

## CROWN MINERALS PROTOCOL

<p><b>PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING CONSULTATION WITH NGĀTI RANGITEAORERE BY THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT ON THE ADMINISTRATION OF CROWN OWNED MINERALS</b></p>
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### 1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 14 June 2013 between Ngāti Rangiteaorere 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 Business, Innovation and Employment (the **"Ministry"**) will consult with the Ngāti Rangiteaorere Governance Entity (the **"Governance Entity"**) on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Ngāti Rangiteaorere 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 Rangiteaorere 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 Rangiteaorere:

3.1.1 asserts that Ngāti Rangiteaorere maintain, in accordance with tikanga, an unbroken, inalienable and enduring relationship with, and mana in relation to, the mineral resources and taonga in the Crown Minerals Protocol Area; and

3.1.2 records that they consider there has been a derogation of their ownership of mineral resources by the Crown and that this is a serious Treaty breach.

3.1.3 The Minister acknowledges that Ngāti Rangiteaorere assert that they maintain, 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.

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 petroleum and minerals other than petroleum in the Crown Minerals Protocol Area is prescribed under the Act.

### 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 waters (including foreshore and seabed) of the coastal areas adjacent to the coastal boundary shown on that map within the Territorial Sea (as defined in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977).

### 5 TERMS OF ISSUE

5.1 This Crown Minerals Protocol is issued pursuant to section 27 of Nga Punawai o Tokotoru Claims Settlement (Ngāti Rangiteaorere) Act (the "**Settlement Legislation**") that implements clause 5.6 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 summary of 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 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 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 Crown Minerals 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 Crown Minerals 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 Crown Minerals 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 Crown Minerals 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 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.

## **7 EFFECTS ON NGĀTI RANGITEAORERE'S INTERESTS IN RELATION TO CROWN OWNED MINERALS IN THE CROWN MINERALS PROTOCOL AREA**

- 7.1 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 Ngāti Rangiteaorere interests in relation to Crown owned minerals in the Crown Minerals Protocol Area, and the Crown Minerals Protocol.
- 7.2 The Minister and Secretary will consult with the Governance Entity on any of the Ministry's Crown owned minerals operational activities which may affect Ngāti Rangiteaorere's interests in relation to Crown owned minerals in the Crown Minerals Protocol Area, and the Crown Minerals Protocol.
- 7.3 Notwithstanding clauses 7.1 and 7.2 above, the Minister and Secretary and Governance Entity may meet to discuss Ngāti Rangiteaorere's interests in relation to Crown minerals in the Crown Minerals Protocol Area as part of the consultation specified in clause 8.1.

## **8 IMPLEMENTATION AND COMMUNICATION**

- 8.1 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 Rangiteaorere.
- 8.2 The basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
  - 8.2.1 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;
  - 8.2.2 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;
  - 8.2.3 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
  - 8.2.4 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.



- 8.3 Where the Ministry is required to consult the Governance Entity as specified in clause 8.1, the Ministry will report back in writing to the Governance Entity on the decision made as a result of such consultation.
- 8.4 The Ministry will seek to fulfil its obligations under this Crown Minerals Protocol by:
- 8.4.1 maintaining information on the Governance Entity's address and contact details as provided from time to time by the Governance Entity;
  - 8.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Crown Minerals Protocol;
  - 8.4.3 nominating relevant employees to act as contacts with the Governance Entity in relation to issues concerning this Crown Minerals Protocol; and
  - 8.4.4 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.

## **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:
- 9.1.1 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.
  - 9.1.2 If the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 9.1.1, the Secretary and the nominated representative of the Governance Entity will meet to work in good faith to resolve the issue.
  - 9.1.3 If the dispute has still not been resolved within 30 working days of the receipt of the notice referred to in clause 9.1.1, and where the matter is of 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 DEFINITIONS

### 10.1 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 14 June 2013 between the Crown and Ngāti Rangiteaorere Koromatua Council 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 Rangiteaorere** has the meaning set out in clause 8.5 of the Deed of Settlement;

**Ngāti Rangiteaorere Governance Entity** means the trustees of the Ngāti Rangiteaorere Koromatua Council Trust, in their capacity as trustees of the trust;

**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;
- (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; and

**Secretary** means the Chief Executive of the Ministry of Business, Innovation and Employment.

ISSUED ON 29 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)

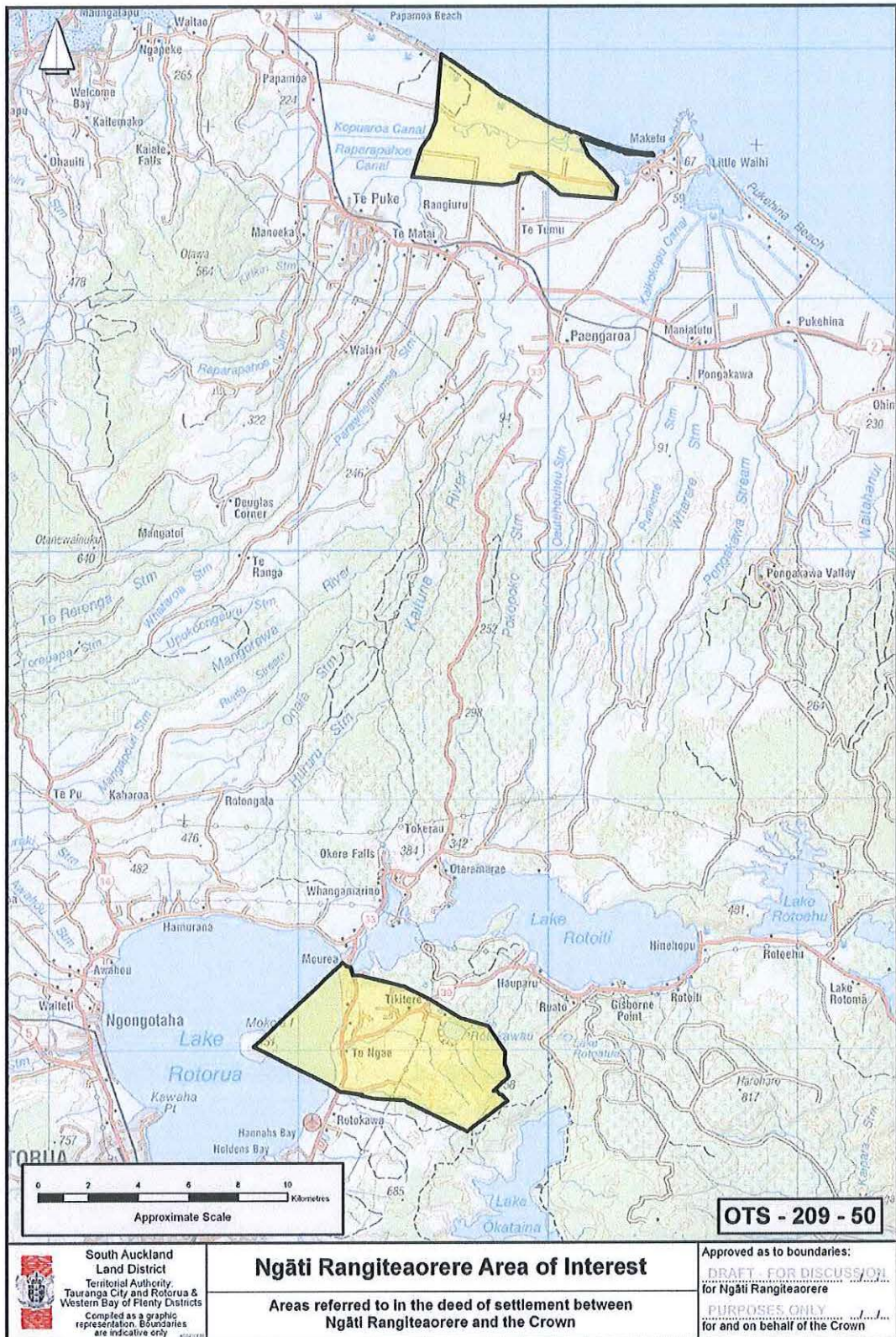
Address

Wellington



# ATTACHMENT A

## CROWN MINERALS PROTOCOL AREA





## **ATTACHMENT B**

### **SUMMARY OF THE TERMS OF ISSUE**

This Crown Minerals 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 provides that:**

1.1.1 a failure by the Crown to comply with a Protocol is not a breach of the Deed of Settlement (clause 5.9);

1.1.2 this Crown Minerals Protocol does not restrict the ability of the Crown to interact or consult with any person including any iwi, hapū, marae, whānau, or other representative of tangata whenua (section 25 of the Settlement Legislation); and

1.1.3 this Crown Minerals Protocol:

(a) is consistent with section 4 of the Crown Minerals Act 1991; and

(b) does not override or diminish:

(i) the requirements of that Act;

(ii) the functions and powers of the Minister of Energy, or the Ministry of Business, Innovation & Employment, under that Act; or

(iii) the rights of Ngāti Rangiteaorere, or a Representative Entity, under that Act (section 25 of the Settlement Legislation).

1.2 Representative Entity has the same meaning in **clause 1.1.3** of these terms of issue as it has in part 6 of the General Matters Schedule.

#### **2. Authority to issue, amend or cancel Protocols**

2.1 Section 24 of the Settlement Legislation provides that the responsible Minister must issue a protocol to Ngāti Rangiteaorere on the terms set out in this document schedule. The responsible Minister may amend or cancel a protocol at the initiative of either Ngāti Rangiteaorere or the responsible Minister. However, the responsible Minister may only amend or cancel a protocol only after consulting and having particular regard to the views of Ngāti Rangiteaorere.

#### **3. Protocols subject to rights and obligations**

3.1 Section 25 of the Settlement Legislation provides that a Protocol does not restrict the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and government policy (including introducing legislation, changing government policy, and interacting or consulting with persons that the Crown considers appropriate for example, iwi and hapū). Protocols also do not restrict the responsibilities of a responsible Minister or a department of State, or the legal rights of Ngāti Rangiteaorere or a representative entity.

#### **4. Noting of Protocol**

- 4.1 Section 28 of the Settlement Legislation provides that the chief executive of the department responsible for the administration of the Crown Minerals Act 1991 must note a summary of the terms of the Crown Minerals Protocol in a register of protocols maintained by the chief executive and in the minerals programmes that affect the Crown Minerals Protocol area, but only when those programmes are replaced. The noting of a Protocol is for the purpose of public notice only and is not an amendment to the minerals programmes for the purposes of the Crown Minerals Act 1991.

#### **5. Enforcement of Protocol**

- 5.1 Section 26 of the Settlement Legislation provides that the Crown must comply with Protocols while they are in force and if the Crown fails to comply without good cause, Ngāti Rangiteaorere may enforce the protocol subject to the Crown Proceedings Act 1950. Failure to comply does not include failure to comply with any guidelines developed for the implementation of a Protocol. Damages or monetary compensation are not available as a remedy for a failure by the Crown to comply with a Protocol, though a court may still award costs incurred by Ngāti Rangiteaorere in enforcing a Protocol.

#### **6. Limitation of rights**

- 6.1 Section 28(3) of the Settlement Legislation provides that the Crown Minerals Protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, Crown minerals.