
PROTOCOL WITH THE MINISTER OF ENERGY AND RESOURCES

**A PROTOCOL ISSUED BY THE CROWN
THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING
CONSULTATION WITH NGĀTI KURI 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 7 February 2014 between Ngāti Kuri and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister of Energy and Resources (the "**Minister**") would issue a Protocol (referred to in the Deed as the "protocol with the Minister of Energy and Resources but herein referred to as the "**Crown Minerals Protocol**") setting out how the Ministry of Business, Innovation and Employment (the "**Ministry**") will consult with the Ngāti Kuri Governance Entity (the "**Governance Entity**") on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Ngāti Kuri are seeking a healthy and 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. 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.
- 1.4 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.
- 1.5 This Crown Minerals Protocol will affect the Ministry's administration of Crown owned minerals under the Act in the Crown Minerals Protocol Area.

2. PURPOSE OF THIS PROTOCOL

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

3. OWNERSHIP OF MINERALS

- 3.1 Ngāti Kuri asserts that traditionally, Ngāti Kuri owned and used the mineral resources and taonga in their rohe.

- 3.2 In reaching this Crown Minerals Protocol with the Minister, Ngāti Kuri records that the expropriation of their ownership of mineral resources by the Crown is a serious Treaty breach with implications that are still being felt.
- 3.3 The Minister acknowledges that Ngāti Kuri asserts that it maintains, in accordance with tikanga, an unbroken, inalienable and enduring relationship with, and mana in relation to, the mineral resources within the Crown Minerals Protocol Area. Ngāti Kuri's mana remains intact, in spite of any legislative expropriation.
- 3.4 The Minister further acknowledges that Ngāti Kuri asserts that despite the expropriation of its ownership it has a right to make decisions regarding mining in the Crown Minerals Protocol Area.
- 3.5 The Crown asserts ownership of minerals under the Crown Minerals Act 1991 and considers that the nationalisation of minerals is not a breach of the Treaty. Section 10 of the Crown Minerals Act 1991 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 Crown Minerals Act 1991 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 petroleum and minerals other than petroleum in the Crown Minerals Protocol Area is prescribed under the Crown Minerals Act 1991.

4. **PROTOCOL AREA**

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

5. **TERMS OF ISSUE**

- 5.1 This Crown Minerals Protocol is issued pursuant to section 126 of Ngāti Kuri Claims Settlement Act 2015 (the "**Settlement Legislation**") that implements clause 8.11.3 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 5.2 This Crown Minerals Protocol must be read subject to the terms of issue set out in Attachment B.

6. **CONSULTATION**

- 6.1 The Minister will ensure that the Governance Entity is consulted by the Ministry:

New minerals programmes

- 6.1.1 on the preparation of new minerals programmes which relate, whether wholly or in part, to the Crown Minerals Protocol Area;

Petroleum exploration permit block offers

- 6.1.2 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 Crown Minerals Protocol Area;

Other petroleum exploration permit applications

- 6.1.3 when any application for a petroleum exploration permit is considered, which relates, whether wholly or in part, to the Crown Minerals Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 6.1.2;

Amendments to petroleum exploration permits

- 6.1.4 when any application to amend a petroleum exploration permit, by extending the land or minerals to which the permit relates, is considered, where the application relates, wholly or in part, to the Crown Minerals Protocol Area;

Permit block offers for Crown owned minerals other than petroleum

- 6.1.6 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 Crown Minerals Protocol Area;

Other permit applications for Crown owned minerals other than petroleum

- 6.1.7 when any application for a permit in respect of Crown owned minerals other than petroleum is considered, which relates, whether wholly or in part, to the Crown Minerals Protocol Area, except where the application relates to a competitive tender allocation of a permit block offer over which consultation has already taken place under clause 6.1.2;

Newly available acreage

- 6.1.8 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 Crown Minerals Protocol Area; and

Amendments to permits for Crown owned minerals other than petroleum

- 6.1.9 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 considered; and
- 6.1.10 where the application relates, wholly or in part, to the Crown Minerals 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 the Governance Entity, and having regard to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi, particularly as those principles are set out in the relevant minerals programme from time to time, and taking into account the circumstances of each case.

7. IMPLEMENTATION AND COMMUNICATION

- 7.1 The Crown has an obligation under the Act (as provided for in minerals programmes) to consult with parties whose interests may be affected by matters described in clause 6.1 of this Crown Minerals Protocol. The Ministry will consult with the Governance Entity in

accordance with this Crown Minerals Protocol and in accordance with the relevant minerals programme if matters described in clause 6.1 of this Crown Minerals Protocol Area may affect the interests of Ngāti Kuri.

7.2 The basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

7.2.1 ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues in relation to any matters under clause 6 of this Crown Minerals Protocol;

7.2.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 6 of this Crown Minerals Protocol;

7.2.3 ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the consideration by the Governance Entity of its submissions in relation to any of the matters described in clause 6 of this Crown Minerals Protocol; and

7.2.4 ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters described in clause 6 of this Crown Minerals Protocol.

7.3 Where the Ministry is required to consult the Governance Entity as specified in clause 6.2, the Ministry will report back in writing to the Governance Entity on the decision made as a result of such consultation.

7.4 The Ministry will seek to fulfil its obligations under this Crown Minerals Protocol by:

7.4.1 maintaining information on the Governance Entity's address and contact details as provided from time to time by the Governance Entity;

7.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Crown Minerals Protocol;

7.4.3 nominating relevant employees to act as contacts with the Governance Entity in relation to issues concerning this Crown Minerals Protocol; and

7.4.4 providing the Governance Entity with the names of the relevant employees who will act as contacts with the Governance Entity in relation to issues concerning this Crown Minerals Protocol.

8. DEFINITIONS

8.1 In this Crown Minerals Protocol:

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

Crown means Her Majesty the Queen 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 7 February 2014 between the Crown and Ngāti Kuri;

Governance Entity means the Te Manawa O Ngāti Kuri Trust;

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;

Ngāti Kuri has the meaning set out in clause 11.11 of the Deed of Settlement;

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; and

Protocol means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Crown Minerals Protocol.

PROTOCOL WITH THE MINISTER OF ENERGY AND RESOURCES – Ngāti Kuri

ISSUED on 5 November 2015

SIGNED for and on behalf of
THE CROWN by the Minister of Energy and
Resources in the presence of:

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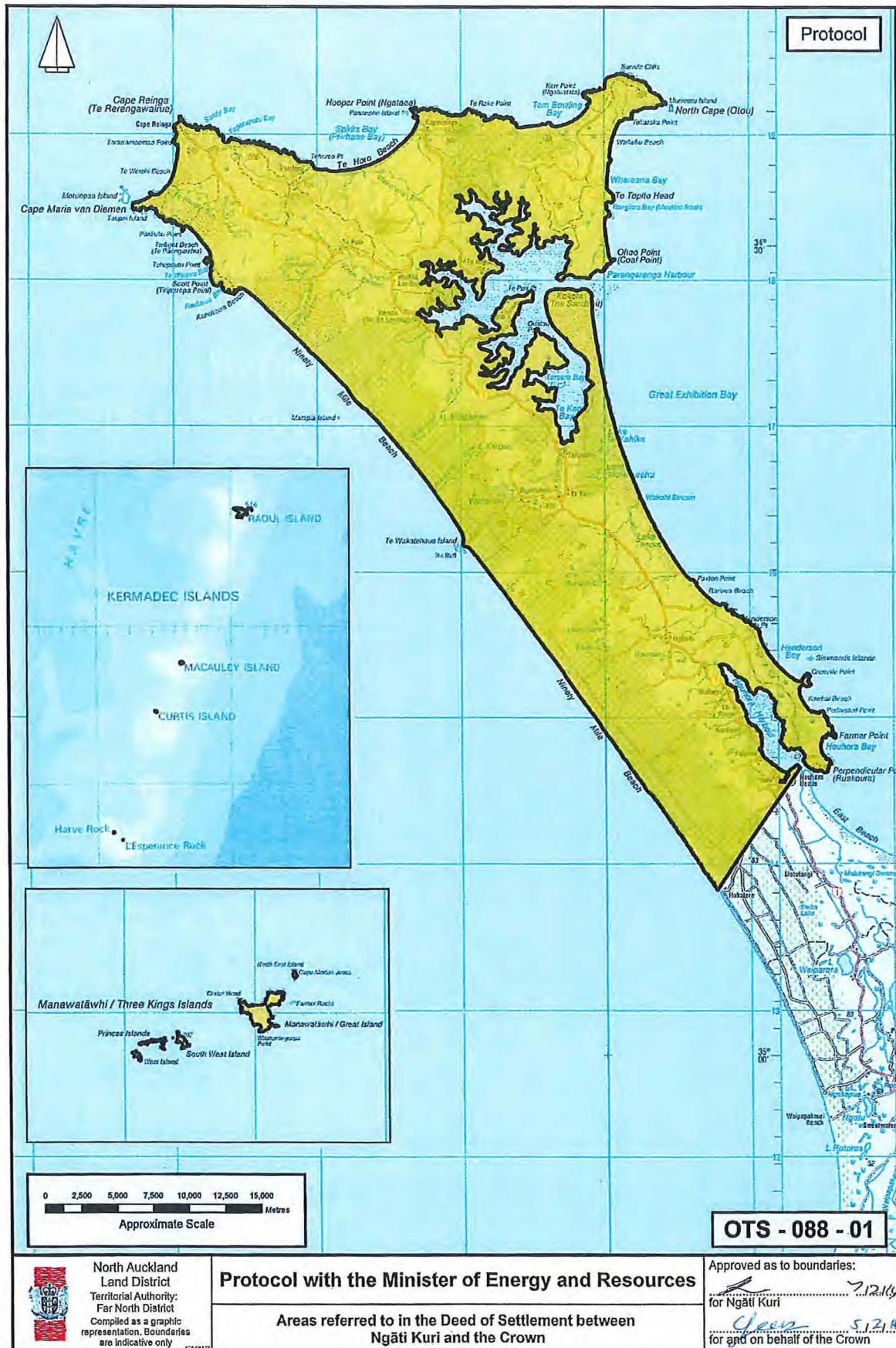
Signature of Witness

Witness Name: Stephanie Fern Edridge

Occupation: Senior Private Secretary

Address: 51R, Executive Wing, Parliament Buildings, Wellington

ATTACHMENT A: CROWN MINERALS PROTOCOL AREA



ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE

This Minerals 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 Minerals Protocol, but only after consulting with Te Manawa O Ngāti Kuri Trust and having particular regard to their views (section 123(2) and (3)).

2. Noting

- 2.1 A summary of the terms of this Minerals 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 Minerals Protocol Area when those programmes are changed;

but the addition:

- 2.1.3 is for the purpose of public notice only; and
- 2.1.4 does not change the minerals programmes for the purposes of the Crown Minerals Act 1991 (section 126(2)(b)).

3. Limits

- 3.1 This Minerals 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 tangata whenua (section 124(a)) or
- 3.1.2 restrict the responsibilities of the Minister or the Ministry under the Crown Minerals Act 1991 or the legal rights of Ngāti Kuri or a representative entity (section 124(b) and (c)); or
- 3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown minerals (section 126(3)); or
- 3.1.4 affect any interests under the Marine and Coastal Area (Takutai Moana) Act 2011.

- 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, Te Manawa O Ngāti Kuri Trust may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 125(2) and (3)).
- 4.2 A breach of this Minerals Protocol is not a breach of the Deed of Settlement (clause 8.14).