

**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND
RESOURCES REGARDING CONSULTATION WITH NGĀTI WHĀTUA Ō ŌRĀKEI 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 5 November 2011 between Ngāti Whātua Ōrākei 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 Whātua Ōrākei governance entity (the "**governance entity**") on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Ngāti Whātua Ōrākei 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 Whātua Ōrākei 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 adjacent waters.

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4 TERMS OF ISSUE

- 4.1 This Crown Minerals Protocol is issued pursuant to section 22 of Ngāti Whātua Ōrākei Claims Settlement Act 2012 (the "**Settlement Legislation**") that implements clause 5.3 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 A summary of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued is set out in Attachment B of the Protocol.

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

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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 Whātua Ōrākei.
- 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

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- 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 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 [] between the Crown and Ngāti Whātua Ōrākei;

governance entity means Ngāti Whātua Ōrākei Trustee Limited as trustee of the Ngāti Whātua Ōrākei 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;

Newly available acreage has the meaning provided in clause 3.5 of the Minerals Programme for Minerals (Excluding Petroleum) 2008;

Ngāti Whātua Ōrākei has the meaning set out in clause 8.5 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;

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

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

10/12/12

Hon. PHIL HEATLEY

WITNESS


Name Jamie GRAY

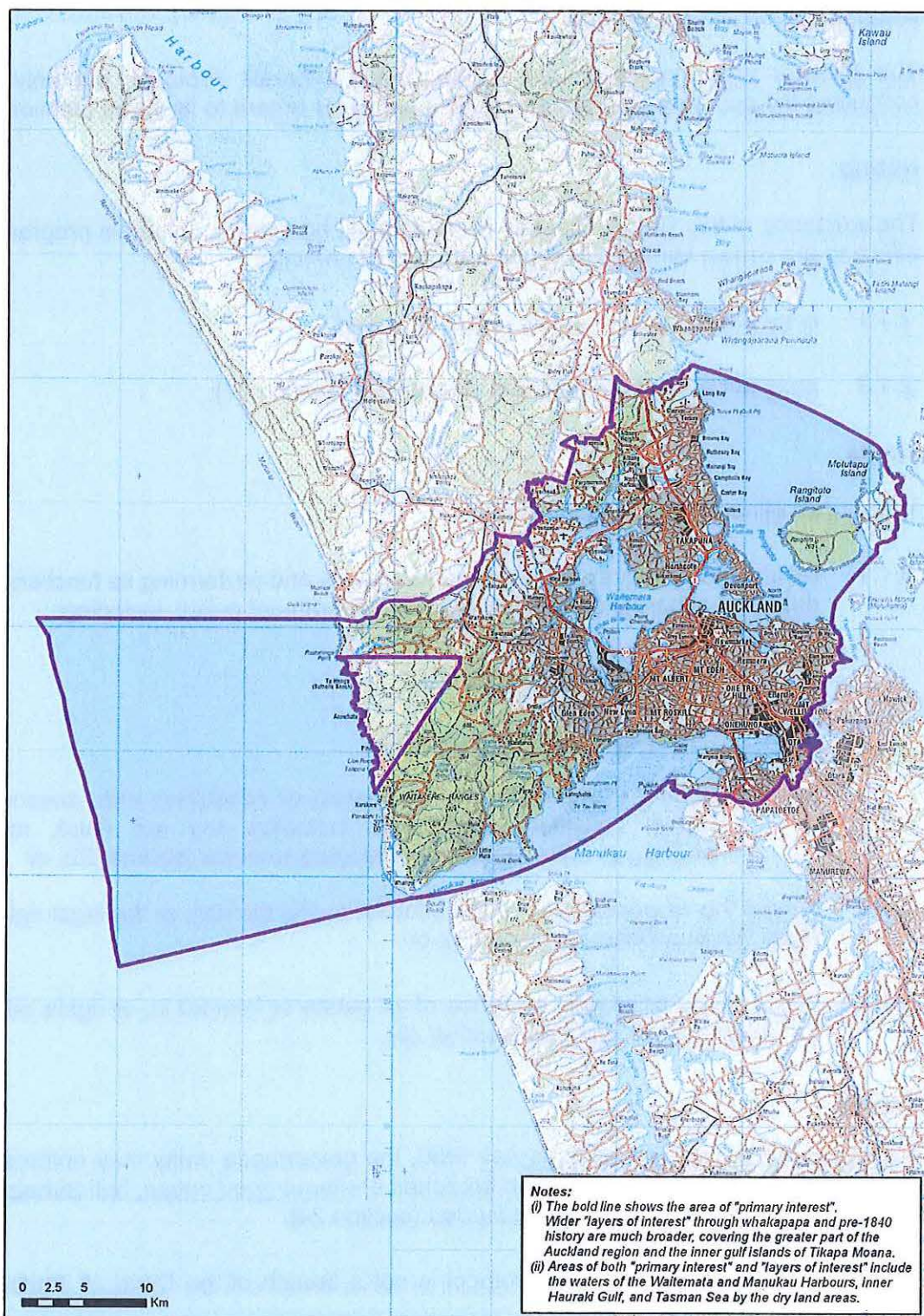
Occupation Private Secretary, Office of Hon Phil Heatley

Address Wellington

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PROTOCOL AREA MAP



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ATTACHMENT B – SUMMARY OF TERMS OF ISSUE

This Crown 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 Crown Minerals Protocol, but only after consulting the governance entity and having particular regard to its views (section 22).

2. Noting

- 2.1 The existence of this Crown Minerals Protocol must be noted in minerals programmes affecting the Crown Minerals Protocol Area, but the noting:

- 2.1.1 is for the purpose of public notice only; and
- 2.1.2 does not amend the minerals programme (section 27).

3. Limits

- 3.1 This Crown 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 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 representatives of tangata whenua (section 23); or

- 3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Whātua Ōrākei (section 23); or

- 3.1.3 grant, create or provide evidence of an estate or interest in, or rights relating to, Crown owned minerals (section 25).

4. Breach

- 4.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this Crown Minerals 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 Crown Minerals Protocol is not a breach of the Deed of Settlement (clause 5.6).