

**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY  
AND RESOURCES REGARDING CONSULTATION WITH MAUNGAHARURU-  
TANGITŪ TRUST BY THE MINISTRY OF BUSINESS, INNOVATION AND  
EMPLOYMENT ON THE ADMINISTRATION OF CROWN OWNED MINERALS**

**1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated 25 May 2013 between the trustees of the Maungaharuru-Tangitū Trust (“**MTT**”) and the Crown (the “**Deed of Settlement**”), the Crown agreed that the Minister of Energy and Resources (the “**Minister**”) would issue a Protocol (the “**Protocol**”) setting out how the Ministry of Business, Innovation and Employment (the “**Ministry**”) will consult with MTT on matters specified in the Protocol.
- 1.2 Both the Ministry and MTT are seeking a constructive relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.3 The purpose of the Crown Minerals Act 1991 (the “**Act**”) is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.
- 1.4 The Minister is responsible under the Act for the preparation of mineral programmes, the grant of minerals permits, and monitoring the effect and implementation of minerals programmes and minerals permits. The Ministry administers the Act on behalf of the Minister. Section 4 of the Act requires all persons exercising functions and powers under the Act to have regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.5 The Minister and the Ministry recognise that MTT is the governance entity of the Hapū and represents the Hapū.
- 1.6 The Hapū, are tāngata whenua and kaitiaki of the Protocol Area and have significant interests and responsibilities in relation to the preservation, protection and management of natural resources within the Protocol Area.

**2 PURPOSE OF THIS PROTOCOL**

- 2.1 With the intent of creating a constructive relationship between MTT and the Ministry in relation to minerals administered in accordance with the Act in the Protocol Area, this Protocol sets out how the Ministry will exercise its functions, powers, and duties in relation to the matters set out in this Protocol.
- 2.2 MTT will have the opportunity for input into the policy, planning, and decision-making processes relating to the matters set out in this Protocol in accordance with the Act and the relevant minerals programmes issued under the Act.

**3 OWNERSHIP OF MINERALS**

- 3.1 The Hapū:

- (a) assert that they maintain in accordance with tikanga, an unbroken, inalienable and enduring relationship with, and mana in relation to, the minerals in their takiwā; and
- (b) record that they consider their ownership, management and control of such minerals has been expropriated by the Crown and that this is a serious Treaty breach.

3.2 The Crown asserts ownership of minerals under the Act and considers that the nationalisation of minerals is not a breach of the Treaty. Section 10 of the Act provides that all gold, silver, uranium and petroleum existing in its natural condition in land shall be the property of the Crown. Section 11 of the Act reserves all minerals to the Crown in any future alienation of Crown land and upholds all reservations of minerals made in earlier enactments. Decision-making regarding prospecting, exploration and mining of minerals in the Protocol Area is prescribed under the Act.

## **4 PROTOCOL AREA**

4.1 This Protocol applies across the Protocol Area which means the area identified in the map included in Attachment A of this Protocol, together with the adjacent waters.

## **5 TERMS OF ISSUE**

5.1 This Protocol is issued pursuant to section 32 of the Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 (the "**Settlement Legislation**") that implements clause 5.32 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

5.2 This Protocol must be read subject to the summary of the terms of issue set out in Attachment B.

## **6 CONSULTATION**

6.1 The Minister will ensure that MTT is consulted by the Ministry:

### **New minerals programmes**

- (a) on the preparation of new minerals programmes which relate, whether wholly or in part, to the Protocol Area;

### **Petroleum exploration permit block offers**

- (b) on the planning of a competitive tender allocation of a permit block for petroleum exploration (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and the relevant minerals programme), which relates, whether wholly or in part, to the Protocol Area. This will include outlining the proposals for holding the block offer, and consulting with MTT on these proposals over the consultation period set out in the relevant minerals programme;

### **Other petroleum exploration permit applications**

- (c) when any application for a petroleum exploration permit is received, which relates, whether wholly or in part, to the Protocol Area, except where the



application relates to a block offer over which consultation has already taken place under clause 6.1(b);

#### **Amendments to petroleum exploration permits**

- (d) when any application to amend a petroleum exploration permit, by extending the land to which the permit relates, is received where the application relates, wholly or in part, to the Protocol Area;

#### **Permit block offers for Crown owned minerals other than petroleum**

- (e) on the planning of a competitive tender allocation of a permit block for Crown owned minerals other than petroleum (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and any relevant minerals programme) which relates, whether wholly or in part, to the Protocol Area;

#### **Other permit applications for Crown owned minerals other than petroleum**

- (f) when any application for a permit in respect of Crown owned minerals other than petroleum is received, which relates, whether wholly or in part, to the Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 6.1(e) or where the application relates to newly available acreage;

#### **Newly available acreage**

- (g) when the Secretary proposes to recommend that the Minister grant an application for a permit for newly available acreage in respect of minerals other than petroleum, which relates, whether wholly or in part, to the Protocol Area;

#### **Amendments to permits for Crown owned minerals other than petroleum**

- (h) when any application to amend a permit in respect of Crown owned minerals other than petroleum, by extending the land or minerals covered by an existing permit is received, where the application relates, wholly or in part, to the Protocol Area; and

#### **Gold fossicking areas**

- (i) when any request is received or proposal is made to designate lands as a gold fossicking area, which relates, whether wholly or in part, to the Protocol Area.

- 6.2 Each decision on a proposal referred to in clause 6.1 will be made having regard to any matters raised as a result of consultation with MTT, and having regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.

## **7 IMPLEMENTATION AND COMMUNICATION**

- 7.1 The Crown has an obligation under the Act to consult with parties whose interests may be affected by matters described in clause 6.1. The Ministry will consult with MTT in accordance with this Protocol if matters described in clause 6.1 of this Protocol may affect the interests of any of the Hapū.

- 7.2 For the purposes of clause 6.1, the basic principles that will be followed by the Ministry in consulting with MTT in each case are:
- (a) ensuring that MTT is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues;
  - (b) providing MTT with sufficient information to make informed decisions and submissions;
  - (c) ensuring that sufficient time is given for the participation of MTT in the decision making process and to enable it to prepare its submissions; and
  - (d) ensuring that the Ministry will approach the consultation with MTT with an open mind, and will genuinely consider the submissions of MTT.
- 7.3 Where the Ministry is required to consult MTT as specified in clause 6.1, the Ministry will report back in writing to MTT on the decision made as a result of such consultation.
- 7.4 Face to face meetings will be held if mutually agreed by the parties such agreement not to be unreasonably withheld. The parties will jointly confirm the meetings and their agenda and location.
- 7.5 The Ministry will seek to fulfil its obligations under this Protocol by:
- (a) maintaining information on MTT's address and contact details as provided from time to time by MTT;
  - (b) as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Protocol;
  - (c) nominating relevant employees to act as contacts with MTT in relation to issues concerning this Protocol;
  - (d) providing MTT with the names of the relevant employees who will act as contacts with MTT in relation to issues concerning this Protocol;
  - (e) discussing with MTT concerns and issues notified by MTT about this Protocol;
  - (f) as far as reasonably practicable, providing opportunities for MTT to meet with relevant Ministry managers and staff;
  - (g) where relevant and reasonably practicable, providing opportunities for MTT to meet with the Minister and Secretary;
  - (h) where relevant and reasonably practicable, informing other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
  - (i) including the summary of the terms of issue and the map of the Protocol Area relating to this Protocol in the relevant minerals programmes when these are issued.



## **8 EXCLUSION OF AREAS OF PARTICULAR IMPORTANCE TO THE HAPŪ**

- 8.1 The Crown has responsibilities in relation to active protection. As a result of the consultation specified in clause 6, MTT may request that defined areas of land of particular importance to the Hapū are excluded from the operation of a minerals programme or shall not be included in any block offer or permit.

## **9 EFFECTS ON THE INTERESTS OF THE HAPŪ IN RELATION TO CROWN OWNED MINERALS**

- 9.1 The Minister and Secretary will consult with MTT on any policy or legislative development or review in relation to the administration of minerals which may affect the interests of the Hapū in relation to Crown owned minerals in the Protocol Area or this Protocol.
- 9.2 The Minister and Secretary will consult with MTT on any of the Ministry's minerals operational activities which may affect the interests of the Hapū in relation to Crown owned minerals in the Protocol Area or this Protocol.
- 9.3 Notwithstanding clauses 9.1 and 9.2 above, the Minister and Secretary and MTT may meet to discuss the interests of the Hapū in relation to Crown owned minerals in the Protocol Area as part of the meetings specified in clause 7.4.

## **10 INFORMATION EXCHANGE**

- 10.1 The Ministry will make available to MTT all existing information held by the Ministry where that information is requested by MTT for the purposes of assisting them to exercise their rights under this Protocol.
- 10.2 The obligation in clause 10.1 does not apply to information that the Ministry is legally prevented from providing (for example, information that is the subject of an obligation of confidentiality or non-disclosure) or to information that the Ministry may withhold under the grounds set out under the Official Information Act 1982 or Privacy Act 1993.
- 10.3 The Minister and Secretary will make available to MTT the names and contact details of all relevant permit holders.

## **11 REVIEW AND AMENDMENT**

- 11.1 The Minister, Secretary and MTT agree that this Protocol is a living document which should be updated and adapted to take account of future developments.
- 11.2 A review of this Protocol may take place at the request of either party.
- 11.3 The Minister and MTT may only vary this Protocol by agreement in writing.

## **12 DISPUTE RESOLUTION**

- 12.1 If one party considers that there has been a breach of this Protocol then that party may give written notice to the other party that they are in dispute. The following process shall be undertaken once notice is received by the other party to this Protocol:

- (a) within 15 working days of being given written notice, the relevant contact person from the Ministry and MTT will meet to work in good faith to resolve the issue;
- (b) if the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 12.1(a), the Secretary and the nominated representative of MTT will meet to work in good faith to resolve the issue;
- (c) if the dispute has not been resolved within 30 working days of receipt of the notice referred to in clause 12.1(a) and where the matter is of such significance and the dispute remains outstanding despite the above process having been followed, provided it is not inconsistent with statutory obligations and the parties agree, the Minister and MTT will meet to work in good faith to resolve this issue. The parties recognise that this clause is subject to this Protocol's Terms of Issue.

### 13 DEFINITIONS

#### 13.1 In this Protocol:

**Act** means the Crown Minerals Act 1991 as amended, consolidated or substituted;

**Crown** means the Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

**Crown owned minerals** means any mineral (as defined below) that is the property of the Crown in accordance with sections 10 and 11 of the Act or over which the Crown has jurisdiction in accordance with the Continental Shelf Act 1964;

**Deed of Settlement** means the Deed of Settlement dated 25 May 2013 between the Crown and MTT;

**Hapū** has the meaning set out in clause 8.5 of the Deed of Settlement;

**mineral** means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water, and includes all metallic minerals, non-metallic minerals, fuel minerals (including coal and petroleum), precious stones, industrial rocks and building stones within the meaning of the Act and a prescribed substance within the meaning of the Atomic Energy Act 1945;

**Minister** means the Minister of Energy and Resources;

**Ministry** means the Ministry of Business, Innovation and Employment;

**newly available acreage** has the meaning provided in clause 3.5 of the Minerals Programme for Minerals (Excluding Petroleum) 2008;

**petroleum** means:

- (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or

- (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and one or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide,

and, except in sections 10 and 11 of the Act, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered, but which has been returned to a natural reservoir for storage purposes in the same or an adjacent area;

**protocol** means a statement in writing, issued by the Crown through the Minister to MTT under the Settlement Legislation and the Deed of Settlement and includes this Protocol; and

**Secretary** means the chief executive of the Ministry.

**ISSUED ON**

16 MAY 2014

**SIGNED** for and on behalf of  
**THE SOVEREIGN**  
in right of New Zealand by  
the Minister of Energy and Resources.



**WITNESS**



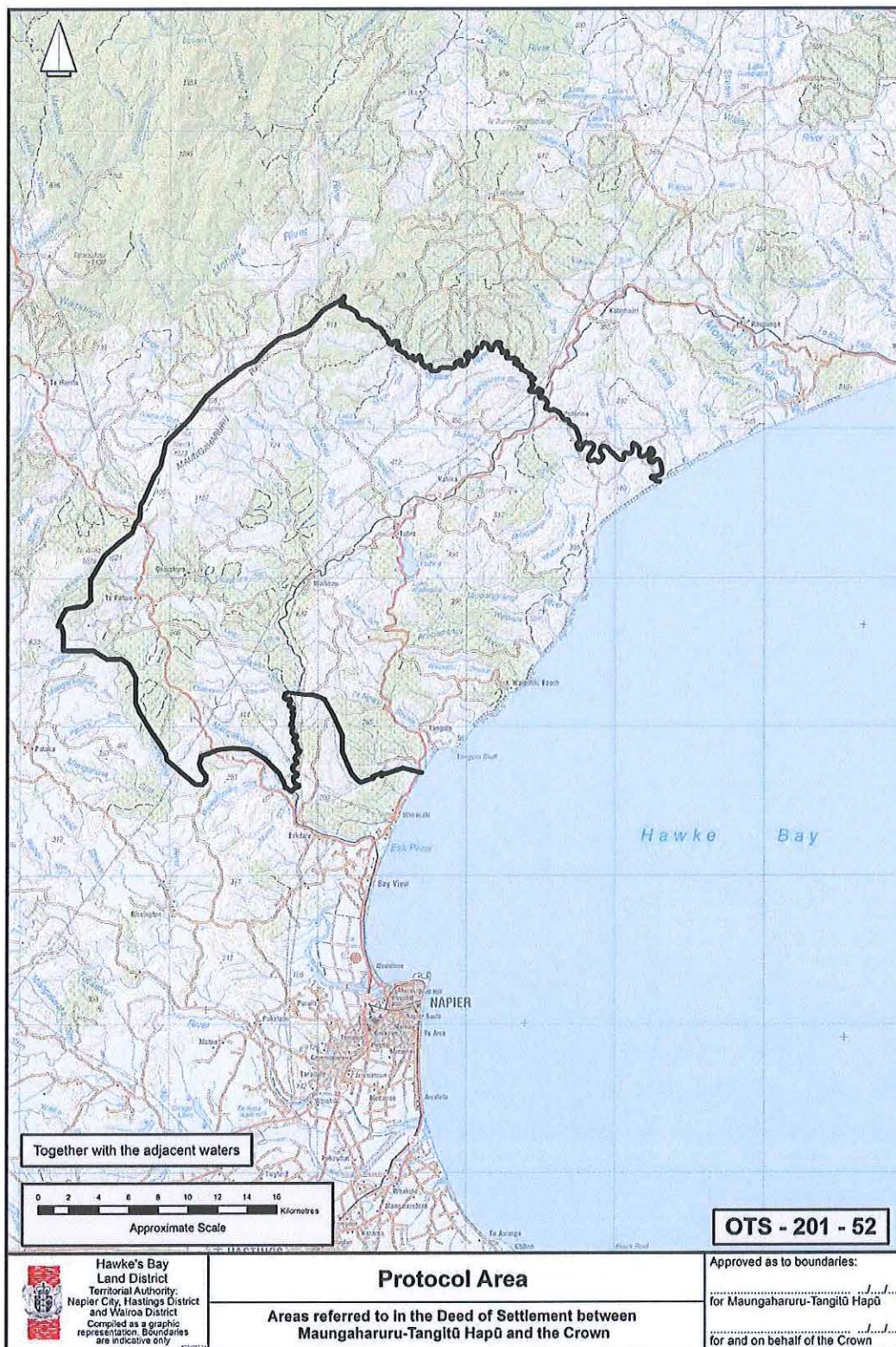
Name Jamie GRAY

Occupation Private Secretary - Energy + Resources

Address Wellington



# ATTACHMENT A PROTOCOL AREA MAP





## ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

### **1. Amendment and cancellation**

- 1.1 The Minister may amend or cancel this Protocol, but only after consulting with MTT and having particular regard to its views (section 32).

### **2. Noting**

- 2.1 A summary of the terms of this Protocol must be added:

2.1.1 in a register of protocols maintained by the chief executive; and

2.1.2 in the minerals programme affecting the Protocol Area when those programmes are replaced;

but the addition:

2.1.3 is for the purpose of public notice only; and

2.1.4 does not amend the minerals programmes for the purposes of the Crown Minerals Act 1991 (section 35).

### **3. Limits**

- 3.1 This Protocol does not -

3.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law (including the Crown Minerals Act 1991) and government policy, including:

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a Protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tāngata whenua (section 33); or

3.1.2 restrict the responsibilities of the Minister or the Ministry under the Crown Minerals Act 1991 or the legal rights of the Hapū or a representative entity (section 33); or

3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown minerals (section 35).

- 3.2 In this summary of the Terms of Issue, "representative entity" has the same meaning as it has in the Deed of Settlement.

#### **4. Breach**

- 4.1 Subject to the Crown Proceedings Act 1950, MTT may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 34).
- 4.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 5.35).