

**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND
RESOURCES REGARDING CONSULTATION WITH NGĀTI TAMA KI TE TAU IHU BY
THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT ON CROWN OWNED
MINERALS**

1. INTRODUCTION

- 1.1 Under the Deed of Settlement dated 20 April 2013 between Ngāti Tama ki te Tau Ihu, Ngāti Tama ki Te Waipounamu Trust and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister of Energy and Resources (the "**Minister**") would issue a Protocol (the "**Minerals Protocol**") setting out how the Ministry of Business, Innovation and Employment (the "**Ministry**") will consult with the Ngāti Tama ki Te Waipounamu trustees on matters specified in the Minerals Protocol.
- 1.2 For the purposes of this Protocol the Ngāti Tama ki Te Waipounamu trustees are the representatives of the whānau and iwi of Ngāti Tama ki Te Tau Ihu who have 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.
- 1.3 The Ministry and Ngāti Tama ki Te Tau Ihu are seeking a relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.4 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.
- 1.5 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.
- 1.6 This Minerals Protocol will affect the Ministry's administration of Crown owned minerals under the Act in the Minerals Protocol Area.

2. PURPOSE OF THIS PROTOCOL

- 2.1 This Minerals Protocol sets out how the Ministry will have regard to the rights and interests of Ngāti Tama ki Te Tau Ihu while exercising its functions, powers and duties in relation to the matters set out in this Minerals Protocol.
- 2.2 The Ngāti Tama ki Te Waipounamu trustees will have the opportunity for input into the policy, planning, and decision-making processes relating to the matters set out in this Minerals Protocol in accordance with the Act and the relevant minerals programmes issued under the Act.

3. PROTOCOL AREA

- 3.1 This Minerals Protocol applies across the Minerals Protocol Area which means the area identified in the map included in Attachment A of this 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).

4. SUMMARY OF THE TERMS OF ISSUE

- 4.1 This Minerals Protocol is issued pursuant to section 33(1)(a) of the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (the “**Settlement Legislation**”) that implements clause 5.17.4 of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 This Minerals Protocol must be read subject to the summary of the terms of issue set out in Attachment B.

5. CONSULTATION

- 5.1 The Minister will ensure that the Ngāti Tama ki Te Waipounamu trustees are consulted by the Ministry:

Petroleum exploration permit block offers

- 5.1.1 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 Minerals Protocol Area;

Other petroleum exploration permit applications

- 5.1.2 when any application for a petroleum exploration permit is considered, which relates, whether wholly or in part, to the Minerals Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 5.1.1;

Amendments to petroleum exploration permits

- 5.1.3 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 Minerals Protocol Area;

Permit block offers for Crown owned minerals other than petroleum

- 5.1.4 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 Minerals Protocol Area;

Other permit applications for Crown owned minerals other than petroleum

- 5.1.5 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 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 5.1.4;

Newly available acreage

- 5.1.6 when the Secretary proposes to recommend that the Minister grant an application for a permit for newly available acreage in respect of mineral other than petroleum, which relates, whether wholly or in part, to the Minerals Protocol Area;

Amendments to permits for Crown owned minerals other than petroleum

- 5.1.7 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
- 5.1.8 where the application relates, wholly or in part, to the Minerals Protocol Area.

New minerals programmes

- 5.1.9 on the preparation of new minerals programmes which relate, whether wholly or in part, to the Minerals 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 Ngāti Tama ki Te Waipounamu trustees, 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.
- 5.3 Where the Ngāti Tama ki Te Waipounamu trustees request that the Minister exclude land from a permit or competitive tender referred to in clause 5.1, the Minister will ordinarily consider the following matters:
- (a) the particular importance of the land to Ngāti Tama ki Te Tau Ihu;
 - (b) whether the land is a known wāhi tapu site;
 - (c) the uniqueness of the land (for example, whether the land is mahinga kai (food gathering area) or waka tauranga (a landing place of the ancestral canoes));
 - (d) whether the importance of the land to Ngāti Tama ki Te Tau Ihu has already been demonstrated (for example, by Treaty claims or Treaty settlements resulting in a statutory acknowledgment or other redress instrument under settlement legislation);
 - (e) any relevant Treaty claims or settlements;
 - (f) whether granting a permit over the land or the particular minerals would impede the progress of redress of any Treaty claims;
 - (g) any Ngāti Tama ki Te Tau Ihu management plans that specifically exclude the land from certain activities;
 - (h) the ownership of the land;

- (i) whether the area is already protected under an enactment (for example, the Resource Management Act 1991, the Conservation Act 1987, or the Historic Places Act 1993); and
- (j) the size of the land and the value or potential value of the relevant mineral resources if the land is excluded.

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 Minerals Protocol. The Ministry will consult with the Ngāti Tama ki Te Waipounamu trustees in accordance with this Minerals Protocol and in accordance with the relevant minerals programme if matters described in clause 5.1 and clause 6 of this Minerals Protocol Area may affect the interests of Ngāti Tama ki Te Tau Ihu.
- 6.2 The basic principles that will be followed by the Ministry in consulting with the Ngāti Tama ki Te Waipounamu trustees in each case are:
 - 6.2.1 ensuring that the Ngāti Tama ki Te Waipounamu 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 Minerals Protocol;
 - 6.2.2 providing the Ngāti Tama ki Te Waipounamu trustees with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 5 of this Minerals Protocol;
 - 6.2.3 ensuring that sufficient time is given for the participation of the Ngāti Tama ki Te Waipounamu trustees in the decision making process and the consideration by the Ngāti Tama ki Te Waipounamu trustees of its submissions in relation to any of the matters described in clause 5 of this Minerals Protocol; and
 - 6.2.4 ensuring that the Ministry will approach the consultation with the Ngāti Tama ki Te Waipounamu trustees with an open mind, and will genuinely consider the submissions of the Ngāti Tama ki Te Waipounamu trustees in relation to any of the matters described in clause 5 of this Minerals Protocol.
- 6.3 Where the Ministry is required to consult the Ngāti Tama ki Te Waipounamu trustees as specified in clause 6.1, the Ministry will report back in writing to the Ngāti Tama ki Te Waipounamu trustees on the decision made as a result of such consultation.
- 6.4 The Ministry will seek to fulfil its obligations under this Minerals Protocol by:
 - 6.4.1 maintaining information on the Ngāti Tama ki Te Waipounamu trustees address and contact details as provided from time to time by the Ngāti Tama ki Te Waipounamu 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 Minerals Protocol;

- 6.4.3 nominating relevant employees to act as contacts with the Ngāti Tama ki Te Waipounamu trustees in relation to issues concerning this Minerals Protocol; and
- 6.4.4 providing the Ngāti Tama ki Te Waipounamu trustees with the names of the relevant employees who will act as contacts with the Ngāti Tama ki Te Waipounamu trustees in relation to issues concerning this Minerals Protocol.

7 CHANGES TO POLICY AND LEGISLATION

- 7.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Crown Minerals Act that impacts upon this Protocol, the Chief Executive shall:
 - 7.1.1 notify the Ngāti Tama ki Te Waipounamu trustees of the proposed policy development or proposed legislative amendment;
 - 7.1.2 make available to the Ngāti Tama ki Te Waipounamu trustees the information provided to Māori as part of the consultation process referred to in this clause; and
 - 7.1.3 report back to the Ngāti Tama ki Te Waipounamu trustees on the outcome of any such consultation.

8 DEFINITIONS

- 8.1 In this 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 20 April 2013 between the Crown and Ngāti Tama ki Te Tau Ihu.

Land includes land covered by water and also includes the foreshore and seabed to the outer limits of the territorial sea;

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 Tama ki Te Tau Ihu has the meaning set out in clause 8.8 of the Deed of Settlement;

Ngāti Tama ki Te Waipounamu trustees means has the meaning set out in paragraph 5.1 of the general matters schedule 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 Ngāti Tama ki Te Waipounamu trustees under the Settlement Legislation and the Deed of Settlement and includes this Minerals Protocol.

ISSUED ON

16 MAY 2014

SIGNED for and on behalf of
THE SOVEREIGN
in right of New Zealand by
the Minister of Energy and Resources

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Signature of witness

Witness Name:

Jamie GRAY

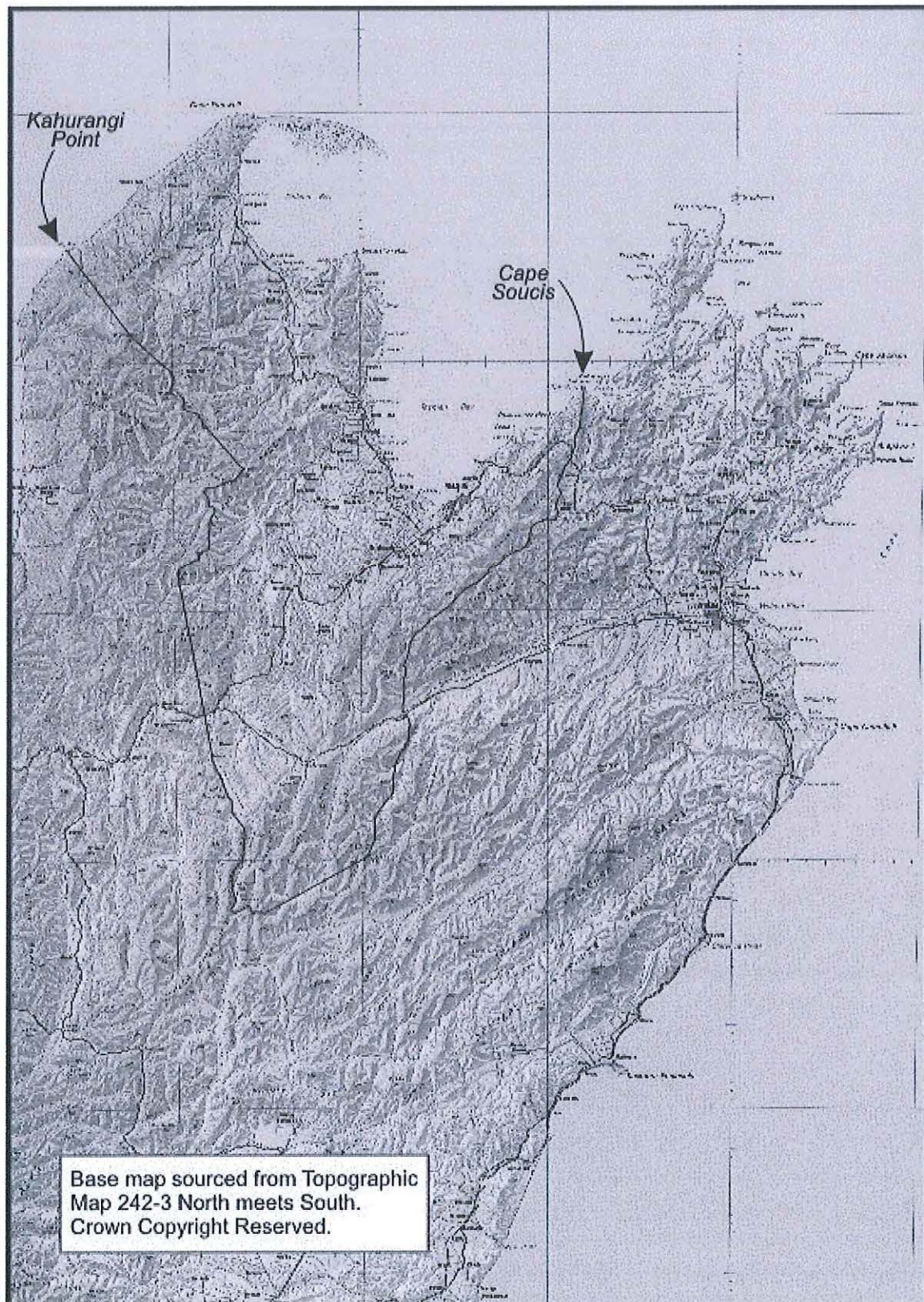
Occupation:

Private Secretary - Energy + Resources

Address:

Wellington

ATTACHMENT A
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 the Ngāti Tama ki Te Waipounamu trustees and having particular regard to their views (*section 33(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 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 39(1)(a) and (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 34(a) and (b)*); 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 Tama ki Te Tau Ihu or a representative entity (*section 34(c)*); or

3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown owned minerals (*section 36(3)*).

- 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 Ngāti Tama ki Te Waipounamu trustees may enforce this Minerals Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section 35(2) and (3)*).
- 4.2 A breach of this Minerals Protocol is not a breach of the Deed of Settlement (clause 5.7).