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**NGĀTI WHARE CROWN MINERALS PROTOCOL**

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER  
OF ENERGY AND RESOURCES REGARDING CONSULTATION  
WITH TE RŪNANGA O NGĀTI WHARE**

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**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF  
ENERGY AND RESOURCES REGARDING CONSULTATION WITH TE  
RŪNANGA O NGĀTI WHARE BY THE MINISTRY OF ECONOMIC  
DEVELOPMENT ON THE ADMINISTRATION OF CROWN OWNED  
MINERALS**

**1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated 8 December 2009 between Ngāti Whare 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 Te Runanga o Ngāti Whare (the "**Governance Entity**") on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Ngāti Whare 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 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 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 Whare 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 PROTOCOL AREA**

- 3.1 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).

## 4 TERMS OF ISSUE

- 4.1 This Crown Minerals Protocol is issued pursuant to section Ngāti Whare Claims Settlement Act 2012 (the “**Settlement Legislation**”) that implements clause 5.26A of the Deed to Amend the Ngāti Whare Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 This Crown Minerals Protocol must be read subject to the terms of issue set out in Attachment B.

## 5 CONSULTATION

- 5.1 The Minister will ensure that the Governance Entity is consulted by the Ministry:

### **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 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**

- 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; and

### **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.

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 Governance Entity, 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 (as provided for in minerals programmes) to consult with parties whose interests may be affected by matters described in clause 5.1 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 5.1 of this Crown Minerals Protocol Area may affect the interests of Ngāti Whare.

6.2 The basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

6.2.1 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 5** of this Crown Minerals Protocol;

6.2.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters described in **clause 5** of this Crown Minerals Protocol;

6.2.3 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 5** of this Crown Minerals Protocol; and

6.2.4 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 5** of this Crown Minerals Protocol.

6.3 Where the Ministry is required to consult the Governance Entity as specified in **clause 6.1**, the Ministry will report back in writing to the Governance Entity on the decision made as a result of such consultation.

- 6.4 The Ministry will seek to fulfil its obligations under this Crown Minerals Protocol by:
- 6.4.1 maintaining information on the Governance Entity's address and contact details as provided from time to time by the Governance Entity;
  - 6.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Crown Minerals Protocol;
  - 6.4.3 nominating relevant employees to act as contacts with the Governance Entity in relation to issues concerning this Crown Minerals Protocol; and
  - 6.4.4 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;

## 7 DEFINITIONS

- 7.1 In this Crown Minerals Protocol:

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

**Crown** means Her Majesty the Queen 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 8 December 2009 between the Crown and Ngāti Whare;

**Governance Entity** means Te Runanga o Ngāti Whare;

**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;

**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; 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;

**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

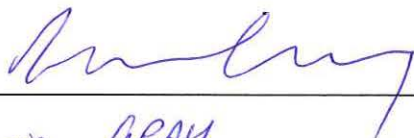
**Secretary** means the chief executive of the Ministry of Economic Development.

ISSUED ON [ - 8 MAY 2012 ]

**SIGNED** for and on behalf of  
**HER MAJESTY THE QUEEN**  
in right of New Zealand by  
the Minister of Energy and Resources.



**WITNESS**

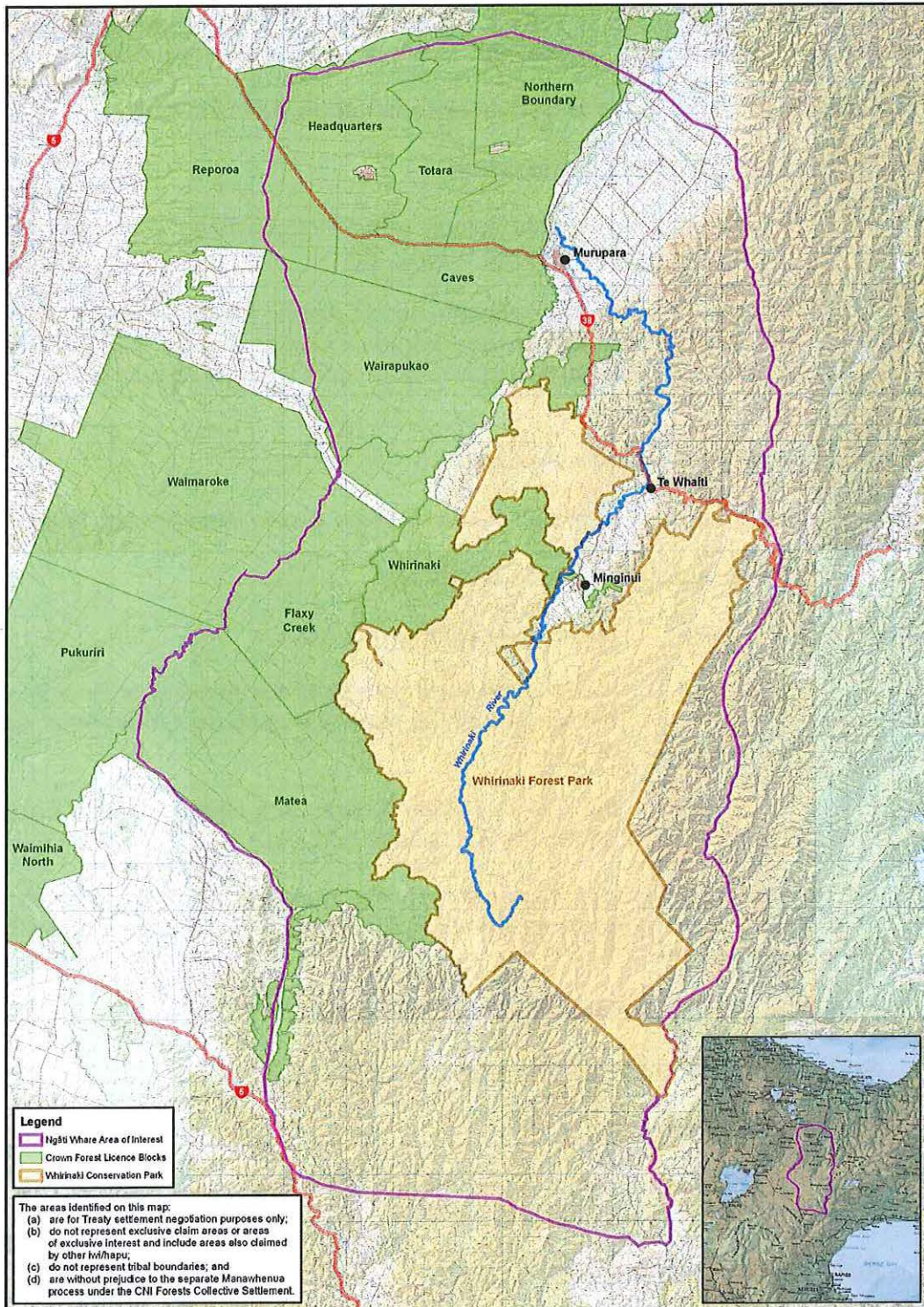


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**ATTACHMENT A  
CROWN MINERALS PROTOCOL AREA**



**Ngāti Whare Area of Interest**

## ATTACHMENT B

### 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 5.26A); and

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 (clause 5.27.4(ii)); and

1.1.3 this Crown Minerals Protocol:

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

(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 Economic Development, under that Act; or

(iii) the rights of Ngāti Whare, or a Representative Entity, under that Act (clause 5.27.4(c)).

1.2 Representative Entity has the same meaning in **clause 1.1.3** of these terms of issue as the term "representative of Ngāti Whare" has in clause 12.5 of the Deed of Settlement.

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

2.1 Section 42 of the Settlement Legislation provides that:

(1) Each responsible Minister –

(a) must issue a protocol to the trustees of Te Runanga o Ngāti Whare in the form set out in subpart 4 of part 1 of the schedule; and

(b) may amend or cancel that protocol.

(2) A protocol may be amended or cancelled under subsection (1) at the initiative of either –

(a) the trustees of Te Runanga o Ngāti Whare; or

(b) the responsible Minister



- (3) The responsible Minister may amend or cancel a protocol only after consulting with, and having particular regard to the views of, the trustees of Te Runanga o Ngāti Whare.

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

3.1 Section 43 of the Settlement Legislation provides that:

Protocols do not restrict –

- (a) the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and government policy, which includes (without limitation) the ability to –
  - (i) introduce legislation and change government policy; and
  - (ii) interact or consult with a person the Crown considers appropriate, including (without limitation) any iwi, hapū, marae, whanau, or other representative of tangata whenua; or
- (b) the responsibilities of the responsible Minister or responsible department; or
- (c) the legal rights of the trustees of Te Runanga o Ngāti Whare or a representative entity.

### **4 Noting of Protocol**

4.1 Section 48 (1),(a),(b) and (c) of the Settlement Legislation provides that:

- (1) A summary of the terms of the Crown minerals protocol must be noted
  - (a) in a register of protocols maintained by the chief executive of the Ministry of Economic Development; and
  - (b) in the minerals programme affecting the Crown minerals protocol area when those programmes are replaced.
- (2) The noting of the Crown minerals protocol is –
  - (a) for the purpose of public notice only; and
  - (b) not an amendment to the minerals programme for the purpose of the Crown Minerals Act 1991

...

- (4) In this section minerals programme has the meaning given to it in section 2(2) of the Crown Minerals Act 1991.

### **5 Enforcement of Protocol**

5.1 Section 44(1) of the Settlement Legislation provides that:

- (1) The Crown must comply with a protocol while it is in force.

- (2) If the Crown fails, without good cause to comply with a protocol, the trustees of Te Runanga o Ngāti Whare may, subject to the Crown Proceedings Act 1950 enforce the protocol.
- (3) Despite subsection (2) damages or any form of monetary compensation are not available as a remedy for failure by the Crown to comply with a protocol. To avoid doubt –
  - (a) subsections (1) and (2) do not apply to guidelines developed for the implementation of a protocol; and
  - (b) subsection (3) does not affect the ability of a court to award costs incurred by the trustees of Te Runanga o Ngāti Whare in enforcing the protocol under subsection (2).

## **6 Limitation of rights**

6.1 Section 48(3) of the Settlement Legislation provides that:

- (1) The Crown minerals protocol does not have the effect of creating, granting or providing evidence of an estate or interest in or rights to, any Crown owned mineral.