

Annex 1: Rangitāne Tū Mai Rā (Wairarapa Tamaki nui a Rua) Crown Minerals Protocol

5

CROWN MINERALS PROTOCOL

PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING CONSULTATION WITH THE RANGITĀNE TŪ MAI RĀ TRUST 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 6 August 2016 between Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua ("**Rangitāne**") 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 governance entity, the Rangitāne Tū Mai Rā Trust (the "**Trust**"), on matters specified in the Protocol.
- 1.2 Both the Ministry and Rangitāne 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 Trust is the governance entity representing Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua.
- 1.5 Rangitāne are tangata 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 PURPOSE OF THIS PROTOCOL

- 2.1 With the intent of creating a constructive relationship between Rangitāne 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 Rangitāne 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.

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 OWNERSHIP OF MINERALS

- 4.1 Rangitāne assert that, traditionally, Rangitāne owned and used the mineral resources and taonga in their takiwā (both onshore and offshore).
- 4.2 In reaching this protocol with the Minister, Rangitāne record that the expropriation of their ownership of mineral resources by the Crown is a serious Treaty breach with implications that are still being felt.
- 4.3 Rangitāne assert that they maintain, in accordance with tikanga, an unbroken, inalienable and enduring relationship with, and mana in relation to, the mineral resources in the Protocol Area. The mana of Rangitāne remains intact, in spite of any legislative expropriation.
- 4.4 Rangitāne also assert that despite the expropriation of its ownership it has a right to make decisions regarding mining in the Protocol Area.
- 4.5 The Crown asserts ownership of minerals under the Crown Minerals Act 1991 and considers that the nationalisation of minerals is not a breach of Te Tiriti o Waitangi/the Treaty of Waitangi. Section 10 of the Crown Minerals Act 1991 provides that all gold, silver, uranium and petroleum existing in its natural condition in land shall be the property of the Crown. Section 11 of the Crown Minerals Act 1991 reserves all minerals to the Crown and any future alienation of Crown land and upholds all reservations of minerals made in earlier enactment. Decision-making regarding prospecting, exploration and mining of petroleum and minerals other than petroleum in the Protocol Area is described under the Crown Minerals Act 1991.

5 TERMS OF ISSUE

- 5.1 This Protocol is issued pursuant to section 22 (the "**Settlement Legislation**") that implements clause 5.8 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 terms of issue set out in Attachment B.

6 CONSULTATION

- 6.1 The Minister will ensure that the Trust 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 relates, 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 Trust on these proposals over the consultation period set out in the relevant minerals programme;

8

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 Trust 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 Trust in accordance with this Protocol if matters described in clause 6.1 of this Protocol may affect the interests of Rangitāne.

8

7.2 For the purposes of clause 7.1, the basic principles that will be followed by the Ministry in consulting with Rangitāne in each case are:

- (a) ensuring that the Trust is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues;
- (b) providing the Trust with sufficient information to make informed decisions and submissions;
- (c) ensuring that sufficient time is given for the participation of the Trust 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 Trust with an open mind, and will genuinely consider the submissions of the Trust.

8 MINIMUM IMPACT ACTIVITIES

8.1 No person may, for the purpose of carrying out a minimum impact activity, enter onto any Māori land within the Protocol Area that is:

- (a) regarded as a wāhi tapu site by the trustees; and is
- (b) vested or transferred to the governance entity through the settlement legislation; without the consent of the trustees.

9 DEFINITIONS

9.1 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 6 August 2016 between the Crown and Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua;

hapū has the meaning set out in clause 9.6.2 of the Deed of Settlement;

Māori land has the same meaning as in the Te Ture Whenua Maori Act 1993; and includes Māori reserves within the meaning of that Act;

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;

petroleum means –

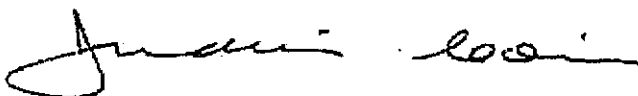
- (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of 1 or more hydrocarbons (other 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 Rangitāne 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 Resources.



WITNESS

Name *Isabel Boulson*
Occupation *Ministerial Advisor*
Address *Parliament Buildings*

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

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).

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 tangata 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 Rangitāne or a representative entity (section 23); or

8

- 3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown minerals (section 25); 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, Rangitāne 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 5.11).



