

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND
RESOURCES REGARDING CONSULTATION WITH NGĀTI TŪWHARETOA 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 8 July 2017 between the trustees of the Ngāti Tūwharetoa post-settlement Governance Entity ("**PSGE**") 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 the PSGE on matters specified in the Protocol.
- 1.2 Both the Ministry and Ngāti Tūwharetoa 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 Te Kotahitanga o Ngāti Tūwharetoa is the governance entity of the Tūwharetoa Hapū Forum and represents Ngāti Tūwharetoa.
- 1.5 Ngāti Tūwharetoa is tāngata whenua and kaitiaki of the Protocol Area and has significant interests and responsibilities in relation to the preservation, protection and management of natural resources within the Protocol Area.

2. PURPOSE OF THIS PROTOCOL

- 2.1 With the intent of creating a constructive relationship between the PSGE 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.
- 2.2 The PSGE will have the opportunity to 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.

3. PROTOCOL AREA

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

4. TERMS OF ISSUE

- 4.1 This Protocol is issued pursuant to section 22 of the Ngāti Tūwharetoa Claims Settlement Act 2018 (the "**Settlement Legislation**") and clause 8.7.1 of the Ngāti Tūwharetoa Deed of Settlement and is subject to Settlement Legislation and the Deed of Settlement.
- 4.2 This Protocol must be read subject to the summary of the terms of issue set out in **Appendix B**.

5. CONSULTATION

5.1 The Minister will ensure that the PSGE 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 PSGE 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 5.1(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 5.1(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.

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 PSGE, and having regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.

6. IMPLEMENTATION AND COMMUNICATION

- 6.1 The Crown has an obligation under the Act to consult with parties whose interests may be affected by matters described in clause 5.1. The Ministry will consult with the PSGE in accordance with this Protocol if matters described in clause 5.1 of this Protocol may affect the interests of Ngāti Tūwharetoa.
- 6.2 For the purposes of clause 6.1, the basic principles that will be followed by the Ministry in consulting with Ngāti Tūwharetoa in each case are:
 - (a) ensuring that the PSGE is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues;
 - (b) providing the PSGE with sufficient information to make informed decisions and submissions;
 - (c) ensuring that sufficient time is given for the participation of the PSGE 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 PSGE with an open mind, and will genuinely consider the submissions of Ngāti Tūwharetoa.

7. DEFINITIONS

7.1 In this Protocol:

- (a) **Act** means the Crown Minerals Act 1991 as amended, consolidated or substituted;
- (b) **Chief Executive** means the Chief Executive of the Ministry of Business, Innovation and Employment;
- (c) **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;
- (d) **Crown owned minerals** means any mineral that is the property of the Crown;
- (e) **Deed of Settlement** means the Deed of Settlement dated 8 July 2017 between the Crown and Ngāti Tūwharetoa;
- (f) **Hapū** has the meaning set out in clause 11.7.1 of the Deed of Settlement;
- (g) **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;

- (h) **Minister** means the Minister of Energy and Resources;
- (i) **Ministry** means the Ministry of Business, Innovation and Employment;
- (j) **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;
- (k) **Petroleum** means:
 - (i) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
 - (ii) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
 - (iii) 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
 - (iv) 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
- (l) **protocol** means a statement in writing, issued by the Crown through the Minister to Ngāti Tūwharetoa under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

ISSUED ON 12-03-2019

SIGNED for and on behalf of

THE SOVEREIGN

in right of New Zealand by

the Minister of Energy and Resources.



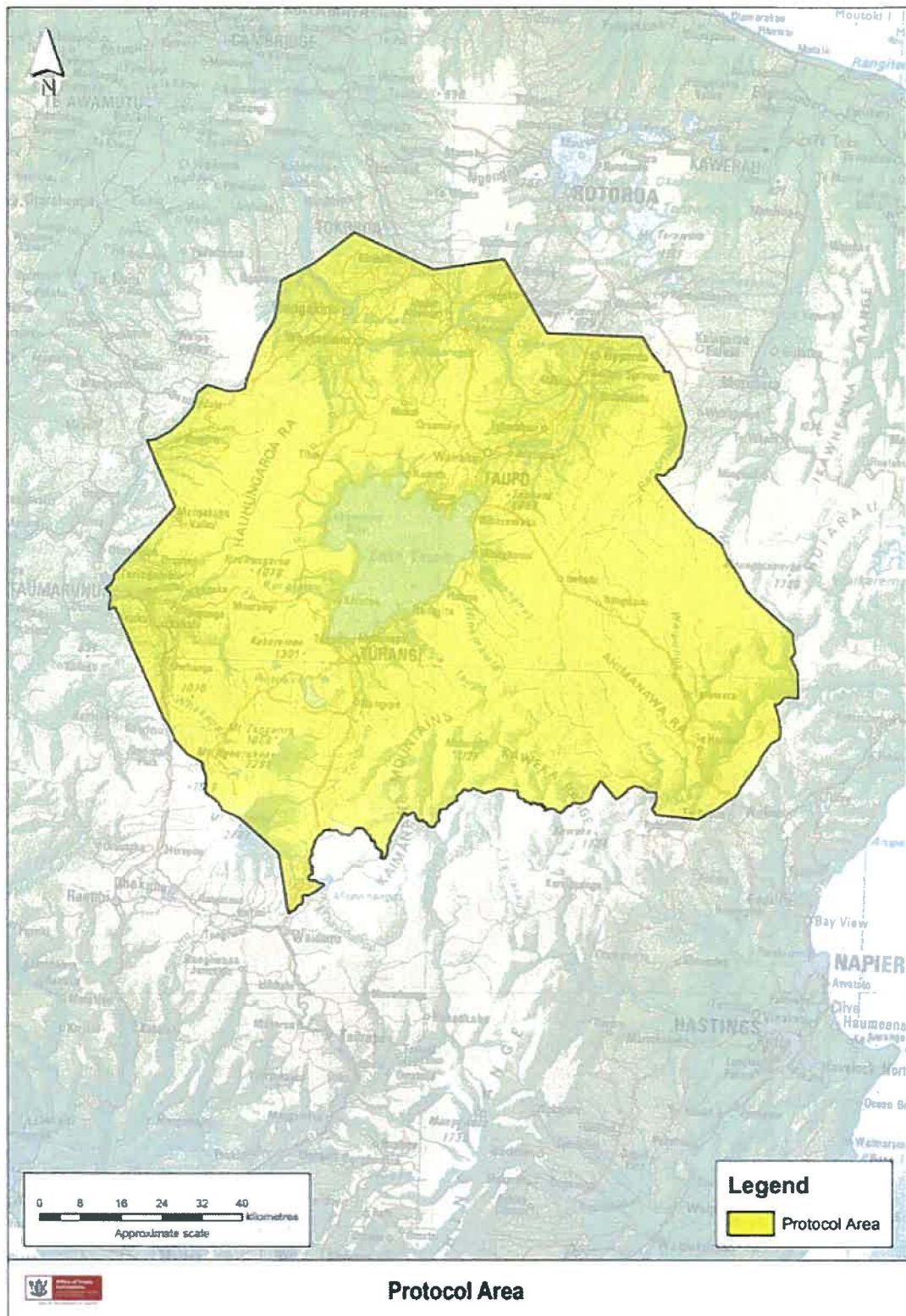
WITNESS

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ATTACHMENT A PROTOCOL AREA MAP



ATTACHMENT B

SUMMARY OF THE TERMS OF ISSUE

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 PSGE may cancel this Protocol.
- 1.2 The Protocol can only be amended by agreement in writing between the Minister and PSGE.

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 25(2)).

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 23); 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 Tūwharetoa or a representative entity (section 23); or
 - 3.1.3 Grant, create, or provide evidence of an estate or interest in, or rights relating to Crown minerals (section 25(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 PSGE may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 24).

4.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 8.10).