

PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING THE CONSULTATION WITH NGĀTI TAMAHO BY THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT ON THE ADMINISTRATION OF CROWN OWNED MINERALS

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 30 April 2017 between the trustees of the Ngāti Tamaoho Settlement Trust ("**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 "**Protocol**") setting out how the Ministry of Business, Innovation and Employment (the "**Ministry**") will consult with Ngāti Tamaoho on matters specified in the Protocol.
- 1.2 Both the Ministry and governance entity are seeking a constructive relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.3 Section 4 of the Crown Minerals Act 1991 (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. The minerals programmes set out how this requirement will be given effect to.
- 1.4 The Minister and the Ministry recognise that the governance entity is the governance entity of Ngāti Tamaoho and represents Ngāti Tamaoho.
- 1.5 Ngāti Tamaoho are tāngata whenua and kaitiaki of the Protocol Area and have significant interests and responsibilities in relation to the preservation, protection and management of natural resources within the Protocol Area.

2 STATEMENT OF ASSOCIATION

- 2.1 Ngāti Tamaoho have exercised kaitiakitanga over the minerals that lay beneath our lands since the earliest occupation of Aotearoa. These minerals are part of our whenua papatupu and passed down to us by our ancestors as among our most important tāonga.
- 2.2 For our people, these minerals are part of Papatūānuku and are an integral part of our whakapapa and our cultural identity. As a result, their use and extraction was governed by a complex system of tikanga developed over centuries. Our tūpuna were experts in the sustainable use of these important resources.
- 2.3 Common stone types such as karā, ōnewa (basalt) and and whatuaho (greywacke), were gathered from deposits in Te Hunua and used for making a wide range of tools including toki (adzes), patu ōnewa, patu muka (flax beating tools) and fishing tackle. Larger blocks of sandstone were formed into hōanga (whet-stones) for sharpening tools. Many of these minerals were protected by the mana of different atua (gods) including Hinetuahōanga.
- 2.4 Te Hunua (Hunua Ranges) is a place of special importance for mineral resources. Large deposits of Kiripaka (chert/flintstone) were found in the north, giving the area its name. Kōkōwai (red ochre) was also found in abundance and used for coloring whakairo (carvings) and for ceremonial use. The red earth of the foothills of the ranges is remembered in the name Papakura.
- 2.5 To the south of Te Hunua, lay extensive deposits of waro (coal). These deposits were found around Te Kopuku, Maramarua and Whangamarino in vast seams. The Tainui peoples, including Ngāti Tamaoho, are among the only groups recorded to be using waro prior to the arrival of Pākehā.
- 2.6 Our people also made use of the volcanic landscape of Tāmaki Makaurau, which provided stone for cultivation and building. In time, this became a unique feature of the region with

places such as Matukutureia, Ōtuataua, and Te Pane O Mataoho becoming some of the largest and most complex stone-gardening sites in the country.

- 2.7 Stones were formed into rows and walls to protect crops from wind and to delineate individual plots. In other cases, stones were used to form mounds around crops such as taro and hue, which were otherwise difficult to grow in the temperate climate of Te Ika a Māui.
- 2.8 Volcanic rock was also used to for cooking, some stones being used for hāngī and umu, while others were heated and placed in water to boil. Good quality stones were gifted and traded between groups.
- 2.9 Meanwhile, in settlements closer to the Waikato and Waipa rivers, pungapunga (pumice) was mixed in with the soil for better drainage and heat retention. This proved a highly effective technique. Pungapunga was also used for floats on fishing nets, children's spinning tops, and nguru (nose-flutes).
- 2.10 For minerals not common in the rohe, our people relied on their extensive trade connections. Knives and other sharp tools were made from matā (obsidian) sourced from whanaunga at Tūhua (Mayor Island) while many important pounamu tāonga were sourced from whangaunga in Te Wai Pounamu.
- 2.11 These minerals continue to be a vital part of our traditional lands and resources to this day.

3 PURPOSE OF THIS PROTOCOL

- 3.1 With the intent of creating a constructive relationship between the governance entity and the Ministry in relation to minerals administered in accordance with the Act in the Protocol Area, this Protocol sets out how the Ministry will exercise its functions, powers and duties in relation to the matters set out in this Protocol.
- 3.2 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 Protocol in accordance with the Act and the relevant minerals programmes issued under the Act.

4 PROTOCOL AREA

- 4.1 This Protocol applies to the area shown on the map in Appendix A and does not go beyond the sovereign territory of New Zealand.

5 TERMS OF ISSUE

- 5.1 This Protocol is issued pursuant to section 23 of Ngāti Tamaoho Claims Settlement Act 2018 (the "**Settlement Legislation**") that implements clause 5.10 of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.
- 5.2 This 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

- (a) on the preparation of a draft minerals programme, or a proposed change to a minerals programme (unless the change is one to which section 16(3) of the Act applies), which relate, whether wholly or in part, to the Protocol Area;

Petroleum exploration permit block offers

- (b) 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. This will include 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;

Other petroleum permit applications

- (c) when any application for a petroleum 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(b);

Amendments to petroleum permits

- (d) when any application to amend a petroleum 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

- (e) 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

- (f) 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(e) or where the application relates to newly available acreage;

Newly available acreage

- (g) 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;

Amendments to permits for Crown owned minerals other than petroleum

- (h) 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; and

Gold fossicking areas

- (i) when any request is received or proposal is made to designate lands as a gold fossicking area, which relates, whether 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 to consult with parties whose interests may be affected by matters described in clause 6.1. The Ministry will consult with the governance entity in accordance with this Protocol if matters described in clause 6.1 of this Protocol may affect the interests of Ngāti Tamaoho.
- 7.2 For the purposes of clause 7.1, the basic principles that will be followed by the Ministry 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 and determination by the Ministry of the proposal or issues;
 - (b) providing the governance entity with sufficient information to make informed decisions and submissions;
 - (c) ensuring that sufficient time is given for the participation of the governance entity in the decision making process and to enable it to prepare its submissions; and
 - (d) ensuring that the Ministry will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of Ngāti Tamaoho.

8 DEFINITIONS

- 8.1 In this Protocol:

Act means the Crown Minerals Act 1991 as amended, consolidated or substituted;

Chief Executive means the Chief Executive of the Ministry of Business, Innovation and Employment;

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 that is the property of the Crown;

Deed of Settlement means the Deed of Settlement dated 30 April 2017 between the Crown and the governance entity;

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, precious stones, industrial rocks and building stones, 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;

newly available acreage is a method for allocating permits for minerals (excluding petroleum) as set out in the Minerals Programme for Minerals (Excluding Petroleum) 2013

Ngāti Tamaoho has the meaning set out in clause 10.6 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 1 or more hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and 1 or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide—

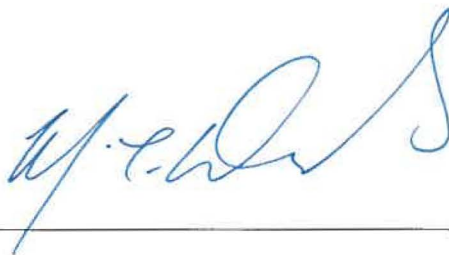
and, except in sections 10 and 11, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered but which has been returned to a natural reservoir for storage purposes; and

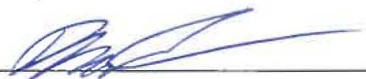
protocol means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

ISSUED ON


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

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)






Signature of Witness



Witness Name

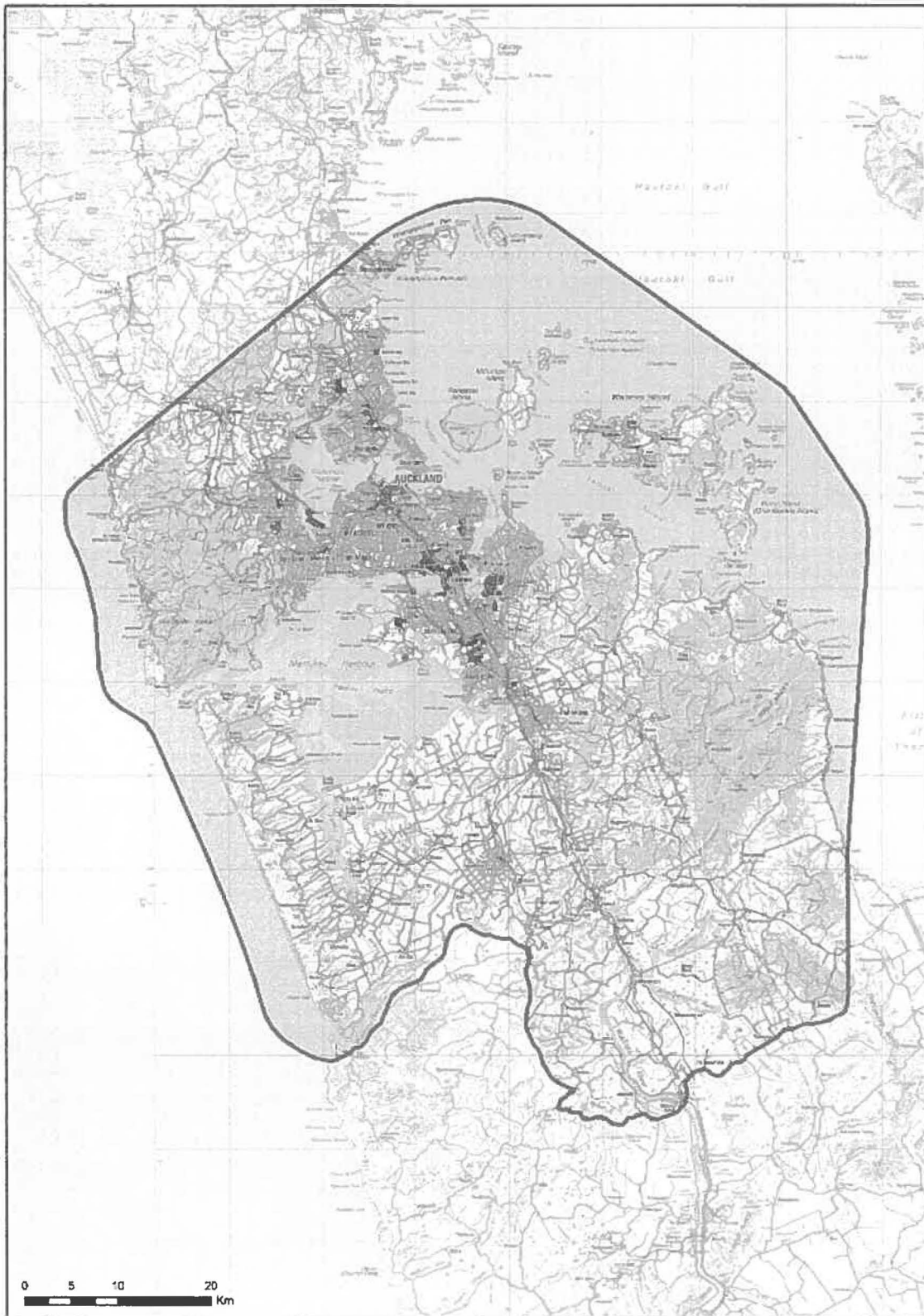


Occupation



Address

ATTACHMENT A
PROTOCOL AREA MAP



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<p style="text-align: center;">ATTACHMENT B</p> <p style="text-align: center;">SUMMARY OF THE TERMS OF ISSUE</p>
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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 or the governance entity may cancel this Protocol.
- 1.2 The Protocol can only be amended by agreement in writing between the Minister and the governance entity.

2. Noting

- 2.1 A summary of the terms of this 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 Protocol Area when those programmes are changed;but the addition:
 - 2.1.3 is for the purpose of public notice only; and
 - 2.1.4 does not change the minerals programmes for the purposes of the Crown Minerals Act 1991 (section 26).

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 (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 tāngata whenua (section 24); 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 Tamaoho or a representative entity (section 24); or
 - 3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown minerals (section 26); or
 - 3.1.4 affect any interests under the Marine and Coastal Area (Takutai Moana) Act 2011.
- 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 Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 25).
- 4.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 5.17).