

CROWN MINERALS PROTOCOL

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

1. INTRODUCTION

- 1.1 Under the Deed of Settlement dated 22 December 2010 between Ngati Porou, the Governance Entity 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 Governance Entity on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Ngati Porou are seeking a healthy and constructive relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi. Consistent with the partnership principle underlying Te Tiriti o Waitangi/the Treaty of Waitangi, Ngati Porou and the Minister have entered into this Crown Minerals Protocol in good faith and as equals. Ngati Porou and the Minister acknowledge that they are obliged to give effect to this Crown Minerals Protocol and to act in good faith, fairly, reasonably and honourably towards each other.
- 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 minerals 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 Treaty-based relationship as set out in clause 1.2 of this Protocol between Ngati Porou 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 In addition to the Minister and Secretary's obligations set out in this Crown Minerals Protocol, the Ministry will provide the Governance Entity with 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 Ngati Porou asserts that traditionally, Ngati Porou owned and used the mineral resources and taonga in their rohe.
- 3.2 In reaching this Crown Minerals Protocol with the Minister, Ngati Porou 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 In 1937, in opposition to the Petroleum Bill, Sir Apirana Ngata stated that the Bill violated the Treaty guarantee of Maori ownership of their property, which included the right to the modern exploration of resources on, in, or under their property.
- 3.4 The Minister acknowledges that Ngati Porou 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. The Ngati Porou mana remains intact, in spite of any legislative expropriation.
- 3.5 The Minister further acknowledges that Ngati Porou asserts that despite the expropriation of its ownership it has a right to make decisions regarding mining in the Crown Minerals Protocol Area.
- 3.6 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. CONSULTATION

- 5.1 The Crown has an obligation under the Act (as provided for in minerals programmes) to consult with relevant iwi and hapu on matters set out in the Act and the relevant minerals programmes. The Minister will ensure that the Governance Entity is consulted by the Ministry in accordance with the Act, the relevant minerals programme, and the Crown Minerals Protocol, on the following matters:

New minerals programmes

- 5.1.1 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

- 5.1.2 During 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. This will include:
- (a) outlining the proposals for holding the block offer, and consulting with the Governance Entity on these proposals over the consultation period set out in the relevant minerals programme; and
 - (b) holding face to face meetings, if the Governance Entity and the Crown consider it appropriate.

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 Crown Minerals 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 Crown Minerals 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 Crown Minerals 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 Crown Minerals 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 Crown Minerals Protocol Area.

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 Crown Minerals Protocol Area.

Gold fossicking areas

- 5.1.9 When any request is received or proposal is made to designate land as a gold fossicking area which relates, whether wholly or in part, to the Crown Minerals Protocol Area.

- 5.2 Requests the Governance Entity may make include:

- 5.2.1 an amendment to the proposed competitive tender or block offer; or
- 5.2.2 that defined areas of land are excluded from a permit or competitive tender.

- 5.3 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 Governance Entity, and having regard to the principles of Te Tiriti o Waitangi/ the Treaty of Waitangi.

6 EFFECTS ON THE NGATI POROU INTERESTS IN RELATION TO CROWN OWNED MINERALS IN THE CROWN MINERALS PROTOCOL AREA

- 6.1 The Minister and Secretary will consult with the Governance Entity on any policy and legislative development or review in relation to the administration of Crown owned minerals which may affect Ngati Porou interests in relation to Crown owned minerals in the Crown Minerals Protocol Area, and the Crown Minerals Protocol.
- 6.2 The Minister and Secretary will consult with the Governance Entity on any of the Ministry's Crown owned minerals operational activities which may affect Ngati Porou interests in relation to Crown owned minerals in the Crown Minerals Protocol Area, and the Crown Minerals Protocol.
- 6.3 Notwithstanding clauses 6.1 and 6.2 above, the Minister and Secretary and Governance Entity may meet to discuss Ngati Porou interests in relation to Crown owned minerals in the Crown Minerals Protocol Area as part of the meetings specified in clause 7.3.

7 IMPLEMENTATION AND COMMUNICATION

- 7.1 The basic principles and processes that will be followed by the Minister and Secretary in consulting with the Governance Entity in each case are:
- (a) ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification by the Ministry of the proposal or issues in relation to any matters under clauses 5 and 6 of this Crown Minerals Protocol;
 - (b) providing the Governance Entity, in a timely manner, 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;
 - (c) 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 5 of this Crown Minerals Protocol; and
 - (d) ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions and/or views of the Governance Entity in relation to any of the matters described in clause 5 of this Crown Minerals Protocol.
- 7.2 Where the Ministry is required to consult the Governance Entity as specified in clause 5.1, the Ministry will report back in writing to the Governance Entity on the decision made as a result of such consultation.
- 7.3 Face to face meetings will be held if mutually agreed by the parties, such agreement not to be unreasonably withheld.
- 7.4 The parties will jointly confirm the meetings and agendas of the meetings specified in clause 8.3.
- 7.5 The location of the meetings specified in clause 7.3 will be mutually agreed by the parties.
- 7.6 The Ministry will seek to fulfil its obligations under this Crown Minerals Protocol by:

- (a) maintaining information on the Governance Entity's address and contact details as provided from time to time by the Governance Entity;
- (b) as far as reasonably practicable, ensure relevant employees within the Ministry are aware of the purpose, content and implications of this Crown Minerals Protocol;
- (c) nominating relevant employees to act as contacts with the Governance Entity in relation to issues concerning this Crown Minerals Protocol;
- (d) 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;
- (e) discussing with the Governance Entity concerns and issues notified by the Governance Entity about this Crown Minerals Protocol;
- (f) as far as reasonably practicable, providing opportunities for the Governance Entity to meet with relevant Ministry managers and staff;
- (g) where relevant and reasonably practicable, providing opportunities for the Governance Entity to meet with the Minister and Secretary;
- (h) as far as reasonably practicable and where relevant, informing other organisations with whom it works, central government agencies and stakeholders about this Crown Minerals Protocol and provide ongoing information; and
- (i) including the summary of the Terms of Issue and Crown Minerals Protocol Area of the Crown Minerals Protocol in the relevant minerals programmes when these are issued.

8 INFORMATION SHARING

- 8.1 The Minister and Secretary will make available to the Governance Entity all existing information held by, and reasonably accessible to, the Ministry where that information is requested by the Governance Entity for the purpose of assisting them to fully exercise their rights under this Crown Minerals Protocol.
- 8.2 The obligations in clause 8.1 of this Crown Minerals Protocol do not apply to information that the Minister or Secretary 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 Secretary may withhold under the Official Information Act 1982.
- 8.3 The Minister and Secretary will make available to the Governance Entity names and contact details of all relevant permit holders.

9 DISPUTE RESOLUTION

- 9.1 If one party considers that there has been a breach of this Crown Minerals 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 Crown Minerals 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 clause 9.1(a), the Chief Executive and the nominated representative of the Governance Entity will meet to work in good faith to resolve the issue.

- (c) If the dispute has still not been resolved within 30 working days of the receipt of the notice referred to in 9.1(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 both parties agree, the Minister and the chair of the Governance Entity will meet to work in good faith to resolve the issue.

10 CONSULTATION WITH TANGATA WHENUA

- 10.1 This protocol does not restrict the ability of the Crown to interact or consult with any person that the Crown considers appropriate including any representatives of Ngati Porou whanau, hapu or marae.
- 10.2 Where representatives of Ngati Porou hapu or marae whanau are consulted on any matter that relates to the interests of the Governance Entity under clauses 5 and 6 of this Crown Minerals Protocol, the Secretary will inform the Governance Entity of the representatives of Ngati Porou hapu and marae whanau with whom the Crown is interacting or consulting.

11 TERMS OF ISSUE

- 11.1 This Protocol is:

11.1.1 issued under:

- (a) clause 5.4 of the Deed of Settlement; and
- (b) section 38 of the Settlement Legislation; and

11.1.2 subject to the Deed of Settlement and the Settlement Legislation.

- 11.2 A summary is attached of the Terms of Issue of this Protocol in the Deed of Settlement and the Settlement Legislation.

12 DEFINITIONS

- 12.1 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;

Exploration permit has the meaning given to that term in section 2 of the Crown Minerals Act 1991;

Governance Entity has the meaning given to it by 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, and any agency, government department or associated party carrying out, or responsible for the administration of, the roles and functions that the Ministry carried out or was responsible for at the time of signing of this Crown Minerals Protocol;

Ngati Porou has the meaning set out in clause 8.6 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;

Permit has the meaning given to that term in section 2 of the Crown Minerals Act 1991;

Permit holder has the meaning given to that term in section 2 of the Crown Minerals Act 1991;

Petroleum has the meaning given to that term in section 2 of the Crown Minerals Act;

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;

Relevant minerals programme has the meaning given in section 2 of the Crown Minerals Act 1991;

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

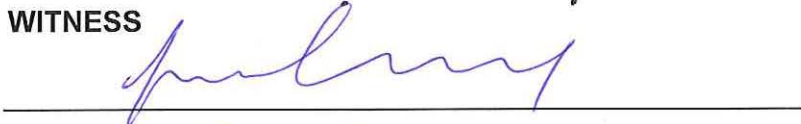
Settlement Legislation means the Ngati Porou Claims Settlement Act 2012.

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.



WITNESS



Name Jamie GRAY

Occupation Private Secretary to Hon Phil Heatley

Address Wellington

ATTACHMENT A: CROWN MINERALS PROTOCOL AREA



ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE

This Crown 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 Crown Minerals Protocol, but only after consulting with the Governance Entity and having particular regard to its views (section 38).

2 Noting

- 2.1 A summary of the terms of this Crown 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 Crown Minerals 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 42).

3 Limits

- 3.1 This Crown 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, hapu, marae, whanau, or representative of tangata whenua (section 39); or

3.1.2 restrict the responsibilities of the Minister or the Ministry under the Crown Minerals Act 1991 or the legal rights of Ngati Porou or a representative entity (section 39); or

3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown owned minerals (section 42).

- 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, the Governance Entity may enforce this Crown Minerals Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 40).
- 4.2 A breach of this Crown Minerals Protocol is not a breach of the Deed of Settlement (clause 5.7).