



Te Kotahi  
Research Institute

# Approaches to Benefit Sharing Summit Report

---

IP RELATED IMPACT ACTIVITIES

KatieLee Riddle, Natalie Kusabs and Maui Hudson

Te Mata Punenga o Te Kotahi | Te Kotahi Research Institute  
Te Whare Wānanga o Waikato | The University of Waikato

**Published by**

Te Mata Pūnenga o Te Kotahi | Te Kotahi Research Institute  
Te Whare Wānanga o Waikato | The University of Waikato  
Hamilton, New Zealand  
ISBN: 978-0-9951290-6-1

## **Acknowledgement**

The authors would like to thank the Science for Technological Innovation National Science Challenge (SfTI) for funding the project as well as support from the MBIE Tauhokohoko: Indigenising trade policy and enabling mana motuhake through Indigenous trade project.

**Preferred citation:** Riddle, K., Kusabs, N., & Hudson, M. 2024. Approaches to Benefit Sharing Workshop Report – IP Related Impact Activities. Te Kotahi Research Institute, Hamilton, NZ.

## Contents

Executive Summary.....	4
Objectives .....	4
Agenda .....	5
Key Findings from Presentations .....	5
Introduction .....	5
Keynote: ABS agreements in Australia and the Pacific .....	5
Bio-Discovery in Aotearoa .....	6
Pathways to Benefit Sharing .....	8
Negotiating Agreements.....	9
IP Guidelines Launch.....	11
Benefit-Sharing and Indigenous Trade .....	11
Closing.....	13
Acknowledgements.....	14
Conclusion.....	14
Appendices.....	16
1. Commercialisation of Taonga Species Workshop Report .....	16
2. Key Sources for Further Reading .....	29

## Executive Summary

The SfTI Spearhead IP Related Impact Activities Project aimed to build on top of the BNZIC (Building NZ Innovation Capacity) review and the SfTI Board imperative to prioritise the communication and dissemination of its research implications and recommendations, by implementing tailored engagement with key end-users. The final part of this project centred on the development of a Māori user perspective on how best to implement the findings and recommendations from the two Māori Cultural Intellectual Property (IP) and mātauranga reports completed in 2021 (Appendix 1) by the research team from the University of Waikato, as well as the recently published IP Guidelines, He Tohu Ārahi Guidelines for Protecting Cultural Intellectual Property in Research and Innovation.

As part of this tailored engagement, the team held three separate training workshops on IP, mātauranga Māori, and commercialisation of taonga species. They involved a series of facilitated discussions, and presentations from experts in these areas. A report from the most recent benefit sharing workshop held in 2023 is annexed in this report.

To finalise these workshops, a Summit was held on June 20<sup>th</sup> 2024 at the University of Waikato, with Māori academics, stakeholders, practitioners, business owners, and entrepreneurs. The presenters, from both Australia and Aotearoa, provided provocative and challenging points of view, and shared thoughts that pointed towards innovative and beneficial solutions for the future.

## Objectives

The objective of the June Summit was to present panel discussions and keynote speeches to present culturally appropriate solutions and options going forwards for the future of commercialisation of taonga species and benefit sharing in relation to Māori taonga. This included options for benefit sharing, consultation obligations, key discussions to be had throughout the timeline, as well as summarising the overall findings of the project.

## Agenda

8:30am	Registration opens	
9:00am	Mihi	Professor Jason Mika
9:15am	Keynote: ABS agreements in Australia and the Pacific	Dr Daniel Robinson & Dr Miri Raven
10:00am	Bio-Discovery in Aotearoa	Manu Caddie Michela Anderson Dr Mitchell Head Laine Fisher
11:00am	Morning tea	
11:30am	Pathways to Benefit-Sharing	John Locke Dr Miri Raven Leo Watson KatieLee Riddle
12:30pm	Lunch	
1:30pm	Negotiating Agreements	Cerasela Stancu Nanaia Mahuta Dr Daniel Robinson Kiriwaitangi Rei
2:30pm	IP Guidelines Launch	KatieLee Riddle
2:45pm	Benefit-Sharing and Indigenous Trade	Nanaia Mahuta Katharina Ruckstuhl Rawson Wright
3:45pm	Closing	

## Key Findings from Presentations

### Introduction

For the introductory section of the summit, it was key that the participants received background and contextualisation information. This was navigated by the MC, **Professor Jason Mika**, who introduced the attendees to the summit in the morning.

### Keynote: ABS agreements in Australia and the Pacific

**Dr Daniel Robinson & Dr Miri Raven** (University of New South Wales) were invited to speak on Access and Benefit Sharing (ABS) agreements in Australia and the Pacific. They discussed two key projects. The first looked at registered Patents on Traditional Knowledge (TK) on Australian plants, identifying whether there have been claims upon associated TK, and whether certain patents infringing upon TK could be challenged or revoked. They also

looked at key species case studies, as well as the identification of biocultural protocols and access and benefit sharing agreements. Their second project considered the implementation of the Nagoya Protocol, to support the implementation and compliance of ABS regulation and policy, as well as studied bio-trade value chains in Melanesia. This project also included capacity building for Indigenous Peoples and Local Communities (IPLC) in these matters.

Their presentation can be found at: <https://youtu.be/bFNMaYE-m6Q?si=4dETX9jptI4-YzZs>



## Bio-Discovery in Aotearoa

Manu Caddie (Te Kotahi Research Institute), Michela Anderson (University of Waikato), Dr Mitchell Head (Te Kotahi Research Institute), and Laine Fisher (Te Puni Kokiri), spoke on their experiences with bio-discovery in Aotearoa. This panel discussed their involvement in international and local benefit sharing, the new WIPO (World Intellectual Property Organisation) Treaty on Genetic Resources and Associated TK, and various other policy advancements around bio-discovery.



**Manu Caddie** presented on his experiences at the WIPO Diplomatic Conference, Geneva in May, in which the Treaty was adopted, as well as 4 to 5 of his projects in relation to taonga species both at a national level in Aotearoa, and locally in Te Tai Rawhiti, to create diverse novel economic opportunities for Māori.

**Michaela Anderson** spoke about ongoing work with her whānau-owned agribusiness, specialising in Mamaku, as well as her academic focus on provenance authenticity, certification, and traceability as a pathway and approach for businesses when commercialising taonga species to create culturally responsible outcomes.

**Laine Fisher** also shared his experiences at the WIPO Diplomatic Conference, and his work at Te Puni Kokiri in relation to stewardship of Māori interests in international spaces as part of the Crown.

Lastly, **Dr Mitchell Head** revealed some of his innovative work investigating the potential of taonga species to improve mental wellbeing and health of whānau and hapū.

The panellists then responded to questions from the audience around appropriate and successful commercialisation, opportunities created by free trade agreements, nature related disclosures, legal agreements' ability to protect legitimate interests of kaitiaki, how to make progress in the absence of legal regulatory protections and frameworks, and capacity and resourcing for Māori leadership in international fora.

Their panel discussion can be found at: <https://youtu.be/bFNMaYE-m6Q>



## Pathways to Benefit Sharing

John Locke (BioCultural Consulting), Dr Daniel Robinson (University of New South Wales), Leo Watson (Tiaki Taonga), and KatieLee Riddle (Te Kotahi Research Institute) discussed national and international considerations for Indigenous communities and their cultural IP when entering research and innovation working relationships.

To open this panel discussion, **John Locke** provided a snapshot view of his work in Queensland, providing insight into consultancy with Indigenous research partners, developments in water reforms, his work internationally at the United Nations Convention on Biodiversity, Indigenous spatial intelligence and knowledge systems, cultural governance, and Indigenous science and innovation within industry.

**Leo Watson** discussed his work at Tiaki Taonga, and how benefits for Māori and kaitiaki also benefit Aotearoa and the world. He also shared his perspective on the ongoing WAI262 kaupapa, working with the Crown as an active partner, frameworks and mechanisms for the protection of mātauranga Māori, interfaces with existing IP and bio-discovery systems, restoration of indigenous communities and knowledge systems, capacity building, the need to uplift te reo Māori, and critiqued the ability of international law to respond to indigenous needs and rights. He noted that power for progress lies in indigenous-to-indigenous collaboration, and that proactive steps to protect tikanga frameworks are needed.

**KatieLee Riddle** shared some of the whakapapa of the project that has led to the Summit, and her experiences in relation to her work at the United Nations Convention on Biodiversity in the development of provisions for digital sequence information (DSI), and the multilateral fund for use of DSI. She also spoke about the difficulties representing Māori internationally in terms of adequate consultation and mana to represent communities, the need for having strong Māori representation in international fora, the use of Local Contexts Notices and Labels, and the need for communities to be able to effectively assert their interests in research agreements. She noted that there is no one right way to share benefits, and that the unique needs of communities should be reflected in research agreements.

**Dr Miri Raven** spoke about her experiences looking at protocols used by cooperative research centres, engaging with legal and economic systems when they may not be the right fit for Indigenous communities. She noted that 'pathways' may not be the best terminology to use in relation to benefit sharing, as looking to the future requires forging new solutions and directions, rather than following a path that has been walked before. Instead, she suggested that we are looking for a dream for the future, as words hold meanings that can generate various inferences.



The panellists then responded to questions from the audience about overcoming barriers to international representation, use of spatial technology to collect samples, maintaining provenance information of samples, and how to ensure we are giving back to the whenua to negate biodiversity and land loss.

Their panel discussion can be found at: [https://youtu.be/HoY1cwdb\\_Mg](https://youtu.be/HoY1cwdb_Mg)

## Negotiating Agreements

Cerasela Stancu (EnviroStrat), Dr Daniel Robinson (University of New South Wales), Hon Nanaia Mahuta (Te Kotahi Research Institute), and Kiriwaitingi Rei (Zespri) were invited to share on their experiences in the negotiation of agreements involving Indigenous peoples.

**Cerasela Stancu** opened the session with a talk on her work with EnviroStrat, reflecting on her experiences in Aotearoa and overseas. She covered community independence and ability to influence local laws, impact investment towards environmental and social issues, land transition, types of benefit sharing mechanisms that she has found to be successful, issues to consider for benefit sharing mechanism implementation, balancing risk, impact and returns, the need for communities to take control in research relationships, the need for accountability in contractual relationships, the ability for technology to track and trace to allow benefits to return to source communities, the growth of seaweed aquaculture in Aotearoa, and the need to balance people and profits along the value chain. Lastly, she identified that shared benefits can be environmental, social, economic, or cultural in nature, depending on the project and the kinds of impacts that are contextually appropriate.

Next, **Hon Nanaia Mahuta** drew on her previous experience within the Crown, to share a different perspective on the evolution of opportunities that create value back to communities as the economy changes. She asserted that the enabling of this is done

through active engagement, resulting in key conversations, and opportunities for participation. The protection of taonga species was emphasised, which included working to advance WAI262, and wayfinding for the future of taonga species, to inform how the Crown can work towards a correct regulatory framework. She emphasised that creating an enabling environment is key, with Indigenous peoples at the centre. She shared that policy development cannot come from the Crown alone, it requires a partnership and level of trust to create opportunities for change, and to bring value back home to communities. She also affirmed that the trajectory to this change is layered and nuanced, requiring an overlapping of expertise on all levels, as well as a level of co-design and trailing to get it right.



**Dr Daniel Robinson** added further to his earlier talk around access and benefit sharing, adding that these agreements are a great opportunity to exercise the ability to say no, or put strict terms on how research should occur. He also discussed knowledge transfer, succession of knowledge, balancing societal and community benefits, choosing the right research partners, and his experiences with the push towards Indigenous ownership in relation to benefit sharing, especially for bush foods and botanical enterprises. He suggested that the recognition of Indigenous ownership could also add a layer of provenance that may attract consumers to products.

**Kiriwaitangi Rei** spoke about her experiences within Zespri, as the head of Māori alliances. This included her travel to Hawai'i, marketing at Zespri for Māori, supporting Māori kiwifruit growers, creating sustainable, Māori designed packaging and the ability to bring Māori provenance into marketing.

The panellists then answered questions about benefit sharing with communities of origin for non-native species, origins of taonga species and the integrity of provenance within benefit sharing, authenticity and integrity of innovation within export markets, the importance of using te reo Māori in branding for provenance, and whether authenticity has a quantifiable added value, and the importance of the future for generational considerations for Māori in terms of discount rates.

Their panel discussion can be found at: <https://youtu.be/f6zy-7jpA5s>

## IP Guidelines Launch

**KatieLee Riddle** launched the newly published He Tohu Ārahi; Guidelines for Protecting Cultural Intellectual Property in Research and Innovation, as well as two information sheets; Evolving Benefit Sharing Regimes; A Way Forward, and Approaches to Benefit Sharing. She shared further information on the whakapapa of how the Guidelines came to be, including the various outputs that came before them, and the need for genuine in-depth guidance for communities on protecting cultural intellectual property. She then provided an overview of what was covered in the Guidelines and the info sheets.



## Benefit-Sharing and Indigenous Trade

Nanaia Mahuta (Te Kotahi Research Institute), Katharina Ruckstuhl (University of Otago) and Rawson Wright (Te Taumata) were invited to discuss their experiences within indigenous trade.





**Nanaia Mahuta** gave a keynote address to open this session. The context of her address came from her previous work as an Associate Minister for Trade and Enterprise, as well as her role as Minister of Foreign Affairs. She recognised very early that there were limited opportunities for us as a country to platform the faster growing Māori economy, and that this was shaping the way that Aotearoa was thinking about regional growth and opportunity. She shared that there was limited guidance in place to contemplate how to navigate collaboration agreements or negotiating Indigenous agreements, and that the lessons of how to navigate these spaces came from outside sources such as Australia and the World Indigenous Business Forum (WIBF). She reflected on the progress made since, especially in terms of collaboration agreements, and insights from inter-Indigenous business engagement. She recognised and outlined some of the internal work undertaken by the Crown to support Māori trade, both domestically and internationally. She reaffirmed the importance of provenance stories for increasing value of Māori trade and suggested that advocacy for Māori participation needs to be clear and practical, balancing the protection of taonga alongside their utilisation.

**Katharina Ruckstuhl** spoke next about her recent experiences with Code NZ Centre of Digital Excellence, and the importance of monopolies for unique Māori resources such as Pounamu and Taramea. She discussed the need to balance the principle of kaitiakitanga alongside economic opportunity in relation to taonga species, and the polarity of views on this balance. The reasoning for this balance, in her opinion, was due to two aspects; firstly the desire to secure Ricardian rents, balancing with the principle of kaitiaki. She observed that this tension was delicate and multi-layered. Secondly, she observed that there was also a Schumpeterian approach in terms of innovation that is important for Māori and their autonomy. She affirmed that both approaches were needed to create valid pathways to future wellbeing. Her next korero centred on work within the SFTI National Science Challenge, especially in relation to IP, as well as the iwi driven initiative; Mea. The history of this product was discussed, and she noted that an agreement was created between the

company and the iwi to contractually affirm their ability to utilise the taonga. Lastly, she reflected upon the difficulties that her hapū encountered in developing this product, as well as the ability for economic powers to be utilised fruitfully and legitimately.



**Rawson Wright** shared his experience as a member of Te Taumata and the challenges overcome during the negotiating of Indigenous chapters in free trade agreements, which was achieved between the UK, European Union and New Zealand. He shared a range of examples of his experiences in this space, and the story of his journey from dairy farming into Indigenous trade. He also reflected on the importance of IP, provenance, and geographic indicators. Lastly, he recognised the need for whakawhanaungatanga, without the expectation of immediate returns, as a starting point in agreements and relationships, as well as the need for the ability to walk in other people's shoes to find equity in relationships.

The launch of He Tohu Ārahi and this final panel discussion can be found at:

<https://youtu.be/nLTBmyHRxfY>

## Closing

**Lisa Warbrick** discussed her working background and thanked all those who spoke at the workshop. She acknowledged the participants and shared her reflections on being part of the Te Nohonga Kaitiaki Guidelines writing project, her learnings about how Māori interact with genomics, how commercialisation of genomic research has changed in the last 5 years, the importance of domestic markets for Māori, and how foundational relationships are built through having hapū and whānau authority.

The closing reflections of the Summit can be viewed at: <https://youtu.be/OuS9ZxzD4bl>

## Acknowledgements

We would like to express our gratitude to the individuals and entities who contributed their time, effort, and expertise to make this workshop a resounding success:

**Attendees:** Our gratitude extends to the attendees who came to the Summit. Your valuable insights, in-depth questions, diverse perspectives, and enthusiastic engagement enriched our discussions and contributed to the overall success of this event.

**Organisers:** Our sincere appreciation goes to the team at Te Kotahi Research Institute, who conceived the idea for this workshop and managed its execution.

**Funders:** We express our deep appreciation to the generous funders, the Science for Technological Innovation National Science Challenge (SfTI), whose support made this workshop possible.

## Conclusion

The June Summit concluded the SfTI IP Impact Activities project and explored Access and Benefit Sharing (ABS) agreements, bio-discovery, and indigenous intellectual property (IP). It began with an introduction to ABS agreements in Australia and the Pacific, focusing on traditional knowledge patents and the Nagoya Protocol. The summit doubled as a launch for He Tohu Ārahi; Guidelines for Protecting Cultural Intellectual Property in Research and Innovation. These guidelines serve as a community-focused starting point for negotiating research agreements.

The initial discussions centred on benefit sharing and protecting taonga species, highlighting both international and local perspectives. The 'Pathways to Benefit Sharing' panel examined cultural IP and the importance of indigenous collaboration.

Negotiation insights emphasized community control, accountability, and balancing economic and cultural benefits. The newly launched He Tohu Ārahi guidelines provided detailed guidance for protecting cultural intellectual property. In addition to these guidelines, a compilation of relevant readings can be found in Appendix 2.

The final session on indigenous trade highlighted the growing Māori economy and the importance of provenance stories. The summit concluded with reflections on its success, attributed to the engaged participants, dedicated organisers, and support from Science for Technological Innovation National Science Challenge.





## Appendices

# 1. Commercialisation of Taonga Species Workshop Report

KatieLee Riddle, Maui Hudson and Natalie Kusabs

### **Acknowledgement**

The authors would like to thank the Science for Technological Innovation National Science Challenge (SfTI) and Genomics Aotearoa for funding the project.

### **Published by**

Te Mata Punenga o Te Kotahi | Te Kotahi Research Institute  
Te Whare Wānanga o Waikato | University of Waikato  
Hamilton  
New Zealand

### **Preferred citation:**

Riddle, K., Hudson, M., & Kusabs, N. 2023. Commercialisation of Taonga Species Workshop Report. Te Kotahi Research Institute, Hamilton, NZ.

## **Executive Summary**

The IP Related Impact Activities Project aims to build on top of the BNZIC (Building NZ Innovation Capacity) spearhead review and the SfTI Board imperative to prioritise the communication and dissemination of its research implications and recommendations, by implementing tailored engagement with key end-users. The third and final part of this project centres on the development of a Māori user-perspective on how best to implement the findings and recommendations from the two Māori Cultural Intellectual Property (“IP”) and mātauranga reports completed in 2021 by the research team from the University of Waikato. As part of this tailored engagement, the team held three separate training workshops on IP, mātauranga Māori, and commercialisation of taonga species. They involved a series of facilitated discussions, and presentations from experts in these areas.

The most recent training workshop was held on July 19<sup>th</sup> 2023 at the University of Waikato, with Māori academics, stakeholders, practitioners, business owners and entrepreneurs. The attendees provided provocative and challenging points of view, and shared thoughts that pointed towards innovative and beneficial solutions for the future.

## Objectives

The objective of the July training workshop was to facilitate discussions to produce potential culturally appropriate solutions and options going forwards for the future of commercialisation of taonga species. This included options for benefit sharing, consultation obligations, key discussions to be had throughout the timeline, as well as scoping of a range of further issues that had not been previously considered within the scope of this project.

## Planning

For the introductory section of the workshop, it was key that the participants received background and contextualisation information so that focus group discussions on the desired topics were both informed and streamlined. The researchers wanted to initiate the workshop with discussion on the key challenges previously identified for taonga species commercialisation, to see whether the group of participants agreed that these were common issues, as well as the most pressing at this time.

For the focus groups, the research team wanted to concentrate on aspects of the commercialisation process that were identified as the most critical to them, and at what point these matters should be addressed along the research and commercialisation timeline.

## Agenda

10.00	Registration, Whakawhanaungatanga, Introductory Comments and Contextualisation.
11.00	Morning Tea
11.30	Focus session 1
13.00	Lunch Break
14.00	Focus session 2
16.00	Summarisations and Closing Remarks
16.30	Finish

## Outcomes

The training workshop was attended by 11 participants, whom all contributed fruitfully to the facilitated discussions. The day started off with karakia and time for whakawhanaungatanga, followed by the introductory session.

In the introductory session, M. Hudson and K.L. Riddle gave a presentation covering the following matters:

- The Building NZ Innovation Capacity: Insights Report Summary, its key insights, and recommendations.
- A comprehensive project background which covered previous parts of the project, their outcomes, and outputs.
- Key aspects to consider such as:
  - Relational challenges in understanding cultural IP.
  - Integrated approaches to the protection of mātauranga Māori and taonga species
  - The similarities and differences between traditional IP, creative commons, and the Traditional Knowledge and Biocultural Labels and Notices, and the relationship between ownership, control, and indigenous authority
- An overview of concurrent and historic projects related to this, and their key outputs.
- Concurrent international activities that relate to this project.
- An overview of existing guidance and research which pertained to the workshop topics.
- A brief overview of recent outputs on IP and Māori interests
- A summary of the Kahu Aronui work programme currently underway through WAI262.
- A brief background on where commercialisation and taonga species currently sits in Aotearoa New Zealand.

During Focus Session 1, the key questions were as follows:

- What are the key challenges to commercialisation with taonga species?
- What could be done during the research phase to make the commercialisation process easier?
- When has taonga species commercialisation worked well? What factors were important?
- How is growing awareness of Māori Data Sovereignty affecting discussions?
- How does WAI262 affect discussions?
- Who do you prefer to partner with? And why?

During Focus Session 2, the key questions were as follows:

- What are the key components of a good commercialisation model?
- When considering a commercialisation model, what aspects make it culturally sound?
- What makes a good benefit sharing arrangement?
- What aspects of capacity building should be built into a culturally sound commercialisation model?
- What does effective community partnership in a commercialisation model look like?
- What do key components of a respectful IP and Cultural IP Rights ("CIPR") arrangement look like?

## **Key Insights**

### ***Definition and Scope of Taonga Species***

- As often occurs in legal discussions, the conversation typically turns to definitions, and their associated scope. The definition of a taonga species is no different. Even so, if one can settle on a definition, what effects does being considered a taonga confer onto the species. The attendees also considered the extent of the scope of the taonga species, such as in situations where it is made into a derivative form, or an artificial version of a component of the species is created. Also, as part of the scoping issue, it was identified that a distinction had not been made between species and subspecies.
- Taonga species are a commodity, with an added relationship. This means that rangatiratanga is attached as a key concept in relation to taonga species, as affirmed by the Treaty of Waitangi.
- It has previously been within a court's mandate to decide what a taonga is, as has been seen in the Protected Objects Act, which contains a prescribed process.

## Value

- The group also discussed the matter of input value, as such, whether there is a need to recognise the input value of the whenua, and if so, what that input is. An input was considered as anything that the taonga species itself is dependent on.
- When considering the value of taonga species, participants noted that a taonga species may have more significance or a differing level of value to different groups, such as different iwi having varied historical relationships to, and use of, the species.
  - This value can change over time, e.g., mānuka being considered a pest and cleared for farmland, and now replanted and nurtured for honey production. Mānuka now has a higher value because of its use.
    - This brings about questions of whether values change depending on what is found in situations such as research and development.
- Value in the western sense is typically monetary, however taonga species should have a recognised value in and of itself. When that holistic value is recognised, what does that mean for the species?
- It was noted that value of taonga species should not be considered by their downstream benefits alone. Examples shared were:
  - The value of mānuka is often considered to be in the honey, rather than the bush. But it is also known that the tree has intrinsic value in and of itself as a taonga species.
  - Kauri historically had been considered valuable for its wood. However, in current times, it has less of an economic value, but a high cultural and social value.

- When recognising a taonga species' intrinsic value, it follows that the species needs to be protected for future generations. The intrinsic value of the taonga species should be considered as an added value to that of its downstream benefits.
  - In relation to this, extraction, or use of taonga species must not be destructive. Sustainable use of taonga species is mana-enhancing.
- Value was also interpreted differently by the attendees, and it was noted that the value of the taonga species and its commercial outcomes are important in a culturally specific way. When we create monetary value, it is done with the help of the community in mind, with benefits such as job creation and knowledge transfer. The intention of the value is thus different, it is not only commercial; it has a holistic benefit for the community and the whenua.
- It was also noted that while taonga species have a cultural, environmental, and economic value in and of themselves, they also present a unique opportunity for Māori to add value to their communities in these ways. This is because we are a part of them, and taonga species feed us physically, culturally, emotionally etc.
- When a commercial entity is marketing new products without reputation and brand awareness, it is the attributes of the product itself that sell it, there needs to be something more, something special, and taonga species can have that special something that makes a product unique and marketable. The value of taonga species is something that adds value in and of itself to a product or commercial output.

## ***Relationships***

- When it comes to a relationship to the taonga itself, the issue of multiple community interests, and thus multiple kaitiaki interests was discussed. This leads to the issue of concurrent competing interests, such as that of private landowners, non-Māori interest holders, other indigenous communities were raised. There was no firm conclusion on which rights holders should have priority.
- It was discussed that there is some distance between the practice of kaitiakitanga and kaitiakitanga at a theoretical legal level. This gap needs to be bridged in a way which does not deny the unique issues that arise from this difference.
- There are different uses and practices in relation to taonga species in different spaces and communities, there needs to be a way to find commonality, through hui which helps to determine a taonga species many uses and ensuring that in future, nobody is left out of consultation. Examples discussed included:
  - Tītī, for which the gathering, use and relationship to the species differs throughout Aotearoa New Zealand.

- Pounamu, where there is a legislative right, as well as a customary practice. People use these in different ways, and in relation to their traditional practices.
  - There was a concern raised about courts deciding who are kaitiaki, suggestion that we find a mechanism to identify kaitiaki before court decides on our behalf.
- The issue of contestation was also raised, in which researchers working in good faith with kaitiaki subsequently learn that there are other kaitiaki that had not been consulted with. This occurs more widely in other cultural contexts than just in the taonga species space, we should look more broadly into what happens in these cases.
- Being a kaitiaki comes with a set of obligations towards the taonga species, which can create a financial burden. Taonga species are often nurtured, cultivated, protected, and used from a place of love. This relationship should be recognised both financially and holistically.
- It may be easy to commercialise with a commercial mindset, but when one approaches commercialisation with a collective mindset, there needs to be an ability to ensure cultural compliance.
- The attendees also flagged a potential issue that ahi kā is also important for consideration; there are many Māori not living on their whenua, what happens in these cases? How does cultural authority change?
- Researchers and Māori communities often prefer to work with people that they already have a relationship with, and this relationship building is core for commercialisation pathways. It is not enough to approach a community after the research is done. The relationship must be pre-existing and non-transactional in nature first to build trust.
- International, or offshore corporates have a different level of awareness for indigenous rights and interests, and the protection and use of Traditional Knowledge. Those based in countries that have ratified the Nagoya Protocol have obligations to follow their domestic laws. This creates an opportunity for Māori to work with commercial entities in a way that provides more protection for their mātauranga Māori.
  - This means that so long as Aotearoa does not have adequate frameworks, policy and legislation in place, national corporate entities and researchers risk potential loss of opportunity.
    - A lack of adequate provisions creates a loss for all, not solely Māori.
- The participants expressed curiosity as to what new free trade agreements meant for Māori enterprises.

- In discussion of rights in relation to taonga species, there was also an issue raised as to the difference between rights to utilise and rights to benefit. It was also recognised that a right to benefit cannot be recognised without a right to utilise.
- WAI262 is extremely informative, and the participants showed heavy support for a sui generis regime on this. When there is a legal right and interest in taonga species, it should be defined in a contemporary context. At present, this is not in line with western IP systems, which are negative in nature, in the sense that they give a right to stop others from unlawful use.
  - Cross licensing was discussed as a potential solution.
  - If a right is recognised for Māori, it is up to us to decide how we divide it.
- A question was raised as to whether taonga species could have their own legal personhood as a solution to their protection, but the discussion turned to the fact that there would still be a need for a person to act on its behalf, and as taonga species' needs are often different from human interests, this carries a deep level of responsibility that kaitiaki often assume in a more customary practice.
- Commercial entities do not want to spend time on research and development only to be tagged later as bio-pirates. Even if the entity may have legal rights regarding research and development on the taonga species, there is a cultural and ethical roadblock that can be encountered if things are not done in a proper way.
- It was discussed that traditional knowledge on taonga species when used in a commercial venture could be maintained through trade secrets and non-disclosure agreements. This has a competitive advantage for commercial outputs and maintains the mana of the mātauranga Māori itself. This however only works when the knowledge is not already in the public domain.

### ***Benefit Sharing***

- Economic elements alone should not be considered in isolation. Social, cultural and environmental benefits also should be considered as elements.
- There is both entrepreneurial benefit, and collective, communal benefit to be found in the commercialisation of taonga species. These can go hand in hand, or separate.
- It was noted that taonga species are also the kaitiaki of iwi, hapū, whānau too, so in recognition of this, how do we benefit share back to the species itself? If the taonga species was its own legal person and owned itself, it would be us that had to negotiate its utilisation.
- When looking at a multilateral benefit sharing system as is being suggested for Digital Sequence Information (“DSI”), there was concern over the potential for communities to miss out on benefiting from this system.

- The participants emphasised that real-life case studies of benefit sharing exist. There was a strong desire to identify precedent that could be used to scope future best practice.
  - When we look at published examples, we find precedent, which can be factored into future economic calculations.
  - Existing examples are included below, and these figures could be used and applied to kaitiaki:
    - Rooibos benefit shared 1.5% of the farmgate value, which some see as too low, however Zespri in their annual report identified that Plant and Food receive 1.35% of the Sungold breeder royalties.
    - Variant bio benefit shares 4% of revenue and 4% of equity.
    - 3-5% is usually the royalty for an inventor or patent holder.
  - Case studies can be hard to identify, as often these figures are hidden in confidential contracts, and non-disclosure agreements.
  - The figures need to both give adequate benefit and be attractive to investors.
- When a taonga species that grows nationwide is commercialised, the question was raised as to how a royalty is shared between all.
  - For example, a group of researchers have been working on developing a kawakawa drink with a foreign country, and a 20% of profit benefit sharing figure was agreed upon to be sent to iwi chairs.
  - In international case studies, many commercial aspects of research and commercialisation agreements are not disclosed, creating an absence of information that could be utilised by other indigenous communities.
- A discussion was had on whether profit, revenue, equity, royalties, or input value should be used to base a benefit sharing figure on.
- A suggestion was made by participants that a national benefit sharing entity could be established in Aotearoa New Zealand to facilitate and guide these relationships, connect kaitiaki with commercial entities and research institutions, and assist in the development of benefit sharing mechanisms. Participation in this mechanism should be voluntary, and some kind of support yet separation from the government is necessary to ensure its ability to be ongoing.
- The participants also discussed what happens when a project failed and agreed that non-monetary benefit sharing should endure even if a project itself fails.

## **Data**



- The participants raised the issue of burden being placed on Māori when they are returned their data, what does this mean? What does the data look like? How should it be stored?
- The point was made that we do not want to take a right to data and turn it into a detriment, there is no point returning data unless that iwi or community is able to host it, use it, and keep it secure. There is value in institutions holding data on behalf for safekeeping instead where it is appropriate.
- Generating value from data requires it to be used, and thus requires more than mere access alone. This also means the ability to bring databases together is key. How do we articulate value from discreet sets of data, as well as metadata for recording rights for use? What does this mean in terms of IP for commercialisation and what's already in the public domain?

### **Other Matters**

- The difference between small and large businesses and corporations was also discussed, in the sense that smaller businesses were anecdotally focused on giving benefit to their respective communities. A benefit of smaller businesses was that autonomy was able to be fostered more fully.
  - A desire to receive guidance for small businesses on how to upscale their businesses without compromising their values and kaupapa was shared by the participants.
- A *sui generis* legal pathway was suggested to be a useful legal pathway for defining taonga and creating concrete foundations on which communities can rely or claim upon if necessary.
  - A question was raised that if a researcher is legally obliged to consult with kaitiaki, whether there should be a network, directory, or connection system available to connect interested parties with relevant kaitiaki. This could be made into a panel, advisory group, or other body.
    - This currently exists for plant breeders.
- From an indigenous entrepreneurship perspective, Aotearoa New Zealand's status as a signatory to the Nagoya Protocol has relevance. Currently, it would be easier for Māori to engage with traditional knowledge and taonga species from other countries rather than our own, as the arrangements would be facilitated, and there would be a set structure to be engaged with.
  - Being a signatory to the Nagoya Protocol would also mean the creation of a National Focal Point on Access and Benefit Sharing.
  - Currently commercial entities bear the onus to approach the land courts, search for kaitiaki, and know how to engage in a fair and equitable manner

with Māori. It is easy for the commercial opportunity to put this in the ‘too hard basket’. There needs to be ease of operation for commercial entities to realise the value of taonga species.

- Much like how IP is an intangible asset, there is a value attributed to goodwill also. When a business is sold, the reputation and goodwill of the business is a part of that transfer. The provenance story is part of this goodwill. What kind of value do we put on Māori provenance?
  - These provenance stories add value, and permission to use these stories should be navigated with care.
- As the law currently stands, there is very little legislation in place to prevent samples being taken across the whenua without consultation or permission.
  - However, there are academic etiquette and ethics processes.
- Is there a way to effectively regulate private commercial research? The consumer holds the power in that relationship, and the regulation comes in the form of support and shame (social licence). Consumer pushback holds a high level of power, as consumer appreciation for brands based on reputation builds revenue; naming and shaming holds commercial weight.
  - In relation to this, company constitutions were noted to be an effective place for companies to have set policies in place and allow for accountability and transparency.
- In the pricing of end products or commercial outputs, it was noted by the participants that there is an expectation that it will be accessible and affordable for New Zealand or Māori buyers. It is inequitable to price them out of being able to enjoy the benefits of what has been created from the relationships they have built.

## Impact and Future Recommendations

During the first session, a pivotal observation emerged, highlighting the potential in disentangling commercial development from the essence of taonga by recognising its intrinsic value in and of itself. Consequently, an imperative for an institutional framework arises, one that delves into the values discussed above. The most potent support for taonga species commercialisation, as underscored in the discussions, is rooted in the intrinsic relationship kaitiaki have with taonga species. Many kaitiaki inherently assume these duties without monetary compensation. Recognising the intrinsic value of taonga species could necessitate an initial investment; a fee paid to kaitiaki, establishing a resource through which they can reciprocate and uphold their responsibilities. By formulating an institutional framework around this symbiotic relationship, discussions about commercialisation, benefit sharing, and related considerations can embark from a more equitable standpoint.

It was also shared that guidelines on the above matters would be highly valued, and that these need to be non-prescriptive in nature to account for the unique relationships that Māori have in commercial ventures. Rather, a sense of best practice was suggested as the guidance that is needed in future, which shares different approaches and perspectives.

The July training workshop on the commercialisation of taonga species yielded significant insights and discussions that have far-reaching implications for the future. The workshop served as a catalyst for fostering culturally appropriate solutions and options, emphasising the importance of benefit sharing, consultation obligations, and a comprehensive understanding of key discussions throughout the commercialisation timeline. The impact of this workshop lies in its ability to initiate a paradigm shift in approaching taonga species commercialisation, recognising their intrinsic value, and the unique relationship of kaitiaki. By acknowledging the communal responsibilities and contributions of kaitiaki, an institutional framework can be established to ensure equitable benefit sharing and cultural preservation.

Based on the robust discussions and key points raised from the workshop, several recommendations emerge for guiding the future of taonga species commercialisation:

1. **Institutional Framework:** Develop an institutional framework that formalises the reciprocal relationship between commercial development and kaitiaki responsibilities. This framework should provide a mechanism for acknowledging the intrinsic value of taonga species and compensating kaitiaki for their role in safeguarding these taonga.
2. **Guidelines and Best Practices:** Create non-prescriptive guidelines and best practices that offer flexible guidance for commercial ventures involving taonga species. These guidelines should encompass diverse perspectives and approaches to accommodate the unique cultural contexts of different Māori communities.
3. **Community Partnership:** Encourage proactive community engagement and partnership between researchers, Māori communities, and commercial entities. Establish mechanisms for establishing pre-existing and non-transactional relationships that foster trust and ensure cultural compliance.
4. **Benefit Sharing Mechanisms:** Develop transparent and adaptable benefit sharing mechanisms that consider economic, social, cultural, and environmental aspects. Utilise real-life case studies and precedent-setting examples to shape equitable benefit sharing arrangements.
5. **Data Management:** Establish protocols for the responsible management and sharing of data related to taonga species. Ensure that data is handled in a way that respects cultural considerations such as rangatiratanga and safeguards the interests of Māori communities.

6. **Legislative Reforms:** Legislative reforms that align with the recognition of taonga species' intrinsic value and kaitiaki responsibilities are needed to realise the potential that lies in taonga species commercialisation. Explore the potential for a *sui generis* legal pathway that provides a contemporary context for defining and protecting taonga species.
7. **International Indigenous Rights:** Continue to advocate for the benefits of Aotearoa becoming a signatory to international agreements like the Nagoya Protocol and implementing recommendations that come out of the Convention on Biological Diversity. This could facilitate engagement with traditional knowledge and mātauranga Māori both from Māori and indigenous communities from other countries, while also establishing a national focal point for access and benefit sharing.

## Acknowledgements

We would like to express our gratitude to the individuals and entities who contributed their time, effort, and expertise to make this workshop a resounding success:

**Attendees:** Our gratitude extends to each and every attendee who actively participated in the workshop sessions. Your valuable insights, diverse perspectives, and enthusiastic engagement enriched our discussions and contributed to the overall success of this event.

**Organisers:** Our sincere appreciation goes to Te Kotahi Research Institute, who not only conceived the idea for this workshop but managed its execution. Your commitment and vision were instrumental in creating a meaningful and enriching experience for all participants.

**Funders:** We express our deep appreciation to the generous funders, the Science for Technological Innovation National Science Challenge (SfTI) and Genomics Aotearoa, whose support made this workshop possible. Your commitment to advancing knowledge and fostering meaningful dialogue is commendable.

Together, your collective efforts have shaped an event that not only enriched our understanding but also paved the way for future progress and collaboration. Thank you for your unwavering support and commitment to our shared goals.

## Conclusion

The July training workshop has set a transformative course for the commercialisation of taonga species, emphasising the importance of recognising their inherent value and the unique role of kaitiaki. By establishing an institutional framework, developing comprehensive guidelines, and fostering meaningful community partnerships, the future of taonga species commercialisation holds the promise of being culturally respectful, economically viable, and

environmentally sustainable. As Māori communities and commercial entities continue to navigate this dynamic landscape, the workshop's impact is poised to help shape a future that honours tradition while embracing innovation.

## 2. Key Sources for Further Reading

### New Zealand Guidelines

He Tohu Ārahi; Guidelines for Protecting Cultural Intellectual Property in Research and Innovation

<https://www.waikato.ac.nz/research/institutes-centres-entities/institutes/tkri/resources/guidelines/> (available from August 2024)

A Wai262 Best Practice Guide for Science Partnerships with Kaitiaki for Research Involving Taonga; Lessons from Māori Voices in the New Zealand Science Sector

<https://www.rauikamangai.co.nz/wp-content/uploads/2022/06/Wai262-Report-Rauika-Ma%CC%84ngai.pdf>

Ko te ara, kia tika; a Guiding Document for the Consideration of Mātauranga Māori in Contracts

<https://www.rauikamangai.co.nz/document/ko-te-ara-kia-tika/>

New Zealand Intellectual Property Office; Protecting intellectual property with a Māori cultural element User Guide

<https://www.iponz.govt.nz/assets/pdf/maori-ip/protecting-ip-with-a-maori-cultural-element.pdf>

Taonga Species and Intellectual Property; Some Thoughts About Negotiating Intellectual Property Agreements with Māori Communities

[https://www.hikurangibioactives.co.nz/wp-content/uploads/2021/07/Kanuka-IP-Guide\\_July-2021\\_FINAL.pdf](https://www.hikurangibioactives.co.nz/wp-content/uploads/2021/07/Kanuka-IP-Guide_July-2021_FINAL.pdf)

Te Mata Ira; Guidelines for Genomic Research with Māori

<https://www.genomics-aotearoa.org.nz/sites/default/files/2019-03/Te-Mata-Ira-Genome-Research-Guidelines.pdf>

Te Nohonga Kaitiaki; Guidelines for Genomic Research on Taonga Species

<https://www.genomics-aotearoa.org.nz/sites/default/files/2022-02/Te%20Nohonga%20Kaitiaki%20Guidelines%20for%20genomic%20research%20on%20taonga%20species%20%28with%20background%29.pdf>

When The Crown Controls Mātauranga; A Report on a Survey of Crown Policies, Programmes, Legislation, Funding, and Impact Assessment Relating to Mātauranga Māori

[https://bioheritage.nz/wp-content/uploads/2019/04/When-the-Crown-controls-matauranga\\_Full.pdf](https://bioheritage.nz/wp-content/uploads/2019/04/When-the-Crown-controls-matauranga_Full.pdf)

## International Guidelines

Aboriginal Affairs NSW Aboriginal Cultural and Intellectual Property Protocol

[https://www.aboriginalaffairs.nsw.gov.au/media/website\\_pages/our-agency/staying-accountable/aboriginal-cultural-and-intellectual-property-acip-protocol/AANSW-Aboriginal-Cultural-and-Intellectual-Property-ICIP-Protocol.pdf](https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/our-agency/staying-accountable/aboriginal-cultural-and-intellectual-property-acip-protocol/AANSW-Aboriginal-Cultural-and-Intellectual-Property-ICIP-Protocol.pdf)

Documenting Traditional Cultural Expressions; Building a Model for Legal Protection Against Misappropriation and Misuse with the Oma Ethnic Group of Laos

<https://www.taec Laos.org/wp-content/uploads/2021/05/TAEC-White-Paper-Securing-Cultural-Intellectual-Property-Rights-Oma-Laos.pdf>

Fungi Foundation Ethnomycology Ethical Guidelines

<https://www.ffungi.org/campaign/ethnomycology-ethical-guidelines#:~:text=The%20Fungi%20Foundation's%20Ethnomycology%20Ethical,local%20communities%2C%20and%20related%20activities.>

Guidance on Engagement with Indigenous Peoples, Local Communities and Affected Stakeholders

[https://tnfd.global/wp-content/uploads/2023/08/Guidance\\_on\\_engagement\\_with\\_Indigenous\\_Peoples\\_Local\\_Communities\\_and\\_affected\\_stakeholders\\_v1.pdf](https://tnfd.global/wp-content/uploads/2023/08/Guidance_on_engagement_with_Indigenous_Peoples_Local_Communities_and_affected_stakeholders_v1.pdf)

Karuk Tribe Protocol with Agreement for Intellectual Property Rights of the Karuk Tribe Research, Publication and Recordings

[https://sipnuuk.karuk.us/system/files/atoms/file/ATALM17\\_KTResearchProtocol.pdf](https://sipnuuk.karuk.us/system/files/atoms/file/ATALM17_KTResearchProtocol.pdf)

Newcastle Indigenous Cultural and Intellectual Property Community Guide

[https://www.newcastle.edu.au/\\_data/assets/pdf\\_file/0008/907874/2023-ICIP-community-guideFINAL.pdf](https://www.newcastle.edu.au/_data/assets/pdf_file/0008/907874/2023-ICIP-community-guideFINAL.pdf)

Newcastle Indigenous Cultural and Intellectual Property Protocol

[https://www.newcastle.edu.au/\\_data/assets/pdf\\_file/0006/907881/2022-0066-ICIP-protocolFINAL.pdf](https://www.newcastle.edu.au/_data/assets/pdf_file/0006/907881/2022-0066-ICIP-protocolFINAL.pdf)

Victorian Traditional Owner Native Food and Botanicals Protocol

<https://gunaikurnai.org/wp-content/uploads/2021/07/Victorian-Traditional-Owner-Native-Foods-and-Botanicals-Strategy-ONLINE.pdf>

WIPO Draft Steps When Considering the Use of Elements of Indigenous Peoples' Traditional Cultural Expressions in Fashion

- <https://www.wipo.int/tk/en/fashion.html>

## Extra Resources

Bay Of Plenty Aquaculture – International Overview of Intellectual Property

[https://smartmaoriaquaculture.co.nz/wp-content/uploads/2021/04/BoP-aquaculture-Stage-2-IP-Report\\_slides-for-aquaculture-hui-16.04.21.pdf](https://smartmaoriaquaculture.co.nz/wp-content/uploads/2021/04/BoP-aquaculture-Stage-2-IP-Report_slides-for-aquaculture-hui-16.04.21.pdf)

Benefit Sharing; Why Inclusive Provenance Metadata Matter

<https://www.frontiersin.org/journals/genetics/articles/10.3389/fgene.2022.1014044/full>

CARE Principles

<https://www.gida-global.org/care>

FAIR Principles

<https://www.go-fair.org/fair-principles/>

IDIA Cultural Integrity Scorecard

<https://www.idia.nz/toolkit/cultural-integrity-scorecard>

Intellectual Property, Mātauranga Māori, and Māori Data: Report prepared for Science for Technological Innovation National Science Challenge & Genomics Aotearoa.

<https://www.sftichallenge.govt.nz/about-us/documents-and-reports/>

Understanding Māori Rights and Interests in Intellectual Property arising from Research and Innovation.



[https://www.sftichallenge.govt.nz/assets/Uploads/Download-PDFs/Understanding-Maori-Rights-and-Interests-in-IP-arising-from-Research-and-Innovation\\_May-2021-Final.pdf](https://www.sftichallenge.govt.nz/assets/Uploads/Download-PDFs/Understanding-Maori-Rights-and-Interests-in-IP-arising-from-Research-and-Innovation_May-2021-Final.pdf)