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1 CROWN MINERALS PROTOCOL

*MSW*

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**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING CONSULTATION WITH NGĀTI MĀKINO BY THE MINISTRY OF ECONOMIC DEVELOPMENT ON THE ADMINISTRATION OF CROWN OWNED MINERALS**

**1 INTRODUCTION**

- 1.1 Under the deed of settlement dated 2 April 2011 between Ngāti Mākino, the trustees of Ngāti Mākino Iwi Authority (the “trustees”), and the Crown (the “**deed of settlement**”), the Crown agreed that the Minister of Energy and Resources (the “**Minister**”) would issue a protocol (the “**Crown Minerals Protocol**” or “**this protocol**”) setting out how the Ministry of Economic Development (the “**Ministry**”) will consult with the trustees on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Ngāti Mākino 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 restate and reform the law relating to the management of Crown owned minerals. 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 protocol area.

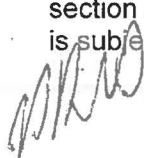
**2 PURPOSE OF THIS PROTOCOL**

- 2.1 With the intent of creating a constructive relationship between Ngāti Mākino and the Ministry in relation to mineral resources administered in accordance with the Act in the 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 trustees 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 PROTOCOL AREA**

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

**4 TERMS OF ISSUE**

- 4.1 This Crown Minerals Protocol is issued pursuant to clause 5.8 of the deed of settlement and section 22 of Ngāti Makino Claims Settlement Act 2012 (the “**settlement legislation**”), and is subject to the settlement legislation and the deed of settlement.
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- 4.2 A summary is attached in Attachment B of the terms of issue of this protocol in the deed of settlement and the settlement legislation.

## **5 CONSULTATION**

- 5.1 The Minister will ensure that the trustees are consulted by the Ministry:

### **New minerals programmes**

- 5.1.1 on the preparation of new minerals programmes which relate, whether wholly or in part, to the protocol area;

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

- 5.1.2 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 protocol area;

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

- 5.1.3 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 5.1.2;

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

- 5.1.4 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**

- 5.1.5 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**

- 5.1.6 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 5.1.5 or where the application relates to newly available acreage;

### **Newly available acreage**

- 5.1.7 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; and

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

- 5.1.8 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.

- 5.2 Each decision on a proposal referred to in clause 5.1 will be made having regard to any matters raised as a result of consultation with the trustees, and having regard to the principles of Te Tiriti o Waitangi/ the Treaty of Waitangi.



- 5.3 No person may, for the purpose of carrying out a minimum impact activity, enter onto any site that is –
- (a) regarded as a wāhi tapu site by the trustees; and is
  - (b) vested or transferred to Ngāti Mākinō through the [Ngāti Mākinō Claims Settlement Act]; -
- without the consent of the trustees.

## 6. IMPLEMENTATION AND COMMUNICATION

- 6.1 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 5.1 of this Crown Minerals Protocol. The Ministry will consult with the trustees in accordance with this Crown Minerals Protocol and in accordance with the relevant minerals programme if matters described in clause 5.1 of this Crown Minerals Protocol Area may affect the interests of Ngāti Mākinō.
- 6.2 The basic principles that will be followed by the Ministry in consulting with the trustees in each case are:
- 6.2.1 ensuring that the trustees are 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 5 of this Crown Minerals Protocol;
  - 6.2.2 providing the trustees with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 5 of this Crown Minerals Protocol;
  - 6.2.3 ensuring that sufficient time is given for the participation of the trustees in the decision making process and the consideration by the trustees of their submissions in relation to any of the matters described in clause 5 of this Crown Minerals Protocol; and
  - 6.2.4 ensuring that the Ministry will approach the consultation with the trustees with an open mind, and will genuinely consider the submissions of the trustees in relation to any of the matters described in clause 5 of this Crown Minerals Protocol.
- 6.3 Where the Ministry is required to consult the trustees as specified in clause 6.1, the Ministry will report back in writing to the trustees on the decision made as a result of such consultation.
- 6.4 The Ministry will seek to fulfil its obligations under this Crown Minerals Protocol by:
- 6.4.1 maintaining information on the trustees' address and contact details as provided from time to time by the trustees;
  - 6.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Crown Minerals Protocol;
  - 6.4.3 nominating relevant employees to act as contacts with the trustees in relation to issues concerning this Crown Minerals Protocol; and
  - 6.4.4 providing the trustees with the names of the relevant employees who will act as contacts with the trustees in relation to issues concerning this Crown Minerals Protocol;



## 7 DEFINITIONS

### 7.1 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 [ ] between the Crown, Ngāti Māhino and the trustees;

**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 Economic Development;

**Ngāti Māhino** has the meaning set out in clause 8.5 of the deed of settlement;

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

**petroleum** means:

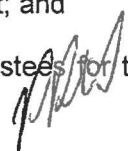
- (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of hydrocarbons (other than coal) 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 the Trustees under the settlement legislation and the deed of settlement and includes this Crown Minerals Protocol; and

**Secretary** means the chief executive of the Ministry of Economic Development; and

**trustees** has the same meaning as in the deed of settlement, being the trustees for the time being of the Ngāti Māhino Iwi Authority.



ISSUED ON [ 20/08/12 ]

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



**WITNESS**

Name Jamie GRAY

Occupation Private Secretary

Address Wellington

MRM

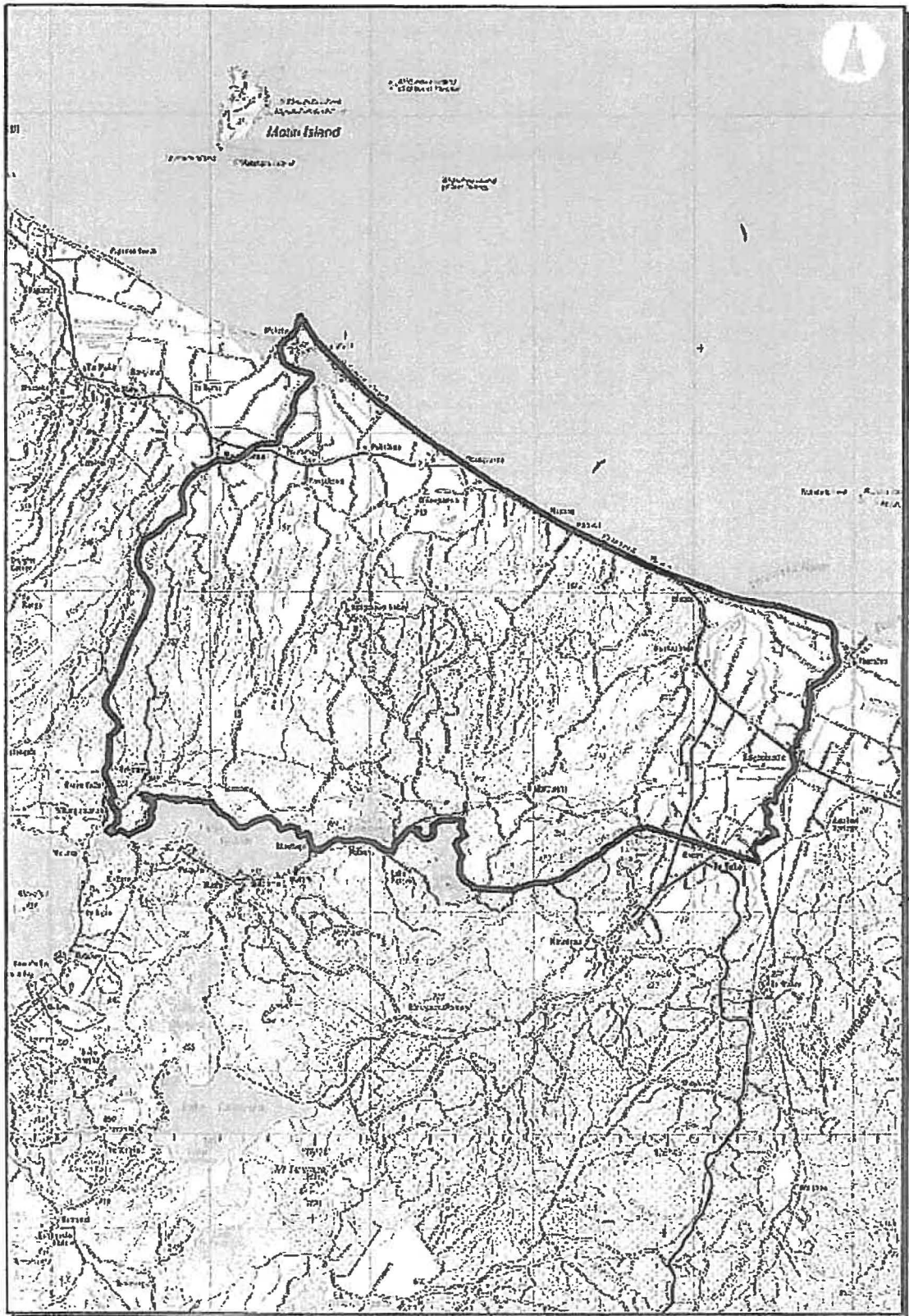
**DOCUMENTS SCHEDULE**

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**5: CROWN MINERALS PROTOCOL**

**CROWN MINERALS PROTOCOL AREA**

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## 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 the trustees and having particular regard to their views (*section [number]*).

#### 2. Noting

- 2.1 The existence of this protocol must be noted in minerals programmes affecting the protocol area, but the noting –

2.1.1 is for the purpose of public notice only; and

2.1.2 does not amend the minerals programme (*section [number]*).

#### 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 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 19(a)(ii)*); or

3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Mākino (*section 19(b) and (c)*); or

3.1.3 grant, create, or evidence an estate or interest in, or rights relating to, Crown owned minerals (*section 22(3)*).

#### 4. Breach

- 4.1 Subject to the Crown Proceedings Act 1950, the trustees may enforce this protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section 20(3)*).

- 4.2 A breach of this protocol is not a breach of the deed of settlement (*clause 5.11*).



