

Project Proposal Template

A. TITLE OF PROJECT

Tūhonohono: Tikanga Māori me te Ture Pākehā ki Takutai Moana (“Tūhonohono”)

B. IDENTIFICATION

Project Leader: Dr Robert Joseph

(Ngāti Raukawa, Ngāti Maniapoto, Kahungunu, Rangitāne, Ngāi Tahu), Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre (“MIGC”), Te Piringa-Faculty of Law, University of Waikato Private Bag 3105
Hamilton 3240
rjoseph@waikato.ac.nz
(07) 838 4466 extn 8796; Cell (022) 070 3275

Co-researchers, Professor Jacinta Ruru (Ngāti Raukawa, Ngāti Maniapoto, Ngāti Ranginui), Ngā Pae o te Māramatanga (“Ngā Pae”); Associate Professor Sandy Morrison (Ngāti Rarua, Ngāti Maniapoto, Te Arawa) and Professor Linda Smith (Ngāti Awa, Ngāti Porou), Te Pua Wānanga ki te Ao, Ms Valmaine Toki (Ngāti Wai) and Ms Mylene Rakena (Ngāti Kahungunu, Ngapuhi) MIGC, Waikato University.

Co-production of research with Frank Hippolite and others, Tiakina te Taiao Ltd (“Tiakina”), representing Ngāti Rarua Iwi Trust, Ngāti Koata Trust, Ngāti Rarua-Te Atiawa Trust Board, Wakatu Inc., Ngāti Tama ki te Waipounamu and Te Atiawa o te Waka-A-Maui.

Investigators:

PhD students - Ms Adrienne Paul (Ngāti Awa) MIGC, Waikato University and Paul Meredith (Ngāti Maniapoto) University of Victoria, Wellington.

Student researchers - Mr Hemi Arthur (Ngāti Toa, Ngāti Koata, Te Atiawa) and Apirana Daymond (Ngāti Mutunga (Chatham Islands) and Ngāti Porou).

Advisory Assistance

MIGC, University of Waikato (UOW) Advisory assistance – Professor Barry Barton, Professor Al Gillespie, Associate Professor Linda Te Aho, Professor Pou Temara, Tom Roa and Trevor Daya-Winterbottom.

C. ABSTRACT

Prior to European contact, Māori had effective legal systems based on mātauranga and tikanga Māori – Māori laws and institutions - which were very effective for social control and for maintaining law and order, and which developed into a considerable body of knowledge and practices over time. Following European contact and the

whole colonial process, mātauranga and tikanga Māori were negatively impacted by, inter alia, newcomer legal frameworks which displaced the Maori legal systems and were not anticipated by rangatira when they signed the Treaty of Waitangi in 1840. As Treaty of Waitangi partners and in more recent times, Māori values, rights and responsibilities within a mātauranga and tikanga Māori context have been re-recognised to varying degrees, and in different ways in New Zealand marine management policy and law.

The MIGC-Ngā Pae-Tiakina Tūhonohono project will examine a range of New Zealand marine policy and legal enablers and barriers with particular emphasis on those specific to Māori such as kaitiakitanga and rahui. The project will build on such mātauranga, tikanga and kawa principles, values and perspectives which will be identified through themes 1 and 2 to understand the conflicts, overlaps and opportunities for bridging the tikanga Māori – State law divide – to tūhonohono or bind together. The project will assess whether the current New Zealand policy and law frameworks pose both positive and negative consequences for mātauranga and tikanga Māori over the takutai moana area.

D. INTRODUCTION

Understanding the relationship between mātauranga and tikanga Māori and New Zealand State law and how to apply both so that they are mutually beneficial to both cultures over the marine coastal area is a large and complex issue and question of national significance. Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre ('MIGC') at the University of Waikato will collaborate on this Tūhonohono project with Professor Jacinta Ruru of Ngā Pae and with Tiakina te Taiao and other key stakeholders. Tūhonohono or 'binding together' expresses the cohesive vision of New Zealand jurisprudence¹ over the coastal marine area to explore the possibilities for the evolution of laws and institutions in Aotearoa New Zealand that reflect the best of the values and concepts of both founding peoples of the New Zealand state – Māori and European – to enhance the utilisation of the marine resources within environmental and biological constraints and to realise the value, increase use, and to maintain the ecosystem health of our vast oceanic and coastal assets.²

Aotearoa New Zealand's legal system historically acknowledged and accommodated for the inclusion of mātauranga and tikanga Māori.³ The non-Māori legal authority for such actions was/is the common law doctrine of aboriginal title, which is an acknowledgement of the pre-existing Māori legal systems based on mātauranga and tikanga Māori values, customs and institutions.⁴ The other authority is the Treaty of Waitangi, which specifically recognised mātauranga and tikanga Māori in Articles II, III and IV.⁵ Consequently, mātauranga and tikanga Māori were respected and integrated into the new legal system following the Treaty.⁶

This Tūhonohono National Science Challenge project will focus on current and future societal participation in marine governance and management to balance the aboriginal title and Treaty rights, aspirations, and responsibilities of Māori through the application of mātauranga and tikanga Māori, and communities and industry through mainstream state law, and will build on Aotearoa New Zealand's reputation as a world leader in the use and stewardship of the takutai moana (marine and coastal area).

Our MIGC-Ngā Pae and Tiakina researchers will explore the traditional and contemporary application of tikanga and mātauranga Māori such as kaitiakitanga,⁷ mana whenua, mana moana, matāwhanga and rahui⁸ in the sustainable use and restoration of the marine environment.⁹ We will identify these concepts 'in practice' through approaches that are based on whakapapa and 'place based' values and perspectives.

In addition, MIGC would like to be involved in Project 3.3.2: "Innovatively Improved Pathways" if possible particularly given our expertise on Māori governance and perhaps if we do an excellent job of Project 3.3.1.

E. AIM OF THE RESEARCH AND RELEVANCE TO OBJECTIVE

The specific objectives of our tūhonohono project are to carry out extensive research:

- to assess the compatibility of marine policy and law in Aotearoa New Zealand with the mātauranga and tikanga Māori of specific iwi, hapū and whānau within the Te Tau Ihu focal region;
- to expedite how mātauranga and tikanga Māori are applied in the marine environment;
- to explore the enablers and/or barriers in New Zealand policy and law for the application of mātauranga and tikanga Māori in the marine environment and what impact this has on uncertainty relating to decision-making for increased use of takutai moana resources;
- to explore whether modifications can be made to existing legal and regulatory systems to enable mātauranga and tikanga Māori and mainstream law to work more cohesively together to achieve kaitiakitanga and ecosystem-based management (EBM) outcomes;
- to explore international Indigenous examples of the successful application of Indigenous customary law and mainstream law over the marine environment; and
- to explore new and innovative models for implementing cohesive jurisprudence over the coastal marine area that reflect the best of the values and concepts of both founding peoples to enhance the utilisation of the marine resources within environmental and biological constraints and to realise the value, increase use, and maintain the ecosystem health of our vast oceanic and coastal assets.

F. PROPOSED RESEARCH

Significance of Research

An evaluation of marine management decision-making has been hindered by the absence of adequate recognition, understanding and partnership in terms of the role that mātauranga and tikanga Māori plays in the marine estate.¹⁰ This creates uncertainty in decision-making:

- Māori are uncertain about the impacts of marine management actions, given that impacts are often expressed in terms and values that are not always consistent with their own;¹¹
- Industry are uncertain and often unable to understand impacts expressed in cultural terms and rarely have the capability or resources to address those impacts adequately;¹² and
- In the absence of clear information about impacts (including cultural impacts), statutory decision-makers must deal with uncertainty in accordance with legal requirements.¹³

The Tūhonohono project will provide the opportunity for making progress in clarifying uncertainty within the focal region (Te Tau Ihu) and beyond, thereby supporting enhanced utilisation of the marine resources within environmental and biological constraints and to realise the value, increase use, and to maintain the ecosystem health of our vast oceanic and coastal assets.

Māori are key stakeholders in the national economy¹⁴ and in the marine estate. Māori own more than 20% of New Zealand's commercial fisheries assets (including aquaculture space),¹⁵ have a range of customary rights and interests particularly relevant to inshore areas stemming from, inter alia, the Resource Management Act 1991,¹⁶ the Māori Fisheries Act 2004 and the Marine and Coastal Area (Takutai Moana) Act 2011,¹⁷ and hold major tourism interests reliant on marine resources and the marine environment.¹⁸ Māori are also important Treaty partners,¹⁹ hence they play an increasingly significant role in Aotearoa New Zealand's marine estate, and their role is recognised in a wide range of statutory measures relevant to the management, use and development of our territorial sea, EEZ and Extended Continental Shelf. The Tūhonohono project will explore the innovation

potential for mātauranga and tikanga Māori in partnership with EBM, to better inform governance,²⁰ management, and decision-making relevant to the marine environment and economy.

The international literature on Indigenous legal systems and best practices regarding governance and management of coastal marine areas asserts that outcomes are achieved, inter alia, when 'other' legal systems with mainstream systems that interface in fact are also acknowledged and integrated in law.²¹ In the context of this proposal, how can mātauranga and tikanga Māori be incorporated with mainstream law to improve the application of both systems so they are mutually beneficial to both cultures over the marine coastal area?²² After the New Zealand Wars (circa 1870), mainstream law marginalized mātauranga and tikanga Māori²³ until recent changes over the past three decades. What pathways can Māori entities and Local and Regional Councils and 'industry' tease out to enhance the utilisation of the marine resources within environmental and biological constraints and to realise the value, increase use, and to maintain the ecosystem health of our vast oceanic and coastal assets? The Tūhonohono research project will answer these key questions among others.

To fully appreciate and even understand mātauranga and tikanga Māori and how it applies to takutai moana, one cannot simply refer to a sterile account in a dictionary that provides a meaning and derivation of words and concepts. In this respect Bentham,²⁴ Hart²⁵ and even Harris all asserted that:

Legal concepts cannot be defined, but only described by reference to illustrative cases. ... two judges have overlooked that lesson, by trying to define Māori culture with the help of conventional dictionary definitions.²⁶

Thus, to understand the legal system of other cultures such as tikanga Māori, mainstream New Zealand needs to understand the legal, cultural and political contexts of Māori culture, mātauranga and tikanga Māori. The purpose of the context is to enable everyone (non-Māori and Māori alike) to understand the circumstances in which mātauranga and tikanga Māori arise, and to judge their credibility, legitimacy, authority and efficacy. As noted by Lord Cooke in *McGuire v Hastings District Council*: 'In law, ... context is everything.'²⁷

The Tūhonohono project will make mātauranga and tikanga Māori more accessible to scholars and the general public. We will bring an understanding of the living Māori world within the marine coastal area to other New Zealanders, practitioners, policy makers, lawyers, politicians and developers, and will focus specifically on the impacts (positive and negative) of policy and legislation for the ability of Māori to apply their own tikanga and mātauranga Māori in the sustainable management of marine areas and resources.

Methods

MIGC-Ngā Pae and Tiakina will collaborate closely with other challenge projects such as CP1.1: "Participatory Processes: Review existing Māori and stakeholder engagement in marine science and marine governance participatory processes"; and the Tangaroa Themes 3.1.1 "Understanding kaitiakitanga in our marine environment"; 3.1.2 "Kaitiakitanga in practice in our marine environment" and Sustainable Seas Programmes 1, 2, 4 and 5. MIGC will also work closely with four Te Tau Ihu tribes within Tiakina Te Taiao on this project with whom we have existing relationships through Associate Professor Sandy Morrison and our researcher Hemi Arthur with their Ngāti Rarua, Toa, Koata and Te Atiawa links. MIGC and Ngā Pae will provide academic rigour to the research and the Te Tau Ihu tribes through Tiakina will provide community connectivity in the focal area. The project will be framed by Kaupapa Māori principles,²⁸ will focus on the effective application of local tikanga and mātauranga Māori over the local takutai moana, and will be conducted within Māori communities in the Te Tau Ihu region. The involvement of Te Tau Ihu tribes is critical to the success of this Tūhonohono project and in being able to translate the research findings into real outcomes in the community. During the project, we will also approach the other four Te Tau Ihu tribes to assess interest in the project even if MIGC does not have any direct networks there at present. The research will, moreover, consider Collective Impact as a model or theory

of development during the course of the research.²⁹ The project will employ mixed methods structured into three stages as follows:

Stage 1 will consist of a mini-literature review of tikanga and mātauranga Māori pertaining to the marine environment as well as mini-case studies with the four targeted Te Tau Ihu tribes and Tiakina Te Taiao and will focus on identifying existing models of local tikanga and mātauranga Māori in terms of practice, organisation of governance and management, and challenges enhancing performance in the takutai moana area. Case studies are a useful method for investigating one or a small number of social entities or situations about which data are collected using multiple sources of data and developing a holistic description through an iterative research sources process.

Stage 2 will comprise of a more extensive literature review and ten interviews with key informants to clarify the challenges in Stage 1 as they relate to the focus groups: tikanga and mātauranga Māori in the takutai moana. Key informants will be drawn from a range of Māori case studies in Te Tau Ihu including with Tiakina te Taiao, the Ngāti Toa Rangatira trust, the Ngāti Rarua-Te Atiawa trust, the Ngāti Koata trust, Te Rūnanga a Rangitāne o Wairau, and perhaps Te Rūnanga o Ngāi Tahu. Associate Professor Sandy Morrison has strong whakapapa links and personal networks specifically to Ngāti Rarua and Wakatu Inc. within Te Tau Ihu. Hemi Arthur also has strong whakapapa links to Toa Rangatira, Ngati Koata and Te Atiawa in the area. Dr Joseph from MIGC already has existing relationships with some of the trustees and key people from Tiakina te Taiao. He also has whakapapa connections to Ngāi Tahu and Rangitāne which, it is assumed, will also assist with the project.

Stage 3 will involve stakeholder workshops with Iwi in the Te Tau Ihu region to discuss which approaches to the application of local tikanga and mātauranga Māori over the takutai moana best suit their context.

A report and journal article will also be published at the end of Stage 1 that will contribute to:

- EBM solutions and practical support for case study iwi, hapū and whānau that supports flax roots kaitiakitanga.
- Information, resources and tools relevant to marine management and blue economy initiatives tailored specifically for iwi, hapū and whānau.
- A consolidated database and assessment report of the legal provisions of specific relevance to Māori in the marine environment and their relationship to the application of Māori lore.
- Innovative marine management and decision-making frameworks that enhance the partnership and leadership between government, Māori and industry.

Dr Joseph has already been involved in significant cutting-edge research on bridging the mātauranga and tikanga Māori and mainstream law dynamic. As noted in his CV, he specializes in Indigenous and Māori governance, and the effective integration of Indigenous and Māori customary law within mainstream British common law systems in New Zealand, Australia, Canada and the United States of America. Dr Joseph was a senior research fellow with the Te Mātāhauariki Research Institute at Waikato University for eight years, during which time he completed his PhD on Māori and Indigenous governance and law.³⁰ He was also a researcher for the recent 2013 book *Te Matapunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law*³¹ which is a seminal piece on integrating mātauranga and tikanga Māori into mainstream New Zealand law. Dr Joseph moreover, was a research fellow for Professor Linda Tuhiwai Smith for her project *Te Hau Mihi Ata*,³² which explored the interface of mātauranga and tikanga Māori with Western Science and the creation of a third space that acknowledged both knowledge systems and benefitted both cultures. Dr Joseph has also published a number of journal articles,³³ presented numerous conference and symposia addresses, and facilitated workshops on integrating mātauranga and tikanga Māori into mainstream New Zealand law. Dr Joseph and Ms Mylene Rakena also currently conduct workshops and extensive graduate courses on Māori corporate

governance, management, financial literacy and other mainstream corporate governance concepts and how they interface with mātauranga and tikanga Māori.³⁴ In addition, Dr Joseph and our other researchers already have stakeholder linkages, inter alia, with key personnel at the Office of Treaty Settlements (OTS), Waitangi Tribunal, Department of Conservation (DOC), Te Puni Kokiri (TPK), MBIE, MPI, MFE, Landcare, Te Ohu Kaimoana (TOKM), Aotearoa Fisheries Ltd (AFL), Sealords Ltd, the Collective Iwi [commercial fisheries] Partnership (CIP), and the Wellington, Waikato, Bay of Plenty, Tasman and Nelson Regional Councils to carry out this work. We will also introduce ourselves to other key stakeholders and the remaining other four iwi of Te Tau Ihu (Ngāti Kuia, Ngāti Apa, Ngāti Tama and Te Atiawa) to gauge their interest in the project.

Professor Jacinta Ruru is a legal academic at Otago University, co-director of Ngā Pae o te Māramatanga and has more than 90 publications focusing on exploring Indigenous peoples' legal rights to own, manage and govern land and water including national parks and minerals in Aotearoa New Zealand, Canada, United States, Australia and the Scandinavia countries. She has led, or co-led, several national and international research projects including on the Common Law Doctrine of Discovery, Indigenous peoples' rights to freshwater and multidisciplinary understandings of landscapes. Jacinta is co-chair of Te Poutama Māori (the University of Otago Maori Academic Staff Caucus), co-director of a new University of Otago Research Theme Poutama Ara Rau that is dedicated to researching Maori tertiary learning and teaching and is a Centre Associate at the Indigenous Law Centre (University of New South Wales, Sydney).

Moreover, there is much potential for further important research following the completion of this research project including further development of more effective policy and legislation as well as regulatory frameworks and practices for incorporating the best of the legal and cultural values, laws and institutions of both founding peoples to enhance the utilisation of the marine resources within environmental, biological and cultural constraints and to realise the value, increase the use and to maintain the ecosystem health of our vast oceanic and coastal resources.

G. ROLES, RESOURCES

1) Dr Joseph – project leader. MIGC can provide some in-kind resources (secretarial, facilities, technology, hui, symposia and other resources as well as student internships and scholarships for Masters and PhD students to research on specific topics relevant to this project.

2) Co-researcher/leader, Professor Jacinta Ruru, Ngā Pae o te Māramatanga. We are finalising the finer details but Ngā Pae have committed to resource the following options:

- I. A fraction of time in-kind as investigator or advisor (in an advisory group/board) on the project. The actual time would need to be confirmed with Professor Ruru, but in terms of funding the fte/fraction of time although small, does add up when a Professorial salary, with associated salary costs and overheads, is involved.
- II. Some funding contributing to the engagement in the project – e.g. paying for Ngā Pae engagement and travel to attend hui.
- III. Ngā Pae secretariat support, management or similar for specific areas that are Ngā Pae or fully aligned and contributing e.g. media, planning, engagement or similar.
- IV. Seminar, symposia or wānanga dissemination and engagement.
- V. Ngā Pae network and engagement, the expertise and contributions of Ngā Pae, our researchers and people to support kaupapa relating to the Ngā Pae vision, research programme and therefore Maori kaupapa.

3) Associate Professor Sandy Morrison and Professor Linda Smith, Te Pua Wānanga ki te Ao, School of Māori and Pacific Development (SMPD), University of Waikato. SMPD will be resource some minor scholarships, secretarial and management support and other in kind support for this kaupapa.

Advisory Assistance

MIGC and SMPD, University of Waikato (UOW)– Advisory assistance from Professor Barry Barton, Professor Al Gillespie, Associate Professor Linda Te Aho, Trevor Daya-Winterbottom, Tom Roa and Professor Pou Temara for this kaupapa.

H. LINKAGES AND DEPENDENCIES

The MIGC Tūhonohono project will link with and is dependent upon and collaborating with CP1.1: “Participatory Processes: Review existing Māori and stakeholder engagement in marine science and marine governance participatory processes”; and the Tangaroa Themes 3.1.1 “Understanding kaitiakitanga in our marine environment”; 3.1.2 “Kaitiakitanga in practice in our marine environment” and Sustainable Seas Programmes 1, 2, 4 and 5. Tūhonohono will collaborate closely with and will need input from these other projects and will co-produce outputs that will contribute to these projects.

I. COLLABORATIONS

As noted above, to complete the Tūhonohono project effectively, MIGC and Ngā Pae will need to collaborate with and will establish reciprocal relationships with the other National Science Challenge Sustainable Seas projects that are relevant to our project, inter alia, including CP1.1: “Participatory Processes: Review existing Māori and stakeholder engagement in marine science and marine governance participatory processes”; and National Science Challenge projects 3.1.1: ‘Understanding Kaitiakitanga in our Marine Environment’ and 3.1.2: ‘Kaitiakitanga in Practice’ which will provide useful data and information on existing literature on tikanga and mātauranga Māori elements; and information on case study area iwi to understand how tikanga and mātauranga Māori translate into contemporary practice.

Furthermore, MIGC and Ngā Pae will work closely with the Te Tau Ihu Māori groups especially Tiakina te Taiao as the first port of call. MIGC has already contacted Frank Hippolite of Tiakina te Taiao for this kaupapa. Moreover, the whakapapa links of Associate Professor Sandy Morrison and Hemi Arthur from te Tau Ihu will assist MIGC and Ngā Pae to work effectively on this kaupapa. Other groups to work with include the Ngāti Toa Rangatira trust, the Ngāti Rarua-Te Atiawa trust, the Ngāti Koata trust, Te Rūnanga a Rangitāne o Wairau, and perhaps Te Rūnanga o Ngāi Tahu. In addition, MIGC and Ngā Pae will work closely with other key stakeholders such as key personnel at the Office of Treaty Settlements, the Ministry for the Environment, the Ministry of Primary Industries, MBIE, the Waitangi Tribunal, Department of Conservation, Te Puni Kokiri, Landcare, Te Ohu Kaimoana, Aotearoa Fisheries Ltd, Sealords Ltd, the Collective Iwi [commercial fisheries] Partnership, and the Wellington, Waikato and Bay of Plenty Regional Councils. MIGC and Ngā Pae researchers will also contact and work closely with the Tasman, Nelson and Marlborough Regional Councils, and will introduce themselves to the other iwi of Te Tau Ihu (Ngāti Kuia, Ngāti Apa, Ngāti Tama and Te Atiawa) to gauge their interest in the project.

J. INTERNATIONAL LINKAGES

Depending on budgets, MIGC will also collaborate with a number of relevant international research programmes and key informants in Canada, USA and Australia to carry out the comparative Indigenous research of Tūhonohono. To this end, MIGC will engage with Indigenous groups who are enhancing the utilisation of the marine resources within environmental and biological constraints and to realise the value, increase use, and to maintain the ecosystem health of their oceanic and coastal assets. Such groups in Canada include the Native Law Centre at the University of Saskatchewan; the Institute of Indigenous Governance at the University of Victoria, the University of Northern British Columbia, Nisga’a Lisims Government and Haida Gwaii in BC, the Inuvialuit and Sahtu Dene groups in the Northwest Territories, Nunavut Government, the Grand Council of the James Bay Cree in Quebec, and the Labrador Nunatsiavut Assembly in Labrador. Key Indigenous researchers in

Canada will also be contacted such as Professor Brad Morse, Thompson River Law School, Professors James Sakeij Youngblood Henderson and Ruth Thompson, University of Saskatchewan; Professor Kierra Lardner, Mamawipawin Indigenous Governance and Community Based Research Space, University of Manitoba; Professors John Borrows, Jeff Corntassel, James Tully and Gerald Taiaiake Alfred, Institute of Indigenous Governance Faculty of Human and Social Development, University of Victoria, Chris Turner, University of Northern B.C, Professor Kierra Lardner and Brenda Gunn, University of Manitoba, and others at the Universities of BC, Alberta, Ottawa, Guelph, Toronto, Montreal, and the Centre for First Nations Governance, Vancouver; First Nations Information and Governance Centre, Ottawa.

Similar groups in the USA include the Professors Robert Williams, James Anaya, Steven Cornell, Joe Kalt, Miriam Jorgensen at the Harvard Project on American Indian Economic Development at Harvard University and the University of Arizona, the Native Nations Institute also at the University of Arizona, the Native American and Indigenous Studies Association (NAISA), National Congress of American Indians for American Indians and Alaska Native Indigenous rights organisations, and groups in Hawaii such as Indigenous law experts Professors Melanie McKenzie & Kapua Sproat, Indigenous Politics, William S. Richardson Law School, at the Universities of Hawaii and BYU.

Similar Indigenous experts in Australia include Mick Dodson, National Centre for Indigenous Studies, Centre for Aboriginal Economic Policy Research (CAEPR), the Australian Indigenous Governance Institute and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) at the Australian National University (ANU) in Canberra; Melissa Castan, Castan Centre for Human Rights Law, Monash University, Les Maelzer, National Congress of Australia's First Peoples, and Professor Megan Davis, the Indigenous Law Centre at the University of New South Wales, Sydney, Noel Pearson, Cape York Institute, Northern Queensland, Professor Margaret Stephenson, University of Queensland, and the Aboriginal Governance and Management Program, Alice Springs and Professor Giselle Byrnes, Pro Vice-Chancellor, Faculties of Law, Education, Business and Arts, Charles Darwin University, Darwin.

K. ALIGNED FUNDING AND CO-FUNDING

MIGC will be seeking additional funding for Tūhonohono from organisations such as Ngā Pae o te Māramatanga, TPK, OTS, MFE, MPI, MSD, the Law Foundation, other Māori organisations such as iwi and some Indigenous organisations with an interest in the project. In kind co-funding will be provided by MIGC, Te Piringa and SMPD at the University of Waikato and Ngā Pae o te Māramatanga through the provision of advisory expertise and manaaki assistance to carry out the project as noted above.

L. VISION MĀTAURANGA (VM)

Research, science and technology is about knowledge creation and application activities that address the needs and challenges of our nation. The Tūhonohono research project provides a great opportunity for Māori communities to make distinctive contributions to research, science and technology which lies in the innovation potential of tikanga and mātauranga Māori, people and resources over the takutai moana area. Vision mātauranga is about unlocking the innovation potential of tikanga and mātauranga Māori, resources and people to assist New Zealanders to create a better future. Māori communities possessed and continue to possess amazing creativity and innovation potential. One of their great strengths after European contact was their ability to adapt and innovate utilising historic and traditional tikanga and mātauranga Māori. Tikanga and mātauranga Māori were not static and unchanging. While the principles and values are deeply embedded and enduring, they are always interpreted, differentially weighted and applied in practice in relation to particular contexts, giving ample scope for choice, flexibility and innovation. If anything can be identified as originating in and handed down from the pre-European Māori ancestors unchanged, it is not any particular social form, such as iwi, hapū, or

whānau, or particular practices, such as whānaungatanga (inclusion) and kaitiakitanga (stewardship) but the principle of creative adaptation itself. Indeed, the New Zealand Law Commission noted that:

The culture of the people is not limited to historic conceptions. A credible [governance] structure is one that conforms to the peoples' current understanding of themselves as a tribe or general Māori community, of where they have been as a people, of who they are now and where they seek to be.³⁵

A dynamic society will evolve as it encounters other societies and other knowledge systems and there will also be ongoing maintenance of the customary traditional values and their relevance. Da Cunha's observations are germane in this respect:

Culture is production and not a product, we must be attentive in order to not be deceived; what we must guarantee for the future generations is not the preservation of cultural products, but the preservation of the capacity for cultural production.³⁶

As in the past, Māori have survived dramatic changes of colonisation, urbanisation and now globalisation, individually and collectively, by deploying their capacity for adaptation; on the one hand modifying traditional forms to serve new functions and on the other creatively adapting introduced forms to their own ends, transforming both in the process. Māori should however be controlling or at the very least be involved in the processes of cultural change and adaptation including over the takutai moana area rather than being controlled by government policy and legislation hence the importance of the Tūhonohono project and its relevance to Vision Mātauranga.

The obvious Vision Mātauranga theme that the Tūhonohono project comes under is "Taiao: Achieving Environmental Sustainability through Iwi and Hapū relationships with land and sea." Tūhonohono is about Māori and non-Māori aspiring to live in sustainable communities dwelling in healthy marine and coastal area environments. Distinctive environmental research arising in Māori communities relates to the expression of iwi and hapū tikanga and mātauranga knowledge, culture and experience over the takutai moana area such as rahui, kaitiakitanga, mana whenua, mana moana, and matāwhanga in the sustainable use and restoration of the marine environment.³⁷ We will identify these concepts 'in practice' through approaches that are based on whakapapa and 'place based' values and perspectives which will unlock the science and innovation potential of tikanga and mātauranga Māori knowledge, resources and peoples over the takutai moana area which should lead to building synergistic environmental sustainability by combining the best of both founding cultures – Māori and New Zealand European - legal systems, philosophies, values, rules and institutions.

The specific groups who will assist with developing the synergistic Taiao theme for our Tūhonohono project will obviously be the Māori case studies in Te Tau Ihu - Tiakina te Taiao, the Ngāti Toa Rangatira trust, the Ngāti Rarua-Te Atiawa trust, the Ngāti Koata trust, Te Rūnanga a Rangitāne o Wairau, and perhaps Te Rūnanga o Ngāi Tahu interfacing with mainstream legal, political, commercial, social and cultural institutions and groups over the takutai moana including working with the key stakeholders mentioned above.

The key MIGC personnel to carry out this research and to help facilitate these Taiao Vision Mātauranga objectives and synergistic processes with the Māori and non-Māori groups and individuals include:

Assoc.Prof. Sandy Morrison



Ngāti Maniapoto, Ngāti Rarua, Te Arawa, BAWaikato, PGDipMPDWaikato, MMPDWaikato, CertCrimWellington

Associate Dean

Research Interests and expertise

Te Tiriti o Waitangi/ Treaty of Waitangi; Adult education; Participatory training processes; Indigenous development issues.

Indigenous models of development partnerships under the Treaty of Waitangi; Māori culture in a contemporary New Zealand.

Refer to Professor Morrison's full CV submitted with this proposal.

Ms Mylene Rakena



Mylene Rakena, of Ngati Hine/Ngapuhi and Ngati Kahungunu descent, completed her LLB (Hons)/BMS (Hons) specializing in Maori Land Law and Corporate Public Relations. Mylene is particularly interested in environmental governance and sustainable natural resource management on Maori owned land. Refer to Ms Rakena's full CV attached to this proposal.



Dr Robert Joseph, of Tainui, Kahungunu, Rangitāne and Ngāi Tahu descent, teaches, researches and publishes in the areas of Maori and Indigenous good governance and sustainable natural resource management. He is particularly interested in the appropriate incorporation of Indigenous customary

laws and institutions within respective common law jurisdictions in areas such as freshwater rights and responsibilities, climate change and emission trading schemes, wahi tapu or sacred spaces, and the coastal marine area. Refer to Dr Joseph's full CV submitted with this proposal.

Professor Jacinta Ruru, University of Otago, Ngā Pae o te Māramatanga

BA (Wellington), LLM (Otago), PhD (Victoria/Canada)



Professor Ruru is of Raukawa, Ngāti Ranginui and Ngāti Maniapoto descent. She teaches, researchers in courses in Māori Land Law and Law and Indigenous Peoples, and is director of her innovative Te Ihaka: Building Māori Leaders in Law Programme (launched 2015).

Professor Ruru's research interests include Indigenous Peoples comparative law (including rights to own, govern and manage water, land, marine area, minerals and national parks); Māori land law including Te Ture Whenua Maori Act 1993; Treaty of Waitangi; Family law and Māori; Environmental Law and Māori, Law and landscapes; Aotearoa New Zealand's legal history, Law and Society and Law and

Geography.

Ms Linda Te Aho - Associate Professor, LLB Auck LLM (Distinction) Waikato



Linda Te Aho is of Ngāti Korokī Kahukura and Waikato-Tainui descent. Linda researches and teaches Māori and Indigenous legal issues at Te Piringa Faculty of Law. In 2014 Linda was appointed to provide expert technical advice on the proposed reforms to Te Ture Whenua Māori 1993 (the Māori Land Act), and chaired the Māori Legal Forum. Linda was appointed by her iwi of Waikato-Tainui as a guardian mandated under the 2010 settlement for the co-management of the Waikato River ecosystem to develop the long term vision for its holistic restoration. In November 2014, with Betsan Martin, Linda co-chaired the Symposium on Law, Ethics and Responsibility at the Waikato-Tainui College for Research and Development leading interdisciplinary engagement on new ideas for the governance of freshwater and other areas of public interest, such as climate, based on responsibility. Linda serves

as a lead negotiator for Ngāti Koroki Kahukura Treaty Claims and provides specialist advice on Treaty

of Waitangi claims and Post-Settlement Governance issues to iwi and hapū organisations and technical advice on Māori legal issues in relation to lands and freshwater to Iwi Leaders, to Crown agencies and government departments.

Valmaine Toki - Senior Lecturer, BA LLB (Hons) LLM *Auck* MBA *UTAS*



Valmaine Toki is of Nga Puhī, Ngāti Wai and Ngāti Rehua descent. Before joining Te Piringa she taught at the Faculty of Law, University of Auckland within the areas of Contemporary Treaty and Māori Issues, Jurisprudence and Legal Method. As a He Ture Pūmau scholar Valmaine previously worked for Te Ohu Kai Moana Trustee Ltd on Māori fisheries, aquaculture and asset allocation. During this time Valmaine completed an MBA from the Australian Maritime College at the University of Tasmania, focusing on marine resource management, spanning strategic planning, economic growth, management planning, and sustainable practices. Valmaine has assisted in cases to the Māori Land Court, the Environment Court, and the High Court and as a Treaty negotiator for her hapū.

Her research interests lie within the area of human and indigenous rights, therapeutic jurisprudence and resource management. Recently she has undertaken research into 'therapeutic jurisprudence' as a vehicle to implement indigenous legal systems/tikanga Māori to reduce the disproportionate number of Māori criminal offenders. This envisages a specialist indigenous court that embraces Māori customs, ethics, values, and norms.

Valmaine is a Vice Chair on the United Nations Permanent Forum on Indigenous Issues.

Professor Barry Barton, BA LLB (Hons) *Auckland* LLM *British Columbia*



Barry Barton's field of research is energy, natural resources and environmental law. In energy law, the issues of climate change, energy policy and energy security hold a growing importance, and present special legal challenges. Barry has worked on energy regulation and the relationship between regulation and effective markets; and has reassessed the popular view that market liberalization obstructs energy sustainability. He has examined the regulatory work of the Electricity Commission and Commerce Commission. At present his focus is on energy efficiency, especially through the project *Energy Cultures* that has been funded by the Foundation of Research Science and Technology. This interdisciplinary project seeks to understand the drivers of energy use behaviour in the household, in order to devise more effective law and policy in the field. Within the International Bar Association, he has co-edited or contributed to a series of studies on energy and resources law published by the Oxford University Press: *Human Rights in Natural Resource Development*, *Energy Security*, *Regulating Energy and Natural Resources*, *Beyond the Carbon Economy*, and *Property and the Law in Energy and Natural Resources*.

Professor Alexander Gillespie, LLB LLM(Hons) Auckland PhD Nottingham



Professor Alexander Gillespie obtained his LLB and LLM degrees with Honours from The University of Auckland. He did his PhD at Nottingham and post-doctoral studies at Columbia University in New York City. His areas of scholarship pertain to international and comparative environmental law; the laws of war; and a number of pressing issues of social concern such as drug policy; and refugees.

Alexander has published sixteen books. The latest works have been *Waste Policy: International Regulation, Comparative and Contextual Perspectives*. (Edward Elgar, London, 2015); *International Environmental Law, Policy and Ethics*. (OUP, Second edition, 2015); and *the Causes of War: 1000-1600* (Volume II, Bloomsbury, NYC, 2015). He has also written over forty academic articles.

Alexander has been awarded a Rotary International Scholarship, Fulbright Fellowship, Rockefeller Fellowship, and the New Zealand Law Foundation International Research Fellowship. Alexander has also been the lawyer/expert on a number of international delegations and advised the New Zealand government on multiple matters of international concern. Professor Gillespie was the first New Zealander to be named Rapporteur for the World Heritage Convention, involving international environmental diplomacy under the auspice of UNESCO. Alexander has also been engaged in policy formation for the United Nations, the Commonwealth Secretariat, and governmental, commercial and non-governmental organisations in New Zealand, Australia, United States, United Kingdom, Ireland and Switzerland.

Trevor Daya-Winterbottom - Senior Lecturer, Associate Dean: Research



Qualifications

- BA (Hons) in Law (Liverpool John Moores University)
- Diplôme de l'Institut International des Droits de l'Homme (Strasbourg)
- MA in Environmental Law (De Montfort University, Leicester)
- Barrister, Lincoln's Inn and New Zealand

Memberships

- Fellow, Royal Society for Arts
- Fellow, Royal Geographical Society
- Member, Royal Society of New Zealand
- Legal Associate, Royal Town Planning Institute
- Member, Resource Management Law Association of New Zealand
- Associate, New Zealand Planning Institute
- Member, New Zealand Centre for Environmental Law, University of Auckland

Research and Teaching Areas

- Administrative Law
- Environmental Regulation and Reform
- Law of the Sea

Trevor Daya-Winterbottom combines research and teaching at the Faculty of Law, University of Waikato, with legal consultancy and practice as a Barrister sole. He holds a BA (Hons) in Law from the Times Higher Education top 100 under 50 ranked Liverpool John Moores University, where highlights of the degree course included studying public international law with Professor Malcolm Shaw QC and Professor Patrick Thornberry CMG, and studying jurisprudence with the renowned Jewish legal scholar, Professor Bernard Jackson.

M. COMMUNICATION AND OUTREACH

MIGC and Ngā Pae will work very closely with and will establish reciprocal relationships with the other Tangaroa and even broader National Science Challenge Sustainable Seas projects that are relevant to our Tūhonohono research project. In particular, MIGC and Ngā Pae will collaborate extensively with the other National Science Challenge projects CP1.1: “Participatory Processes: Review existing Māori and stakeholder engagement in marine science and marine governance participatory processes”; 3.1.1: ‘Understanding Kaitiakitanga in our Marine Environment;’ and 3.1.2: ‘Kaitiakitanga in Practice’ which will provide useful data and information on existing literature on stakeholder engagement, tikanga and mātauranga Māori elements; and information on case study area iwi to understand how tikanga and mātauranga Māori translate into contemporary practice.

MIGC and Ngā Pae will also work closely with a diverse array of other important key stakeholders regarding outreach and communications opportunities that are essential to support EBM and to gain social and cultural licence for increased economic use of our marine estate. To this end, MIGC and Ngā Pae will work closely, inter alia, with Te Tau Ihu (principally but not exclusively through Tiakina te Taiao) and other Iwi Māori, as well as with key stakeholders in the public, private and not for profit sector groups listed in section I. MIGC and Ngā Pae will also be working with the international collaboration networks listed in section J which will provide additional context for co-developing and co-producing appropriate balanced and sustainable models to integrate mātauranga and tikanga Māori with mainstream law over the takutai moana area. MIGC and Ngā Pae will also hold symposia, workshops and a conference and will co-develop and co-produce reports and academic articles on the research findings as a means of disseminating the key findings as broadly and effectively as possible in local, national and international fora.

N. CAPACITY BUILDING

Potential formal educational and capacity building opportunities will directly flow out of Tūhonohono through the involvement of Ms Mylene Rakena as a key researcher which will assist her with her PhD work, and the involvement of Ms Adrienne Paul who is already a Te Piringa UOW PhD candidate working on environmental challenges for her Iwi with the Rena disaster in her rohe which thesis is directly relevant to this project. Dr Joseph has also approached a number of senior undergraduate and Masters Students to engage them in this research including Mr Hemi Arthur (Ngāti Toa, Ngāti Koata, Te Atiawa) and Apirana Daymond (Ngāti Mutunga (Chatham Islands) and Ngāti Porou). Furthermore, the involvement of Te Tau Ihu representatives could result in MIGC approaching them to co-support their promising Rangatahi to contribute to Tūhonohono by enrolling a student in graduate studies at the UOW where they can be engaged as a researcher for their Iwi and for MIGC and we may be able to co-fund a scholarship to this end.

O. ETHICS APPROVAL

Yes ethics approval is required for this project. As noted in the research plan and methods, MIGC researchers will need to personally observe and interview Te Tau Ihu and other iwi and stakeholder key informants to obtain

the required breadth and depth of information to successfully carry out the Tūhonohono objectives. In order to do this effectively and to ensure that the interviews are conducted in an ethically safe and culturally appropriate manner, MIGC researchers will seek approval early to carry out this work from the Te Piringa-Faculty of Law Ethics Committee according to the Te Piringa Ethics processes which are stringent and robust enough to ensure that the mana of the Te Tau Ihu and other key stakeholder informants remains intact as they engage throughout the entire Tūhonohono research processes.

P. REFERENCES

Reports

1. Durie, Eddie, 1993. 'The outstanding business: The Waitangi Tribunal and Māori Treaty claims' in The Knowledge Basket. <http://www.knowledgebasket.co.nz/oldwaitangi/press/93womens.htm>. Retrieved 16th June 2009.
2. Durie, Mason, 'Outstanding Universal Value: How Relevant is Indigeneity?' (World Heritage Committee Pacific Workshop, Tongariro, 2007).
3. Fowler, P.J., 2003. *World Heritage Cultural Landscapes*. (World Heritage Papers 6. Paris: UNESCO). Marsden, Māori and Te Aroha Henare, 1992. *Kaitiakitanga A Definitive Introduction to the Holistic Worldview of the Māori*. (Wellington: Ministry for the Environment).
4. Marsden, Māori, 1988. *Resource Management Law Reform: Part A, The Natural World and Natural Resources: Māori Value Systems and Perspectives*. (Working Paper No. 29. Wellington: Ministry for the Environment, 1988)
5. Mutu, Margaret and Peter Rikys, 1993. *Statutory Resource Management and Indigenous Property Rights. A Report Prepared for the Ministry for the Environment*. (Auckland: Uniservices.
6. Parliamentary Commissioner for the Environment [PCE], 1996. *Historic and Cultural Heritage Management in New Zealand*. (Wellington: Parliamentary Commissioner for the Environment).
7. Sullivan, Sharon, 2004. 'Local involvement and traditional practices in the World Heritage system' in UNESCO (ed.), *Linking Universal and Local Values: Managing a Sustainable Future for World Heritage*. (World Heritage Papers 13. Paris: World Heritage Centre, 2004) at 49-55.

Books

1. Anderson, M. Kat, 2006. *Tending the Wild. Native American Knowledge and the Management of California's Natural Resources*. (Berkeley: University of California Press).
2. Barlow, Cleave, 1991. *Tikanga Whakaaro: Key Concepts in Māori Culture*. (Auckland: Oxford University Press).
3. Benton, R, Frame, A and Meredith, P, *Te Matapunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law*, (Te Mātāhauariki Research Institute, University of Waikato and Victoria University Press, 2013)
4. Clarke, Philip, 2003. *Where the Ancestors Walked: Australia as an Aboriginal Landscape*. (Crows Nest, NSW: Allen & Unwin).
5. Durie, E, 'Māori Custom Law' (Unpublished Paper, Wellington, 1994) at 44-45
6. Durie, Mason, 2003. *Nga Kahui Pou. Launching Māori Futures*. (Wellington: Huia)
7. Firth, Raymond, 1959. *Economics of the New Zealand Māori*. (Wellington: Government Printer).
8. Hviding, Edvard, *Guardians of Marovo Lagoon: Practice, Place, and Politics in Maritime Melanesia*. (Honolulu: University of Hawai'i Press, 1996)
9. Johannes, Robert, 1981. *Words of the Lagoon: Fishing and Marine Lore in Palau District of Micronesia*. (Berkeley: University of California Press).
10. Joseph, R *The Government of Themselves: Case Law, Policy and Section 71 of the New Zealand Constitution Act 1852* (Te Mātāhauariki Institute, University of Waikato Press, Hamilton, 2002).
11. Mead, Hirini, 2003. *Tikanga Māori: Living by Māori Values*. (Wellington: Huia Publishers).
12. Metge, Joan, 1976. *The Māoris of New Zealand: Rautahi*. (London: Routledge and Kegan Paul, 1976)
13. Walker, Ranginui J., 1990. *Struggle Without End: Ka Whawhai Tonu Matou*. (Auckland: Penguin).
14. Williams, Henry W., 1957. *A Dictionary of the Māori Language*. (Wellington: R.E. Owen/Government Printer).

Journal Articles

1. Agrawal, Arun, 1995. Dismantling the divide between indigenous and western knowledge. *Development and Change*, (Vol. 26 (3), 1995) at 413-39.
2. Benton, Richard, 2004. 'Lexicography, Law and the Transformation of New Zealand Jurisprudence.' (Paper prepared for presentation at the International Invitational Symposium on Concepts in Polynesian Customary Law, University of Auckland).
3. Best, Elsdon, 1904. Notes on the custom of rahui: Its application and manipulation, and also its supposed powers, its rites, invocations and superstitions. *Journal of the Polynesian Society*, (Vol. 13 (2), 1904) at 83-88.
4. Clarke, William, 1990. Learning from the past: Traditional knowledge and sustainable development. *The Contemporary Pacific*, (Vol. 2 (2), 1990) at 233-51.

5. Hviding, Edvard and Graham Baines, 'Community-based fisheries management, tradition and the challenges of development in Marovo, Solomon Islands' in *Development and Change*, (Vol. 25, 1994) at 13-39.
6. Joseph, R, 'Māori Values and Tikanga Consultation under the RMA and the Local Government Bill – Possible Ways Forward' (Conference address for the Inaugural Māori Legal Forum at Te Papa Tongarewa, 9-10 October 2002).
7. Kawharu, M, 'Ancestral Landscapes and World Heritage from a Māori viewpoint' in *Journal of the Polynesian Society* (Vol. 118, No. 4, 2009) at 317-338.
8. Kawharu, M, 'Kaitiakitanga: A Māori Anthropological Perspective of the Māori Socio-Environmental Ethic of Resource Management' in *The Journal of the Polynesian Society* (Vol. 109, No. 4 (Dec 2000) at 349-370.
9. Kawharu, Merata, Kaitiakitanga and Rangatiratanga: Report on the Resource Management Act 1993 Amendment Proposals and the Ture Whenua Māori Act 1993 Review. (Unpublished Report for Ministry of Māori Development, 1999).
10. Maxwell, Kimberely and Wally Penetito, 2007. 'How the Use of Rahui for Protecting Taonga has Evolved Over Time' in *MAI Review* (Interim Report 2, 2007).
11. McCormack, F, 'A Blunting of Teeth' in *Journal of the Polynesian Society* (Vol. 120, No. 1, 2011) at 43-56.
12. McCormack, Fiona. 2007. 'Moral economy and Māori fisheries' in *Sites*, (Vol. 4 (1), 2007) at 45-69.
13. McHugh, P., 1992. 'Sealords and sharks: The Māori fisheries agreement' in *New Zealand Law Journal*, (Vol. 10, 1992) at 354-58. Mulrennan, Monica and Colin Scott, 2000. 'Indigenous rights in saltwater environments' in *Development and Change*, (Vol. 31 (3), 2000) at 681-708.
14. Roberts, Mere, Waerete Norman, Del Wihongi, Nganeko Minhinnick and Carmen Kirkwood, 'Kaitiakitanga: Māori perspectives on conservation' in *Pacific Conservation Biology*, (Vol. 2, No 7, 1995) at 20.
15. Smith, Anita, 2007. 'Building capacity in Pacific Island heritage management: Lessons from those who know best' in *Archaeologies*, (Vol. 3 (3), 2006) at 335-52.
16. Von Benda-Beckmann, K., 2002. Who's afraid of legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, (Vol. 47, 2002) at 37-82.
18. When, N and Ruru, J, Providing for Rahui in the Law of Aotearoa New Zealand in *Journal of the Polynesian Society* (Vol. 120, No. 2, 2011) at 169-182.

Chapters

1. Kawharu, Merata, 'Environment as a marae locale' in R. Selby, P. Moore and M. Mulholland (eds), *Kaitiaki: Māori and the Environment*. (Wellington: Huia. Māori Heritage Council, 2009).
2. Kawharu, Merata, 'Outstanding native interests' in M. Kawharu (ed.), *Whenua: Managing Our Resources*. (Auckland: Reed, 2002) at 145-66.
3. Morphy, Howard, 1995. 'Landscape and the reproduction of the ancestral past' in E. Hirsch and M. O'Hanlon (eds), *The Anthropology of Landscape : Perspectives on Place and Space*. (Oxford: Clarendon Press, 1995) at 184-209.
4. Rose, Carol, 2002. 'Common property, regulatory property and environmental protection' in E. Ostrom, T. Dietz, N. Dolsak, P. Stern, S. Stonich and E. Wever (eds), *The Drama of the Commons*. (Washington DC: National Academy Press, 2002) at 233-59.
5. Smith, Anita and Kevin L. Jones, 2007. *Cultural Landscapes of the Pacific Islands*. (ICOMOS Thematic Study. Paris: ICOMOS, 2007).

Theses

1. Joseph, R, 'The Government of Themselves: Indigenous Peoples' Internal Self-Determination, Effective Self-Governance and Authentic Representation: Waikato-Tainui, Ngai Tahu and Nisga'a' (PhD Thesis Dissertation, University of Waikato, 2006).
2. Kawharu, Merata, 'Dimensions of Kaitiakitanga: An Investigation of a Customary Māori Principle of Resource Management. (Unpublished DPhil thesis, Oxford University, 1998).
3. Tapsell, Paul, 1998. Taonga: A Tribal Response to Museums. (Unpublished DPhil thesis, Oxford University, 1998).

ENDNOTES

¹ See Von Benda-Beckmann, K., 2002. Who's afraid of legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, (Vol. 47, 2002) at 37-82.

² Tangaroa and Vision Mātauranga Programmes, Sustainable Seas Challenge Research Plan on the MBIE website: <http://www.msi.govt.nz/update-me/major-projects/national-science-challenges/>.

³ Native Exemption Ordinance - An Ordinance to exempt in certain cases Aboriginal Native Population of the Colony from the ordinary process and operation of the law." Legislative Council, Ordinances, Session III, No. XVIII, 16 July 1844.

⁴ *R v Symonds* (1847), NZPCC 387, at 390-1; *Kauwaeranga* (1870) (unreported); Sinclair, Fergus, 1999. 'Kauwaeranga in context' in *Victoria University of Wellington Law Review*, VUWLR (Vol. 14: 29, 1999) at 139; *Re Landon and Whitaker Claims Act 1871* (1872) NZPCC 387; *Ngāti Apa v Attorney-General* [2003] 3 NZLR 643 Durie, E, 'Māori Custom Law' (Unpublished Paper, Wellington, 1994) at 44-45 and Metge, J *Commentary on Judge Durie's Custom Law* (Unpublished Paper for the Law Commission, 1996).

⁵ Orange, C *The Treaty of Waitangi* (Allen Unwin Press, Auckland, 1987); Buick, T Lindsay, 1936. *The Treaty of Waitangi. How New Zealand Became a British Colony*. (New Plymouth: T. Avery).and Colenso, W *The Authentic and Genuine History of the Signing of the Treaty of Waitangi* (Capper Press, Reprint, 1890).

⁶ See Joseph, R, *The Government of Themselves: Case Law, Policy and Section 71, Constitution Act 1852* (Te Mātāhauriki Research Institute

Monograph, Waikato Print, Hamilton, 2003) and Joseph, R, & Bennion, T 'Challenges of Incorporating Māori Values and Tikanga under the Resource Management Act 1991 and the Local Government Bill – Possible Ways Forward' in Midson, B & Morgan, G (eds) *Yearbook of New Zealand Jurisprudence* (Vol. 6, Issue 1, 2002 – 2003, University of Waikato, Hamilton, 2004) at 9 – 34.

⁷ For good references on kaitiakitanga, see Roberts, Mere, Waerete Norman, Del Wihongi, Nganeko Minhinnick and Carmen Kirkwood, 'Kaitiakitanga: Maori perspectives on conservation' in *Pacific Conservation Biology*, (Vol. 2, No 7, 1995) at 20; Kawharu, Merata, 'Dimensions of Kaitiakitanga: An Investigation of a Customary Maori Principle of Resource Management. (Unpublished DPhil thesis, Oxford University, 1998); Kawharu, I. H., n.d. 'Ko Te Mana Whenua o Ngāti Whātua o Orakei' (Draft paper for Ngāti Whātua o Orakei Trust Board); Kawharu, Merata, Kaitiakitanga and Rangatiratanga: Report on the Resource Management Act 1993 Amendment Proposals and the Ture Whenua Maori Act 1993 Review. (Unpublished Report for Ministry of Maori Development, 1999); Kawharu, M, 'Kaitiakitanga: A Maori Anthropological Perspective of the Maori Socio-Environmental Ethic of Resource Management' in *The Journal of the Polynesian Society* (Vol. 109, No. 4 (Dec 2000) at 349-370; Kawharu, Merata, 'Outstanding native interests' in M. Kawharu (ed.), *Whenua: Managing Our Resources*. (Auckland: Reed, 2002) at 145-66 and Kawharu, Merata, 'Environment as a marae locale' in R. Selby, P. Moore and M. Mulholland (eds), *Kaitiaki: Māori and the Environment*. (Wellington: Huia. Māori Heritage Council, 2009).

⁸ See Maxwell, Kimberely and Wally Penetito, 2007. 'How the Use of Rahui for Protecting Taonga has Evolved Over Time' in *MAI Review* (Interim Report 2, 2007) and Wheen, N and Ruru, J, Providing for Rahui in the Law of Aotearoa New Zealand in *Journal of the Polynesian Society* (Vol. 120, No. 2, 2011) at 169-182.

⁹ See Benton, R, Frame, A and Meredith, P, *Te Matapunenga: A Compendium of References to the Concepts and Institutions of Maori Customary Law*, (Te Mātāhauariki Research Institute, University of Waikato and Victoria University Press, 2013) and *Takamore v Clarke* (Court of Appeal, CA525/2009, 23 November 2011) at 36, 69, 70; *R v Mason*, (High Court, CRI 2011 – 070-1249, 3 May 2012) at 8.

¹⁰ Refer to the Waitangi Tribunal *The Manukau Report* (Wai 8, Wellington, 1985).

¹¹ *Winstone Aggregates Ltd & Heartbeat Charitable Trust v Franklin District Council* (A80/02. 17 April 2002. Judge Whiting). See also Mutu, Margaret and Peter Rikys, 1993. *Statutory Resource Management and Indigenous Property Rights. A Report Prepared for the Ministry for the Environment*. (Auckland: Uniservices) and Mutu, Margaret, 1995. *Marsden Point Terminal Proposal Cultural Assessment: Views of Tangata Whenua in Respect of the Proposed Port Development at Marsden Point*. (A Report Prepared for the Parliamentary Commissioner for the Environment. Auckland: Uniservices).

¹² *Winstone Aggregates Ltd v Regional Council* (Unreported, Judge Whiting, Environment Court, Auckland, A80/62, 28 April 2002). See also Palmer, K 'The Planning System and the Recognition of Māori Tribal Plans' *Working Paper 28 RMLR* October 1998 and Palmer, M "The Treaty of Waitangi in Legislation" [2001] *NZLJ* at 207.

¹³ For example, Motuhora (Whale Island) Management Reserve (Ngāti Awa Claims Settlement Act 2005 (No 28), Schedule 7), and the "statutory area" of Port of the Ohiwa Harbour (Schedule 8). 4.

¹⁴ See BERL, *Māori Economy, Science and Innovation – potential opportunity and value*. (BERL Economics, Wellington, 2011) http://www.tpk.govt.nz/_documents/taskforce/met-growecothruscience-2011.pdf (Accessed October 2015) and Te Puni Kokiri, *The Māori Economy*, (Wellington, 2012).

¹⁵ Maori Commercial Fisheries Settlement 1992, Maori Fisheries Act 2004 and the Maori Commercial Aquaculture Claims Settlement Act 2004. See also McCormack, Fiona. 2010. 'Fish is my daily bread: Owning and transacting in Maori fisheries' in *Anthropological Forum*, (Vol. 20 (1), 2010); and McHugh, P., 1992. 'Sealords and sharks: The Maori fisheries agreement' in *New Zealand Law Journal*, (Vol. 10, 1992) at 354-58.

¹⁶ Refer to Palmer, K 'The Planning System and the Recognition of Māori Tribal Plans' *Working Paper 28 RMLR* October 1998 and Palmer, M "The Treaty of Waitangi in Legislation" [2001] *NZLJ* at 207.

¹⁷ Marine and Coastal Area (Takutai Moana) Act 2011.

¹⁸ See Orams, M, 'Marine Ecotourism as a Potential Agent for Sustainable Development in Kaikoura, New Zealand' in *International Journal of Sustainable Development*, (Vol. 5, Issue 3, 2002)

¹⁹ The New Zealand Government has negotiated over 66 Treaty of Waitangi settlements as at February 2016 and some of these settlements include provisions for recognition of aspects of mātauranga and tikanga Maori over marine coastal areas such as topuni under the Ngai Tahu Claims Settlement Act 1998; the Motuhora (Whale Island) Management Reserve under the Ngāti Awa Claims Settlement Act 2005 (No 28), Schedule 7), and the "statutory area" of Port of the Ohiwa Harbour (Schedule 8) under the same legislation.

²⁰ See Joseph, R, 'Contemporary Māori Governance: New Error' in *Contemporary Issues in Corporate Governance* (Centre for Commercial and Corporate Law Inc., University of Canterbury, Christchurch, 2011) at 327-368; and Torivio Fodder, Robert Joseph & Priscilla Davis-Ngatai,

Ka Takahia ano o Tātou Tapuae: Retracing Our Steps: A Māori Governance Overview and Literature Review (Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre, Waikato Print, University of Waikato, Hamilton, 2014) 167 pages;

²¹ For cohesive jurisprudence references, see Agrawal, Arun, 1995. Dismantling the divide between indigenous and western knowledge. *Development and Change*, (Vol. 26 (3), 1995) at 413-39; Clifford, James, 1997. *Routes: Travel and Translation in the Late Twentieth Century*. (Cambridge, Mass.: Harvard University Press); Clarke, William, 1990. Learning from the past: Traditional knowledge and sustainable development. *The Contemporary Pacific*, (Vol. 2 (2), 1990) at 233-51; Morphy, Howard, 1995. 'Landscape and the reproduction of the ancestral past' in E. Hirsch and M. O'Hanlon (eds), *The Anthropology of Landscape : Perspectives on Place and Space*. (Oxford: Clarendon Press, 1995) at 184-209; Rose, Carol, 2002. 'Common property, regulatory property and environmental protection' in E. Ostrom, T. Dietz, N. Dolsak, P. Stern, S. Stonich and E. Wever (eds), *The Drama of the Commons*. (Washington DC: National Academy Press, 2002) at 233-59; Galla, A., 2008. The first voice in heritage conservation. *International Journal of Intangible Heritage*, (Vol. 3, 2008) at 10-25 and Mulrennan, Monica and Colin Scott, 2000. 'Indigenous rights in saltwater environments' in *Development and Change*, (Vol. 31 (3), 2000) at 681-708. For international references, see Sullivan, Sharon, 2004. 'Local involvement and traditional practices in the World Heritage system' in UNESCO (ed.), *Linking Universal and Local Values: Managing a Sustainable Future for World Heritage*. (World Heritage Papers 13. Paris: World Heritage Centre, 2004) at 49-55; UNESCO (ed.), 2004b. *Linking Universal and Local Values: Managing a Sustainable Future for World Heritage*. (World Heritage Papers 13. Paris: World Heritage Centre); UNESCO, 2008. *The Operational Guidelines for the Implementation of the World Heritage Convention*. (Paris: World Heritage Centre, 2008). For specific Indigenous case studies, see Anderson, M. Kat, 2006. *Tending the Wild. Native American Knowledge and the Management of California's Natural Resources*. (Berkeley: University of California Press); Clarke, Philip, 2003. *Where the Ancestors Walked: Australia as an Aboriginal Landscape*. (Crows Nest, NSW: Allen & Unwin); viding, Edvard and Graham Baines, 'Community-based fisheries management, tradition and the challenges of development in Marovo, Solomon Islands' in *Development and Change*, (Vol. 25, 1994) at 13-39; Hviding, Edvard, *Guardians of Marovo Lagoon: Practice, Place, and Politics in Maritime Melanesia*. (Honolulu: University of Hawai'i Press, 1996); Johannes, Robert, 1981. *Words of the Lagoon: Fishing and Marine Lore in Palau District of Micronesia*. (Berkeley: University of California Press); Crocombe, Ron (ed.), 1987. *Land Tenure in the Pacific*. (Suva: University of the South Pacific); Smith, Anita and Kevin L. Jones, 2007. *Cultural Landscapes of the Pacific Islands*. (ICOMOS Thematic Study.

Paris: ICOMOS, 2007) and Smith, Anita, 2007. 'Building capacity in Pacific Island heritage management: Lessons from those who know best' in *Archaeologies*, (Vol. 3 (3), 2006) at 335-52 and Kawharu, M, 'Ancestral Landscapes and World Heritage from a Maori viewpoint' in *Journal of the Polynesian Society* (Vol. 118, No. 4, 2009) at 317-338. See also See Joseph, R, Indigenous Peoples' Good Governance, Human Rights and Self-Determination in the Second Decade of the New Millennium – A Māori Perspective" in *Maori Law Review* (December 2014) 10 pages; Durie, Mason, 'Outstanding Universal Value: How Relevant is Indigeneity?' (World Heritage Committee Pacific Workshop, Tongariro, 2007); Organisation for Economic Co-operation and Development, *Environmental Performance Reviews: New Zealand*, (OECD, Paris, 2007);²² See Kawharu, M, 'Kaitiakitanga: A Maori Anthropological Perspective of the Maori Socio-Environmental Ethic of Resource Management' in *The Journal of the Polynesian Society* (Vol. 109, No. 4 (Dec 2000) at 349-370; Kawharu, Merata, Kaitiakitanga and Rangitiratanga: Report on the Resource Management Act 1993 Amendment Proposals and the Ture Whenua Maori Act 1993 Review. (Unpublished Report for Ministry of Maori Development, 1999); Metge, Joan, 1989. Evidence of Alice Joan Metge in respect of Te Wharo Oneroa A Tohe. Submission to the Waitangi Tribunal Muriwhenua Land Report 1997, Wai 45. H/C 20. Ministry of Fisheries, 2011. NABIS: Interactive web mapping of New Zealand's marine environment and biodiversity. <http://www2.nabis.govt.nz/map.aspx?to pic=CustomaryAreas>. Retrieved 18th April 2011. See also Metge, J *Commentary on Judge Durie's Custom Law* (Unpublished Paper for the Law Commission, 1996).

²³ *Wi Parata v the Bishop of Wellington* (1877) 3 N.Z. Jur. (N.S.) 72.

²⁴ Bentham, J, *Deontology together with A Table of the Springs of Action and Article on Utilitarianism* (Vol. 1, Athlone Press, 1983) at 99.

²⁵ Hart, H, 'Definition and Theory of Jurisprudence' in *LQR* (Vol. 70, 1954) at 37.

²⁶ Harris, D, 'The Concept of Possession in English Law' (Oxford Essays in Jurisprudence, 1968) at 69.

²⁷ *McGuire v Hastings District Council* [2001] NZRMA 557 at 561.

²⁸ See Smith, Linda Tuhiwai, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, London, University of Otago Press, 1999); Baptiste, M, *Reclaiming Indigenous Voice and Vision* (UBC Press, Vancouver, 2000); Denzin, N, Lincoln, Y and Smith, L, (Eds.) *Handbook of Critical Indigenous Methodologies* (SAGE Publications Inc., California, 2008) and Steinhauer, Evelyn, 'Thoughts on an Indigenous Research Methodology' in *Canadian Journal of Native Education* (Vo. 26, 2002) 69 at 77. See also Freire, P, *Pedagogy of the Oppressed* (Penguin, London, 1996); Henry, E and H Pene 'Kaupapa Māori: Locating Indigenous Ontology, Epistemology and Methodology in the Academy' in *Organization* (Vol. 8, 2001) at 234;

Pihama, L, Fiona Cram and Sheila Walker 'Creating Methodological Space: A literature review of Kaupapa Māori Research' in *Canadian Journal of Native Education* (Vol. 26, 2002) at 30; and Smith, G, 'The Development of Kaupapa Māori Theory and Praxis' (Unpublished Doctor of Philosophy Thesis, Auckland, 1997).

²⁹ See Kania, J & Kramer, M, 'Collective Impact' in *Stanford Social Innovation Review* (Winter 2011) at 36-41 and Kania, J & Kramer, M, 'Embracing Emergence: How Collective Impact Addresses Complexity' in *Stanford Social Innovation Review* (Jan 2013).

³⁰ Joseph, R, 'the Government of Themselves: Indigenous Peoples' Internal Self-Determination, Effective Self-Governance and Authentic Representation: Waikato-Tainui, Ngai Tahu and Nisga'a' (PhD Thesis Dissertation, University of Waikato, 2006).

³¹ Benton, R, Frame, A and Meredith, P, *Te Matapunenga: A Compendium of References to the Concepts and Institutions of Maori Customary Law*, (Te Mātāhauariki Research Institute, University of Waikato and Victoria University Press, 2013)

³² 'Te Hau Mihi Ata Mātāuranga Māori and Science,' FRST Research Project, UOW, 2007-2008.

³³ Refer to Joseph, R, *Treaty Settlement and Good Governance by Prescription: An Analysis of Treaty of Waitangi Settlements and Post-Settlement Governance Policies in New Zealand*, (Te Mātāhauariki Research Institute Monograph, Waikato Print, Hamilton, 2004); Joseph, R, 'Contemporary Māori Governance: New Era or New Error?' in *New Zealand University Law Review* (Vol. 22, No. 4, December 2007) at 682-709; Joseph, R, 'Re-Creating Legal Space for the First Law of of Aotearoa-New Zealand' in *Waikato Law Review: Taumauri* (Vol. 17, 2009) at 74-97; Joseph, R, 'Contemporary Māori Governance: New Error' in *Contemporary Issues in Corporate Governance* (Centre for Commercial and Corporate Law Inc., University of Canterbury, Christchurch, 2011) at 327-368; Joseph, R, 'Nga Pakanga Mo Wahi Tapu: Battles Over Sacred Places' in Ruru, J & Abbott, M (Eds), *Making Our Place: Exploring Land-Use Tensions in Aotearoa New Zealand* (Otago University Press, 2011) at 173-184; Joseph, R, 'Unsettling Treaty Settlements: Contemporary Māori Identity and Representation Challenges' in Wheen, N and Hayward, J (Eds) *Treaty of Waitangi Settlements* (Bridget Williams Books Ltd, New Zealand Law Foundation, Wellington, 2012) at 151-165; Joseph, R, Indigenous Peoples' Good Governance, Human Rights and Self-Determination in the Second Decade of the New Millennium – A Māori Perspective" in *Maori Law Review* (December 2014) 10 pages; and Torivio Fodder, Robert Joseph & Priscilla Davis-Ngatai, *Ka Takahia ano o Tātou Tapuae: Retracing Our Steps: A Māori Governance Overview and Literature Review* (Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre, Waikato Print, University of Waikato, Hamilton, 2014) 167 pages;

³⁴ University of Waikato Graduate Certificate in Corporate Governance, Law and Management, 2013-2016.

³⁵ New Zealand Law Commission, *Waka Umanga: A Proposed Law for Māori Governance Entities* (NZLC R92, Wellington, 2006) at 69.

³⁶ M C Da Cunha, "The Case of Brazilian Indians" in S Stephens (ed), *Children and the Politics of Culture* (1995).

³⁷ See Benton, R, Frame, A and Meredith, P, *Te Matapunenga: A Compendium of References to the Concepts and Institutions of Maori Customary Law*, (Te Mātāhauariki Research Institute, University of Waikato and Victoria University Press, 2013) and *Takamore v Clarke* (Court of Appeal, CA525/2009, 23 November 2011) at 36, 69, 70; *R v Mason*, (High Court, CRI 2011 – 070-1249, 3 May 2012) at 8.