

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

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 12 December 2009 between Ngāti Manawa 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**") setting out how the Ministry of Economic Development (the "**Ministry**") will consult with the Ngāti Manawa governance entity (the "**Governance Entity**") on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Ngāti Manawa 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 Ngāti Manawa has interests and responsibilities in relation to the Protocol Area. These interests and responsibilities are inextricably linked to whakapapa and have important cultural and spiritual dimensions.
- 1.6 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 This Crown Minerals Protocol outlines how the Ministry will have regard to the rights and interests of Ngāti Manawa while exercising 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 NGĀTI MANAWA GUIDING PRINCIPLES

Ko Tāwhiuau te maunga

Ko Rangitaiki te awa

Ko Rangipo te wehenga o te tuna

Ko Ngāti Manawa te iwi

Ko Tangiharuru te tangata

Tāwhiuau is the mountain

Rangitaiki is the River

Rangipo is the departure place of the eels

Ngāti Manawa are the people

Tangiharuru is the Chief

Manawa tu, Manawa oho, Manawa Rere, Manawakotokoto

- 3.1 Ngāti Manawa values, aspirations, and associations encapsulate and express the world view of Ngāti Manawa with the essence of acknowledging the spiritual and physical relationships with the past and present for future generations. In doing so the inter-relationships and interconnectedness of these principles will continue to ensure that Ngāti Manawa continues to provide, and act in and for, the best interests of Ngāti Manawa at all times.
- 3.2 The following principles are interlinked and are fluid and extend across Ngāti Manawa rohe; they are formed from reciprocity and cannot be dissected without affecting the other; they are in-separable:

Turangawaewae: Physical and spiritual relationships to the whenua; strong association and connection.

Ahikāroa: The eternal fires of occupation and whakapapa. Kainga, mahinga kai, settlements and camps hold importance as expressions of ahikāroa.

Mana Motuhake: The rights and ability to control, manage, direct and influence Ngāti Manawa's future to its full potential. Prestige and identity linked to all things and associated with obligations and responsibility for the benefit of all Ngāti Manawa.

Kaitiakitanga: The inherent and inherited responsibility for the sustainable use and care of resources where relationships are based on reciprocity between mana tangata, mana whenua, mana atua, mana ora. Welfare of the resource first and foremost; for the benefit of the resource and the people and the respect and commitment each have for one another.

Tino Rangatiratanga: Expressed as an act, relationship, association, thought and authorises and empowers one's rights and responsibilities to act and behave with the

utmost respect in a given situation. Ngāti Manawa responsibilities and aspirations extend beyond any individual, organisation and generation.

Whakapapa: The physical and spiritual relationships with mana atua, mana tangata and mana whenua. Values of connectivity through past, present, and future relationships.

Mauri: Life force, ethos imbues in all things animate and inanimate. If the mauri is damaged, so too will be the mauri of the people.

Tikanga: Parameters by which activities are conducted to ensure the safeguarding and health of those values that Ngāti Manawa hold steadfast eg: policies and procedures, terms and conditions. Appropriate behaviour and conduct for the wellbeing and intent of the situation. Ngāti Manawa has its own tikanga in respect of the kaitiakitanga of their waters which dictates the way they manifest their management, interests and rights over and in their taonga.

Wairua: Spirituality imbued in all things requiring acknowledgement and response. Upholding the wairua.

Manaakitanga: To care, nurture and ensure the collective wellbeing and interest of Ngāti Manawa. The collective takes precedence over personal gain and self interest.

Mana Whenua: Ancestral rights that are not only based on lands and resources.

4 **PROTOCOL AREA**

- 4.1 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.

5 **TERMS OF ISSUE**

- 5.1 This Crown Minerals Protocol is issued pursuant to section 34 of the Ngati Manawa Claims Settlement Act 2012 (the "Settlement Legislation") that implements clause 5.9 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 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 Protocol Area;

Other petroleum exploration permit applications

- 6.1.3 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 6.1.2;

Amendments to petroleum exploration permits

- 6.1.4 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

- 6.1.5 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

- 6.1.6 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 6.1.5 or where the application relates to newly available acreage;

Newly available acreage

- 6.1.7 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

- 6.1.8 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.

- 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.

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 may affect the interests of Ngāti Manawa.

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 6.1 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 6.1 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 6.1 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 6.1 of this Crown Minerals Protocol.

7.3 Where the Ministry is required to consult the Governance Entity as specified in clause 6.1, 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 EXCLUSION FOR AREAS OF SIGNIFICANT IMPORTANCE TO NGĀTI MANAWA

- 8.1 The Crown has responsibilities in relation to active protection. As a result of the consultation specified in clause 6.1 the Governance Entity may request that defined areas of land of significant importance to the mana of Ngāti Manawa are excluded from the operation of the minerals programme or shall not be included in any block offer or permit. If the Governance Entity and the Crown think it appropriate, there may be face-to-face consultation or a hui held.

9 INFORMATION PROVISION

- 9.1 The Ministry will make available to Ngāti Manawa all existing information held by the Ministry where that information is requested by Ngāti Manawa for the purposes of assisting them to exercise their rights under this Protocol.
- 9.2 The obligation in clause 9.1 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 Minister or Ministry has grounds to withhold under the Official Information Act 1982.

10 DISPUTE RESOLUTION

- 10.1 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 the Governance Entity 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 10.1(a), the Chief Executive and the nominated representative of the Governance Entity will meet to work in good faith to resolve the issue.

11 DEFINITIONS

- 11.1 In this Crown Minerals 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 12 December 2009 between the Crown and Ngāti Manawa;

Governance Entity has the meaning set out in clause 13.6 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 Economic Development;

Ngāti Manawa has the meaning set out in clause 13.1 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 Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Crown Minerals Protocol;

Protocol Area has the meaning given to it in clause 4; and

Secretary means the chief executive of the Ministry of Economic Development

ISSUED ON - 8 MAY 2012

SIGNED for and on behalf of

THE SOVEREIGN

in right of New Zealand by the Minister of

Energy and Resources in the presence of:

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)
)
)



Signature of Witness

Witness Name:

Jamie GRAY

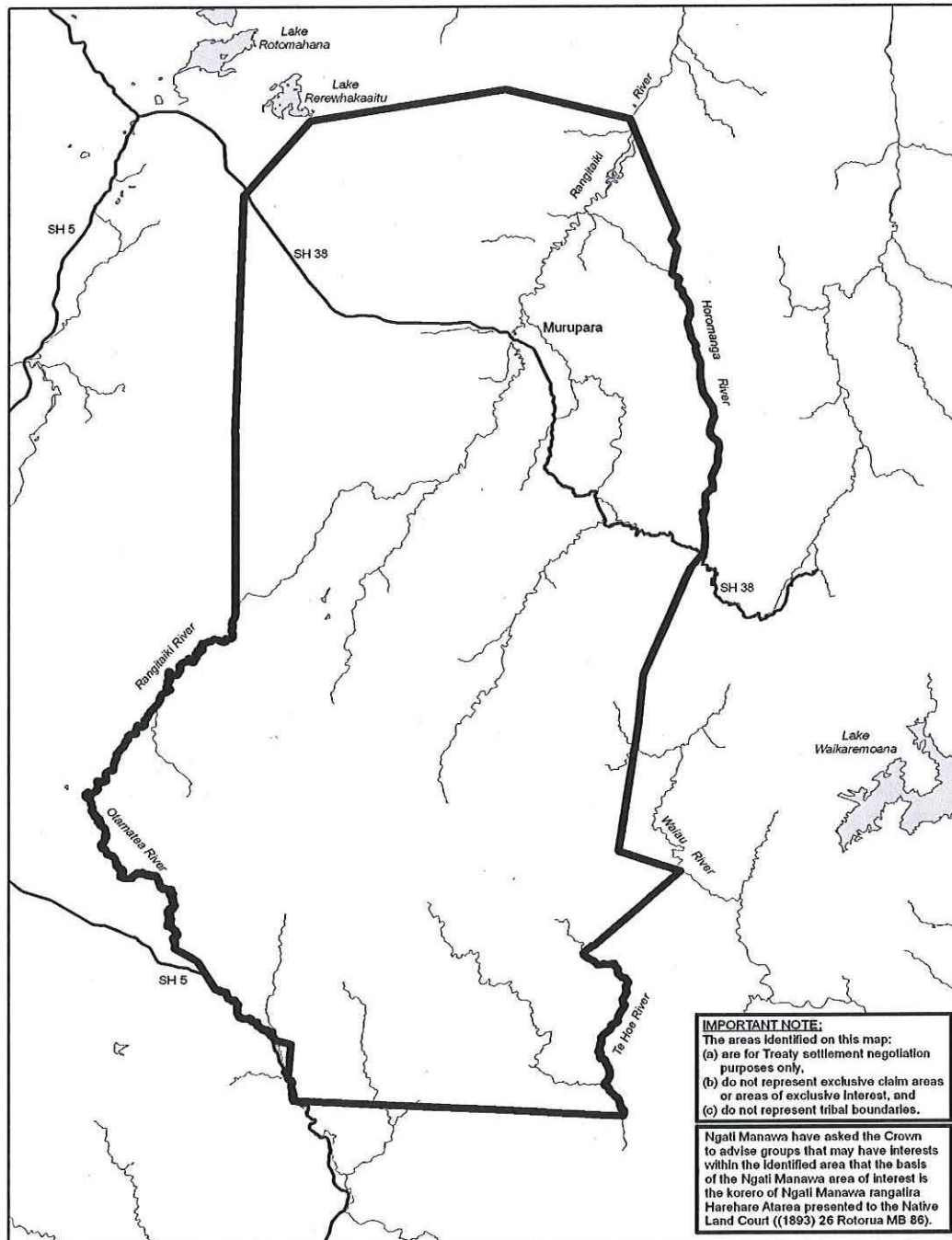
Occupation:

Private Secretary to Hon Phil Heatley

Address:

Wellington

ATTACHMENT A PROTOCOL AREA



ATTACHMENT B

CROWN MINERALS TERMS OF ISSUE

This Protocol is issued subject to the provisions of the deed of settlement and the settlement legislation. These provisions are set out below.

1 Provisions of the deed of settlement relating to this Protocol

1.1 The deed of settlement will provide that:

- 1.1.1 a failure by the Crown to comply with a Protocol is not a breach of the Deed of Settlement (clause 5.12); and
- 1.1.2 this Protocol does not restrict the ability of the Crown to interact or consult with any person including any iwi, hapū, marae, whānau, or representative of tangata whenua (clause 5.11.4(a)(ii));
- 1.1.3 this Protocol:
 - (a) is consistent with section 4 of the Crown Minerals Act 1991;
 - (b) does not override or diminish:
 - (i) the requirements of the Fisheries Act 1996;
 - (ii) the functions and powers of the Minister for Energy and Resources, or the Ministry of Economic Development, under that Act; or
 - (iii) the rights of Ngāti Manawa, or a Representative Entity, under that legislation (clause 5.11.4(c)).

1.2 Representative Entity has the same meaning in clause 1.1.3(iii) of these terms of issue as the term "representative entity for Ngāti Manawa" has in clause 13.6 of the Deed of Settlement.

2 Authority to issue, amend or cancel protocols

2.1 Section 34 of the Settlement Legislation provides that:

- (1) Each responsible Minister –
 - (a) must issue a protocol to the trustees of Te Rūnanga o Ngāti Manawa in the form set out in Part 2 of the Schedule of the deed of settlement; and
 - (b) may amend or cancel that protocol.
- (2) A protocol may be amended or cancelled under subsection (1) at the initiative of either –
 - (a) the trustees of Te Rūnanga o Ngāti Manawa; or
 - (b) the responsible Minister.

- (3) The responsible Minister may amend or cancel a protocol only after consulting with, and having particular regard to the views of, the trustees of Te Rūnanga o Ngāti Manawa.

3 Protocols subject to rights, functions, and obligations

3.1 Section 35 of the Settlement Legislation provides that:

Protocols do not restrict -

- (a) the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and government policy, which includes (without limitation) the ability to –
 - (i) introduce legislation and change government policy; and
 - (ii) interact or consult with a person the Crown considers appropriate, including (without limitation) any iwi, hapū, marae, whānau, or other representative of tangata whenua; or
- (b) the responsibilities of the responsible Minister or a responsible department; or
- (c) the legal rights of the trustees of Te Rūnanga o Ngāti Manawa or a representative entity.

4 Noting of this Protocol

4.1 Section 40(1), (2) and (4) of the settlement legislation provides that:

- (1) A summary of the terms of the Crown minerals protocol must be noted –
 - (a) in a register of protocols maintained by the chief executive of the Ministry of Economic Development; and
 - (b) in the minerals programmes affecting the Crown minerals protocol area when those programmes are replaced.
- (2) The noting of the Crown minerals protocol is –
 - (a) for the purpose of public notice only; and
 - (b) not an amendment to the minerals programme for the purpose of the Crown Minerals Act 1991.
- ...
- (4) In this section minerals programme has the meaning given to it in section 2(2) of the Crown Minerals Act 1991.

5 Enforcement of a protocol

5.1 Section 36 of the settlement legislation provides that:

- (1) The Crown must comply with a protocol while it is in force.

- (2) If the Crown fails, without good cause, to comply with a protocol, the trustees of Te Rūnanga o Ngāti Manawa may, subject to the Crown Proceedings Act 1950, enforce the protocol.
- (3) Despite subsection (2) damages or any form of monetary compensation are not available as a remedy for failure by the Crown to comply with a protocol.
- (4) To avoid doubt –
 - (a) subsections (1) and (2) do not apply to guidelines developed for the implementation of a protocol; and
 - (b) subsection (3) does not affect the ability of a court to award costs incurred by the trustees of Te Rūnanga o Ngāti Manawa in enforcing the protocol under subsection (2).

6 Limitation of rights

6.1 Section 40(3) of the settlement legislation provides that:

- (3) The Crown minerals protocol does not have the effect of creating, granting or providing evidence of an estate or interest in, or rights relating to, any Crown owned mineral.