

I advocate for the plants and animals as one of their guardians.

I seek more sustainability for nature, as they are my Whanau.

I seek the ability for all Maori to be able to more freely interact interdependently with all aspects of nature.

I seek to retain Maori cultural practices and knowledge.

Dated this 14th day of September 2006

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**Fred Allen**

## SCHEDULE 1

Themes	Evidence	Key Messages to Tribunal
Patent Act, PVR Act and Maori Advisory Committee	Nurserymen preferentially growing native species that are not PVR'd 20-year royalty limit, no known native plant breeding by Maori. Climate change issue for new hybrids GM Royal Commission recommended a Maori Consultative Committee be established	Any royalty system additional to PVR act will prejudice native plant sustainability. Keep Acts separate, do not join with Patent Act. There should be a Maori Committee advising IPONZ NZ Patent law and policy amendments necessary
Possible Indigenous Patent Act	No such Indigenous Patent Act in existence in NZ Current Intellectual Property Rights in conflict with Maori customary practices	Treaty redress through new Act Recommend a new 'Indigenous Patent Act'. Amendment to Patent Act and advisory committee may be unsatisfactory. A stand alone (sui generis) system will address concerns
Biotechnology, Genetic Modified Organisms Bio-prospecting and Patenting	No accountability system in existence. Royal Commission report stated, until WAI 262 & 740 are heard, moratorium is to stay in place <i>Read Parliamentary Transcript on subject</i> HSNO Act does not require permission of Maori for applications to proceed	Currently consultation is required of which the recommendations do not have to be met Benefit sharing into impartial authority No G.E in the field at all <i>refer to GE submission + Ngai Tahu policy</i> DNA bar-coding at centre for molecular evolution and ecology, for biosecurity and education uses only <i>Refer Draft Bio-technology policy</i> Change the law to require Kaitiakitanga of all GMOs. <i>Read GMO Policy 'conditions of GE Material organism consents'</i> Maori concerns regarding genetic modification could be addressed in the context of "contrary to morality" exceptions to patentability, if a broader definition that includes social and environmental considerations such as Article 27.2 of the Trips Agreement are included. Exclude patentability of human beings as recommended by the GE Royal Commission That biological material as found in nature can not be patented. Amend the Patent Act to require the applicant to disclose any use of traditional knowledge and native resources, and to include consultation with Maori
Te Reo, Nomenclature of Biodiversity of discovered and undiscovered species	Is not current practice Botanical nomenclature does not require Maori naming Maori list available at Landcare	Cultural redress in naming all flora and fauna in Te Reo. Amendments to the Patent Act. Maori Advisory Board to determine naming Read portions of recent submission on Te Reo within the context of WAI 262
Nutrient Pollution	'Millenium Ecosystem Report' 2005 Parliamentary Commissioner for the Environment Comments in recent report. NIWA just completed study found nitrogen levels in the most enriched rivers has grown 25% since 1989 GWRC reported that only six of twenty three popular recreational sites met guidelines for water quality 90% of the time	Taonga species declining to extinction Recommend message to Government to agree on funding and restore all rivers to Fishable and swimmable standards Mitigation measures are planting hillsides, retiring hazardous land, restoring wetlands and planting buffer zones alongside rivers and streams.

Themes	Evidence	Key Messages to Tribunal
Rongoa and the Health Sector	Resistance to Rongoa practitioners. Personally can give evidence of this as PHO trustee	National network recognised by Ministry of Health, Nga Ringa Whakahaere o te Iwi Maori Inc Society currently meeting standards and development criteria set by MOH Rongoa practitioners can be funded by DHB's and PHO's, Requires amendments to Public Health Act and policy changes to open door more fully
Rongoa material collection	Very difficult to access material legally i.e. crown land, local government land etc Resistance for collection of natural material by Crown agencies, can give evidence	Accredited persons only, permitted to carry out collection processes Amended Acts required Crown agencies policy to reflect sustainability outcomes instead of current protective preservation outcomes.
All Plants and animals are Taonga species	National Biodiversity Strategy Ecological components of 'Regional Plans'	Any specific Taonga species is interdependent to the ecosystem in which it exists. All species (biodiversity) are Taonga species due to their interconnectedness to each other
Taonga Species Lists	As evidenced by Nga Tahu settlement, extremely small Taonga species lists	No National list in existence Discussed recently at a National ERMA Hui. All species interconnected for sustainability of Taonga Species National list to be developed
Crown land SOE's Local Authority Land Maori Land applicable to claims	NZ Government has the power to change legislation to include SOE's and local authorities in settlement, example Foreshore and Seabed Act	Crownland, SOE's, Maori land, and Local Authority land (Regional, District and City Councils) applicable to claim Subsidiaries of the Crown included in scope of claim
Water conservation	MFE discussion document 'Freshwater for a sustainable future' No Crown ownership of water	Where are the 'conservation' considerations in the planning? Enhance Maori participation and focus onto Water resources, issues of high strategic or cultural importance. Recognise claimed customary rights to water
Minerals and seabed mining	Company Bonaparte has a two year licence to prospect 3393 km <sup>2</sup> of beaches and seabed	Maori opposition to application. However no process for enhanced participation. Ability to appeal decisions and continued consultation required. Do not want to open the door to seabed mining
Soil conservation and contaminated sites	Contamination Registers (pre 1992) lists sites Dioxin example - Whakatane 'Resource Management Legislation Amendment Bill' Farmers and homeowners could become liable for cleanups, in some cases the contamination was the result of activities required by Government	All soils and silt that are contaminated are the responsibility of the Crown to mitigate all of the effects. Recommend acknowledgement of health victims by ACC (Dioxin example) Recommend sustainability of native soil organisms written into RMA.
Sustainable Native Forestry of Taonga species	Very difficult under current legislation New Zealand Biodiversity Strategy acknowledges the need to encourage Maori participation in managing biodiversity	This is not existing native forest logging, strip felling, selection felling or clear felling but establishment of new native forests Recommend realignment of Forests Act and RMA Act to permit sustainable native forestry on <u>planted</u> native wood lots that will require Regional and District Plan changes for future extraction or harvest Anomalies in the Income Tax Act need resolution

Themes	Evidence	Key Messages to Tribunal
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'Sustainability' Climate change and ecosystem ruin	'Millenium Ecosystem assessment report' 2005 NZ researcher contributions for NZ say 'ecosystem degradation is increasing the emergence of new diseases, the creation of dead zones, the collapse of fisheries and climate change, 50 year time frame <i>Give examples of last of taonga species and national observations</i>	This is where 'sustainability' becomes important Recognise aspects of WAI 262 and WAI 740 to address sustainability Environmental damage could make life impossible for future Maori generations Suggest Tribunal read the Report because it also identifies solutions
Capacity building Maori for climate change	Maori Commercial nurseries in development. Ethno-botanical international commercialization, ready to proceed Many other Maori developments I am aware of ready to proceed	Clarity on Maori intellectual property rights will facilitate business decisions for everyone
Foreshore and Seabed	Criticism from UN over Foreshore and Seabed laws UN found the act discriminates Maori <i>Example, Fiji's Foreshore and Seabed Bill</i> "this Bill perpetuates entrenched bad environmental management of the coast" ( <i>Metiria Turei Green MP Third Reading Speech, Foreshore and Seabed</i> )	'Resume dialogue' amend the legislation to reduce discrimination and environmental damage
Political representation for Taonga & Kaitiaki law and policy	Within these organisations there are Maori committees. Liaison representatives, memorandums of understanding and accords, operational initiatives, cultural support and rates relief mechanisms to name a few. Meetings and Hui's almost on request. However insufficient political representation at top levels. <i>Can give evidence</i> Local authorities avoid Treaty obligations <i>will give examples if required</i>	Crown to legislate for mandatory Kaitiaki, as elected boards or committees appointed and funded by local and regional authorities 1 <sup>st</sup> option, recommend Maori Boards as in Community Boards within local government. Amended Acts to require elected Maori Boards within 85 authorities not subject to any Representation review. 2 <sup>nd</sup> option, appointed Maori committees of council, funded by council. Example, receives all 'documents' of council and has limited statutory powers, however can make recommendations to council and has input into the Long Term Council Community Plan Important Representation training ground for future councilors and ongoing and future taonga Kaitiaki participation Amendments to Local Government Act etc.
Health Services and Medicine	Maori Health Strategic Plan for Hutt Valley 2005-2010 <i>read page 9, were we've been</i>	Relate Health to loss of Taonga Flora and Fauna sustainability related to Health issues
Revenue for increased sustainability Environment Tax or Levy	Insufficient revenue designated for 'sustainability' of Taonga. Evidenced by present environmental chaos	1% levy on all natural resources Any benefits to be administered impartially and returned for measures to ensure sustainability of flora and fauna Taonga species retention from extinction being 'Kaitiaki' obligations of the Motu
Education (mainstream) for Kaitiaki of Taonga	The New Zealand Biodiversity Strategy acknowledges the need to encourage Maori participation in managing biodiversity and in developing a Framework for the retention and promotion of Matauranga Maori Refer own input and national observations. Focus on difficulty zones, level 1 to advanced level 4 on	Recommend 'Sustainability' education at all levels with Maori cultural components in all horticulture, forestry, agriculture and environmental science education.

	NZQA Framework	
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**APPENDIX 1****WAI 740: THE SUSTAINABILITY OF INDIGENOUS FLORA, FAUNA, WATER, AIR  
AND SOILS CLAIM**2<sup>nd</sup> December 2004

## 1. Claim information

- (a) I wish to lodge an amended claim. The attached amended claim modifies the amended claim dated 26<sup>th</sup> April 1999; which was an amendment to the original claim dated 25<sup>th</sup> May 1998.
- (b) The newest amended claim needs to be recognised as providing clarification to the 'purposes of claims.'
- (c) I request the Title wording to be amended by substituting the word 'protection' with the word 'sustainability,' and include the words Water, Air and Soils to follow the words Flora, Fauna, and delete the word (Allen).
- (d) I request this claim to be available on the Tribunals website, copies sent to affected and interested parties, and one stamped 'Received' by the Tribunal and returned to the claimant.
- (e) I am of Maori descent. My ancestor Mata Te Naihe was a chief's daughter – of the Iwi and Hapu of Te Atiawa. She, and her grandfather and uncle were living in and around the Rohe of Whanganui-A-Tara in 1839 and 1840.
- (f) My claim arises because my Tupuna were signatories of Tiriti O Waitangi, and because Acts and policies of the New Zealand Government prejudicially affect me.
- (g) I claim on behalf of my Tupuna, Te Tino Rangatiratanga O Te Iwi Maori, in respect of indigenous flora, fauna, water, air and soils Me o ratou taonga.
- (h) This claim contains no intention regarding any financial compensation directly to the claimant

## 2. Purposes of Claim

- (a) This claims interests are in the Kaitiakitanga of indigenous and endemic flora, fauna, water, air and soils, (biodiversity) located in the Wellington, Kapiti, Cook Strait, Marlborough Sounds and Taranaki lands of our Tupuna.
- (b) The claim is intended to be recognised as partially addressing the Crowns inaction and avoidance to enact laws and provide resources for the Kaitiakitanga of indigenous and endemic flora, fauna, water, air and soils, (biodiversity.)
- (c) The Crowns ongoing negligence and breach of trust to Mana Whenua is by failure to act when legally obliged to, to the terms of the Deed Document, The Treaty of Waitangi, Article Two and the words, "undisturbed possession of land."
- (d) The purpose of this claim is to re-establish Kaitiakitanga Rongoa, Mahinga Kai, taiapure, maitaitai, Wai and other practices of Mana Whenua on any Maori land, Crown and Crown enterprises land, Regional Council land and all District and City Council land within the Wellington, Kapiti, Cook Strait, Marlborough Sounds and Taranaki lands of our Tupuna.

- (e) The purpose of this claim is to slow down the destruction of Crown owned remaining ecosystems of indigenous and endemic flora, fauna, water, air and soils, (biodiversity), by whomever and whatever Political Party, Members of Parliament, individuals, organisations or foreign governments.
- (f) I recommend the Crown develop a process to supersede remaining preservation, conservation and harvesting legislation with sustainability legislation that provides outcomes for cultural, social and economic management that will sustain flora, fauna, water, air and soils, (biodiversity), indefinitely.
- (g) I recommend the New Zealand Government to amend legislation that does not sustainably manage the remaining ecosystems within their control of our flora, fauna, water, air and soils, (biodiversity) itself, be they international accords and agreements, restrictions imposed or permission granted by the Government that pertains to the ownership, management, research, development, production and sale of Biodiversity, (known and unknown species) within and outside the boundaries of New Zealand.
- (h) To advance the social, economic and constitutional position of Mana Whenua, the Crown must honour Kaitiakitanga. Being the Resource Management Acts interpretation S.2(1) which reads “means the exercise of guardianship by Tangata Whenua of an area in accordance with Tikanga Maori in relation to natural and physical resources: and includes the ethic of stewardship”
- (i) That the legal obligation of the Crown, is to fund all of the Kaitiakitanga activities of all Mana Whenua indefinitely

### 3. Recommendations

I recommend the New Zealand Government to amend legislation, some of which recognises the Treaty of Waitangi, Maori values, Customary Rights and the protection and sustainability of Flora, Fauna and biodiversity. To govern for outcomes of the following,

1. I recommend a new Act, ‘The Flora and Fauna Act of New Zealand’ which would recognise the Treaty of Waitangi Acts, and parts of Acts of the New Zealand Parliament that relate to the sustainability of indigenous and endemic flora, fauna, water, air and soils, (biodiversity) and the customary right of Kaitiakitanga for all Mana Whenua.
2. I recommend the New Zealand Government to change single policy approaches, to a useful mix of approaches within this one Act. ‘The Flora and Fauna Act of New Zealand,’ which will support learning and behavioural changes to integrate Maori, Polynesian and Western knowledge systems, which will provide mechanisms to substantiate progress toward flora, fauna, water, air and soils, (biodiversity) retention and recovery.
3. Subsidiaries of the crown, being Crown enterprises, territorial and local authorities are not exempt from this claim.
4. Nutrient management plans to become mandatory for the agricultural and horticultural industries, with particular emphasis on artificial nitrogen.
5. Air pollution standards require consultation with Mana Whenua
6. Climate protection action by the Crown and subsidiaries of the Crown require consultation with Mana Whenua
7. Customary rights to flora, fauna, water, air and soils recognised in RMA
8. An interpretation of ‘biodiversity’ in the RMA to Read, Biological diversity, or biodiversity in short, describes the variety of all biological plants, animals and micro-organisms, the genes they contain, and the terrestrial, marine and/or other aquatic ecosystems in which they live
9. Addition of main components of National Biodiversity Strategy document to be included in RMA
10. Interpretation of Te Tino Rangatiratanga O Te Iwi Maori over natural resources included in RMA
11. Rights of Mana Whenua to natural resources upon Crown land and Maori land clarified
12. Legislate to introduce co-management structures with Mana Whenua and Local Government, to implement the RMA in foreshore and seabed’s
13. Marine farming rights for all harbours and all sea boundaries, including foreshores and seabed for all marine indigenous biodiversity, (for known and unknown species) require consultation with Mana Whenua
14. That as all consents for water usage expire, (Fresh water rights from onshore aquifers, springs, lakes, rivers and offshore aquifers/springs,) all future consents also require the consent from Mana Whenua

15. Seawater rights, current and future consents for sea water usage expire, require consents from Mana Whenua
16. Fish passage to be a requirement for all future activities in all water ways
17. Oceans policy approvals for activities in the Exclusive Economic Zone between 12 and 200 nautical miles offshore require consultation with Mana Whenua
18. Water quality management and allocation rights require consultation with Mana Whenua
19. That non-saleable collective titles be issued for all foreshore and seabed land, all Crown and Crown enterprises land, and all territorial and local authorities land, and the Queens chain, so that all this land is set aside for future generations, and can not be sold or legislated to be sold without a national referendum
20. To legislate the development on all flood plains and water catchments for the purposes of quality of artesian waters
21. That sustainable Native Forestry to be permitted in Claimants boundaries. And the Crown is requested to amend the Forests Act, RMA, Tax Act and Local Government Act to permit this activity
22. The Tax act be amended to permit purchases and expenses associated with native forestry to be 100% tax deductible.
23. Nomenclature of native plants and recorded biodiversity to be changed from scientific and common names. To Maori names first, then scientific and common names, by all Crown entities in claimants boundaries i.e. Te Papa, D.O.C, Government Departments, Territorial and Local Authorities and Crown enterprises.
24. Establish an area of continuous habitats, from the sea to the top of the mountain ranges in claimants boundaries
25. Permanent Forest Sink Initiative legislation and regulations, require consultation with Mana Whenua
26. Rongoa collection rights for ripe fruit, ripe seed, leaf, bark, fungi, lichen and spores included in RMA
27. Customary flora and fauna rights to read, *Food, medicinal and propagation material gathered from the land by Mana Whenua* included in RMA
28. Regulations related to customary flora and fauna rights included in RMA
29. Appointment of Board Members to Conservancy Boards in perpetuity for Mana Whenua
30. A conservation tax upon visitors entering New Zealand be introduced to fund recovery of species facing extinction
31. That D.O.C Conservancy budget is increased to facilitate the retention of rare, endangered, threatened and at risk flora and fauna, and their habitats from fund/trust, taxes and royalties.
32. Continue to develop mainland and offshore islands for biodiversity museums
33. Carbon taxes from native flora, calculated, accumulated and held into fund/trust
34. Legalise trade in selected native species to permit captive breeding
35. That MAF does set policy for mandatory biosecurity impact assessments
36. Royalties in regard to any material transfer agreements between NGO's, corporations and Governments and the New Zealand Crown for any genetically modified organisms from any Native species, (all biodiversity), known and unknown, from Claimants boundaries is to be accumulated into a fund/trust or to fund recovery of species facing extinction
37. For future intellectual properties rights protection, I recommend a permanent position on the Maori Advisory board, (recently recommended by the Patent Act Review 2003) to be made available to the Mana Whenua of claimants.
38. I recommend amendments to the Patent Act which will require the return of Royalties from international commercialisation of indigenous flora, fauna, water, air and soils to be credited directly into a Fund/Trust account.
39. That the recommended Maori Advisory Board for indigenous intellectual property, provides recommendations to the Ministry of Economic Development that must be incorporated into their Long Term Strategic plans, management and policy documents.
40. That protection of Native soils that contain Micro flora and fauna are written into the RMA
41. That all soils polluted and contaminated are the responsibility of the Crown and the Crown's subsidiaries, to mitigate all of the effects, due to past and current Crown Acts, policies and regulations that permit these activities
42. Review of selected land use registers and law changes to revert contamination disaster cleanup costs back to the Crown
43. That this claim's generic property interests extend to New Zealand's Exclusive Economic Zone and Antarctica

#### 4. Genetic Modification

That the moratorium on Genetic Engineering, which was lifted on the 29<sup>th</sup> October 2003, should not have occurred at all.

Genetic modifications are contrary to my beliefs of the order of Whakapapa. (The diverse and complex interconnectedness of all life,) and that the Crown cannot separate its obligations by Acts policies and regulations that do not eliminate all risks of unwanted gene transfers. That this claim and WAI 262 and future claims to the Crown for gross negligence, will occur unless Maori concerns about genetic modifications are recognised and implemented.

The Crown's obligations to Maori require that Genetic changes to New Zealand's indigenous endemic biodiversity do not occur at all. That total containment of GE trials occur until WAI 740 & WAI 262 are heard by the Waitangi Tribunal, as recommended in the Royal Commission Document, (10.6).

#### 5. Territorial and Local authorities

I recommend amendments to the Local Government Act, which recognises the Treaty of Waitangi. To require all Regional and Local authorities to enable the customary right of Kaitiakitanga for Mana Whenua to participate in the protection and sustainability of indigenous flora, fauna, water, air and soils by way of the requirement of an appointed committee of council, funded by council and whose recommendations must be included in the Long Term Council Community Plan, of all Councils.

#### 6. Foreshore and Seabed

I recommend that a Future New Zealand Parliament abolish the Foreshore and Seabed Bill, (and subsequent Acts) 2004 because "this Bill perpetuates entrenched bad environmental management of the coast" (*Metiria Turei Green MP Third Reading Speech, Foreshore and Seabed*)

I recommend that non-saleable collective titles be issued for all foreshore and seabed land, so that all this land is set aside for future generations and can not ever be owned, or legislated to be owned.

That an upper house of Parliament be re-established for the purpose of Greater Governance, for the management of Political Parties, and so that the Government will honour its own judicial process.

That if the Crown does not follow these recommendations I am therefore prejudicially affected and can not take responsibility for the awhi of the coast and cannot exercise my Kaitiakitanga, which the Crown is legally obliged to, to the terms of the Deed Document, The Treaty of Waitangi.

## 7. Conclusion

The Crown's obligations to the claimant and all Mana Whenua require that

Until all contemporary Treaty of Waitangi claims are heard by the Waitangi Tribunal, and settled by the Office of Treaty Settlements, all Acts, policies and regulations opposing these claims are contrary to the Treaty of Waitangi.

That I dispute the Crown's sole legitimate ownership of biodiversity, whilst there is a pending claim.

It is the Crown's judicious responsibility to refrain from granting rights to a third party, and remuneration received from disputed rights already granted should be held by an impartial organisation whilst a determination is made by the proper authority.

That I request all revenue received from Taxes, Royalties, leases and property rights pertaining to this claim to be held by the Crown to mitigate the effects of its dereliction of Duty to the original signatories and their descendents for the "undisturbed possession of this land."

That perceived revenue is being from all activities mentioned in this claim, and including freshwater and seawater rights, (trading onshore and offshore) wind and water electricity generation, marine and aquatic farming rights, irrigation schemes, bio-prospecting and gene technology.

That this revenue so held is deposited into a Crown organisation, to disperse monies similarly to the Crown Forest Rental Trust model, and operate accordingly.

That the Crown representatives and the Waitangi Tribunal give due consideration to this claim

I claim for my Tupuna, and as a descendent of an original in the Wellington Tenth's Trust. Te Tino Rangatiratanga, in respect of indigenous flora and fauna, water, air and soils on all land in claimant's boundaries

This claim relates to flora, fauna, water, air and soils only, which resides in and around the land, wetlands, rivers, lakes, oceans and air of the land referred to, and contains no intention regarding any financial compensation directly to the claimant.

For Maori, our history of struggle continues, Ka Wawhai tonu matou, ake ake ake.

Naku noa na

Fredrick C. Allen

## APPENDIX 2

### CV Relevant to WAI 262

Participated in Biodiversity Strategy at D.O.C. Patent and PVR Acts Review and bio-prospecting development at M.E.D

Participated in GE debate at two hearings, and gave written submission

Gave published presentation on Maori Perspectives on Sustainable Indigenous Forestry (Waikato University)

Lodged Treaty Claim WAI 740 in June 1998

Recent submission to the Tribunal on Te Reo Maori within the context of WAI 262

Managing Director of Kiwi Plants Ltd

Currently a trustee, on committee or member of, or have been employed in,

- Claimant WAI 740, 'Sustainability of Flora, Fauna, Water Soil and Air'
- Wellington Tenth's Trust (Descendant of an original beneficiary)
- Registered member of Port Nicholson Block Claim
- Te Atiawa Ki Te Upoko o Te Ika A Maui Potiki Trust
- Nga Ringa Whakahaere o te Iwi Maori Inc Society (National organisation of Maori traditional medicine practitioners)
- National Maori Network for Environmental Risk Management Authority (ERMA)
- Matiu Somes Island Trust
- The Green Party of New Zealand
- Forest and Bird Society Lower Hutt Branch
- Royal Forest and Bird Protection Society of New Zealand
- Tane's Trust (Native Forestry Organisation)
- Action for the environment (Wellington)
- Wetland Trust of New Zealand
- Royal New Zealand Institute of Horticulture
- New Zealand Ecological Society
- NZ Plant Conservation Network
- Wellington Botanical Society
- Nursery and Garden Industry Association
- International Plant Propagators Society
- Assessor advanced level 4 for trade certificates in plant Nursery Production and Amenity Horticulture, from New Zealand Horticulture Industry Training Organisation.
- Keep Hutt City Beautiful Committee
- Former Elected member of Northern Ward Committee, Lower Hutt City Council for 3 years
- Former appointed Chairman of Northern Ward Committee, Lower Hutt City Council for further 3 years
- Current Deputy Chair and Maori representative of Mid Valley Access Primary Health Organisation
- Current Chairman of Stokes Valley Community House
- Former Local Authority officer in operational and management capacities for 15 years in Parks and Leisure Services and Roading Department.
- Local Bodies Officers Union delegate for large local authority
- Self employed in native plant sustainability business for 13 years

**APPENDIX 3**

1 November 2000

The Royal Commission on Genetic Modification  
 PO Box 3354  
 Wellington  
 04 495 9151

Tena Koe,

Submission on Genetic Modification

The treaty claim registered with the Waitangi Tribunal titled WAI 740 – The Protection of Indigenous Flora and Fauna (Allen) Claim, is a contemporary claim which includes genes, biodiversity and research of genes.

I wish the Royal Commission to caution The Crown on:

- Any failure to protect the biodiversity of New Zealand by acts, policies, and regulations that do not eliminate risks of uncontrolled gene transfers.
- That future Maori claims to The Crown for gross negligence will occur unless Maori concerns about genetic modifications are recognised and processed.

The Crowns obligations to Maori require that:-

- 1) Genetic changes to New Zealand's indigenous biodiversity do not occur at all.
- 2) Conditions of genetic engineering consent are to include:-
  - a) Total containment of GE trials until further knowledge is available on vector mediated horizontal gene transfer recombinations and their consequences on indigenous biodiversity.
  - b) Testing compatibility of genes on a selection of measurable indigenous organisms from terrestrial, marine, and aquatic ecosystems to eliminate toxic combinations if containment fails, and the tested organisms destroyed.
- 3) Kaitiakitanga is to be honoured by the crown. Being the Resource Management Acts interpretation S.2 (1) which reads "means the exercise of guardianship by Tangata Whenua of an area in accordance with Tikanga Maori in relation to natural and physical resources: and includes the ethic of stewardship".
- 4) That until contemporary Treaty of Waitangi claims that refer to genetic modifications are heard by the Waitangi Tribunal, Acts, policies and regulations by The Crown for consent of Genetic engineering are contrary to the Treaty of Waitangi.
- 5) That The Crown does not contravene The Resource Management Act which recognises The Treaty of Waitangi, and the protection and sustainability of flora and fauna.

I claim for my Tupuna Kaitiakitanga in respect of all indigenous flora and fauna, and wish that the Royal Commission gives due consideration to my submission.

Naku noa na  
 FC Allen

## APPENDIX 4

24<sup>th</sup> May 2006

Submission on Te Reo Maori within the context of WAI 262

I wish to lodge a submission on how to address Te Reo Maori components within statements of claim WAI 262. I am the principal claimant for WAI 740: “The sustainability of Indigenous Flora, Fauna, Water, Air and Soils claim.”

The specific component in WAI 740 that relates to Te Reo Maori is 3.23 that states, “Nomenclature of native plants and recorded biodiversity to be changed from scientific and common names to Maori names first, scientific and then common names, by all crown entities in claimants boundaries.”

Upon considering the request for submissions on Te Reo Maori within the context of WAI 262 I wish to submit the following

- i. Cultural redress for all indigenous flora and fauna (all biodiversity) and for all of our Kaitiakitanga obligations, should require Te Reo Maori within the language that defines, interprets and describes all of these living organisms, and the activities of Kaitiakitanga because Te Reo Maori shapes what we think, what we perceive and what we feel as Maori.
- ii. Kaitiakitanga was once one of the cornerstones of the sovereign authority exercised by Iwi and Hapu, therefore the Crown and the NZ government should integrate Te Reo Maori within all aspects of flora and fauna and Kaitiakitanga. They will be recognizing their Treaty Partner as not being inferior, subordinate and marginalised by the English Language.
- iii. The English language interpreted, defined and dominated all aspects of Maori culture and by releasing control of Te Reo Maori within the context of WAI 262 we can find another way forward to come into being and reconstitute our Treaty Partnership
- iv. Te Reo Maori for Flora and Fauna should be reconfigured with formal Maori participation that would see the creation of a Maori committee as an advisory body to the intellectual property office (IPONZ)
- v. Te Reo Maori for flora and fauna, (all biodiversity), should be covered by separate legislation, such as being incorporated into an ‘Indigenous Patents Act’ being a separate new act to the ‘Patents Act’.

### Conclusion

It is a most significant decision not to comprehensively inquire into crown compliance with the WAI 11 Te Reo Report within the context of WAI 262.

Only by including components of Te Reo Maori within the WAI 262 will there be any authenticity to contribute to any satisfactory settlement process, that returns the authority that we inherited from our ancestors

This submission is only indicative of the complexity of this matter and if it is not addressed within WAI 262 it will only arise in future hearings of current claims and future claims

I do not wish to be heard at future hearings if this submission can be read aloud, at the appropriate place and time

Naku noa na

FC Allen