

**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF
ENERGY REGARDING CONSULTATION WITH TE URI O HAU BY THE
MINISTRY OF ECONOMIC DEVELOPMENT ON THE ADMINISTRATION
OF CROWN OWNED MINERALS**

1 INTRODUCTION

- 1.1 Under the Deed of Settlement between Te Uri o Hau and the Crown (*the Deed of Settlement*), the Crown through the Minister of Energy (*the Minister*) agreed to issue a Protocol setting out how the Ministry of Economic Development (*the Ministry*) will consult with Te Uri o Hau Governance Entity on specified issues.
- 1.2 Both the Ministry of Economic Development and Te Uri o Hau 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 is to restate and reform the law relating to the management of Crown Owned Minerals. Section 4 of the Crown Minerals 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 of Energy is responsible under the Crown Minerals Act for the preparation of minerals programmes, the grant of minerals permits, and monitoring the effect and implementation of minerals programmes and minerals permits. The Ministry of Economic Development administers the Crown Minerals Act on behalf of the Minister of Energy.
- 1.5 This Protocol will affect the administration of the Crown Minerals Act by the Ministry of Economic Development.

2 PURPOSE OF THIS PROTOCOL

- 2.1 With the intent of creating a constructive relationship between Te Uri o Hau and the Ministry in relation to the administration of the Crown Minerals Act, this Protocol sets out how the Ministry will exercise its functions, powers, and duties in relation to the matters set out in this Protocol. Te Uri o Hau 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 Crown Minerals Act and the relevant minerals programmes.

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3 PROTOCOL AREA

3.1 This Protocol applies across Te Uri o Hau MED Protocol Area which means the area identified in the map included in *Attachment A* of this Protocol together with the waters (including foreshore and seabed) of the coastal areas adjacent to the coastal boundary of the area shown on that map:

- (a) Within the Kaipara and Mangawhai harbours; and
- (b) Extending to the outer limit of the Exclusive Economic Zone (as defined in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977).

4 TERMS OF ISSUE

4.1 This Protocol is issued pursuant to section 108 of the Te Uri o Hau Claims Settlement Act (2002) (the *Settlement Legislation*) and clause 5.12 of the Deed of Settlement between the Crown and Te Uri o Hau, and is subject to the Settlement Legislation and the Deed of Settlement. The provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued are set out in *Attachment B* of this Protocol.

4.2 This Protocol must be read subject to the terms and conditions set out in the Schedules.

5 CONSULTATION

5.1 The Minister of Energy will ensure that Te Uri o Hau Governance Entity is consulted by the Ministry:

New Minerals Programme in Respect of Petroleum

5.1.1 On the preparation of new minerals programmes in respect of petroleum which relate, whether wholly or in part, to Te Uri o Hau MED Protocol Area;

Petroleum Exploration Permit Block Offers

5.1.2 On the planning of any proposed petroleum exploration permit block offer, which relates, whether wholly or in part, to Te Uri o Hau MED Protocol Area;

Other Petroleum Exploration Permit Applications

5.1.3 When any application for a petroleum exploration permit is considered, which relates, whether wholly or in part, to Te Uri o Hau MED Protocol Area; and

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- 5.1.4 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

- 5.1.5 Where any application to amend a petroleum exploration permit, by extending the land or minerals to which the permit relates, is considered; and
- 5.1.6 Where the application relates, wholly or in part, to Te Uri o Hau MED Protocol Area;

New Minerals Programme in Respect of Crown Owned Minerals Other Than Petroleum

- 5.1.7 On the preparation of new minerals programmes in respect of Crown Owned Minerals other than petroleum, which relate, whether wholly or in part, to Te Uri o Hau MED Protocol Area;

Permit Block Offers for Crown Owned Minerals Other Than Petroleum

- 5.1.8 On the planning of a competitive tender allocation of a permit block (being a specific area with defined boundaries available for allocation as a permit in accordance with the Minerals Programme for Coal, and the Minerals Programme for Minerals other than coal and petroleum), which relates, whether wholly or in part, to Te Uri o Hau MED Protocol Area;

Other Permit Applications for Crown Owned Minerals other than Petroleum

- 5.1.9 When any application for a permit in respect of Crown Owned Minerals other than petroleum is considered, which relates, whether wholly or in part, to Te Uri o Hau MED Protocol Area;
- 5.1.10 Except where the application relates to a competitive tender allocation of a permit block over which consultation has already taken place under clause 5.1.8;

Amendments to Permits for Crown Owned Minerals Other Than Petroleum

- 5.1.11 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 considered; and
- 5.1.12 Where the application relates, wholly or in part, to Te Uri o Hau MED 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 Te Uri o Hau Governance Entity, and having regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, particularly as those principles are set out in the relevant minerals programmes from time to time, and taking into account the circumstances of each case.

6 IMPLEMENTATION AND COMMUNICATION

- 6.1 The form of consultation processes under which consultation will be carried out under clause 5 of this Protocol is that provided for, from time to time, under the relevant minerals programmes.
- 6.2 The basic principles that will be followed by the Ministry of Economic Development in each case are:
- 6.2.1 Ensuring that there is early consultation with Te Uri o Hau Governance Entity at the onset of the decision making processes in relation to any matters under clause 5 of this Protocol;
 - 6.2.2 Providing Te Uri o Hau Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 5 of this Protocol;
 - 6.2.3 Ensuring that sufficient time is given for the participation of Te Uri o Hau Governance Entity in the decision making process and the consideration of submissions by Te Uri o Hau Governance Entity in relation to any of the matters described in clause 5 of this Protocol; and
 - 6.2.4 Ensuring that the Ministry will approach the consultation with Te Uri o Hau Governance Entity with an open mind, and will genuinely consider the submissions of Te Uri o Hau Governance Entity in relation to any of the matters described in clause 5 of this Protocol.
- 6.3 The Ministry will seek to fulfil its obligations under this Protocol by:
- 6.3.1 Maintaining information on Te Uri o Hau Governance Entity's address and contact details as provided from time to time by Te Uri o Hau Governance Entity;
 - 6.3.2 As far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Protocol;
 - 6.3.3 Nominating relevant employees to act as contacts with Te Uri o Hau Governance Entity in relation to issues concerning this Protocol;

6.3.4 Providing Te Uri o Hau Governance Entity with the names of the relevant employees who will act as contacts with Te Uri o Hau Governance Entity in relation to issues concerning this Protocol;

6.3.5 Meeting with or briefing Te Uri o Hau Governance Entity or its representatives in relation to issues concerning this Protocol at least annually.

SIGNED for and on behalf of
HER MAJESTY THE QUEEN
in Right of New Zealand by the
Associate Minister of Energy
in the presence of:

Witness

Occupation

Address

(Hon Lianne Dalziel MP)
SIGNED by the Trustees of
TE URI O HAU SETTLEMENT TRUST
in the presence of:

Hon Harry Duynhoven

Sir Graham Latimer

William Richard Wright

Tirikatene Hetaraka

Russell Kemp

Jamie Bruce Lloyd Paikea

Wayne Smith

Gabriel Thompson

Rawson Sydney Ambrose Wright

Witness

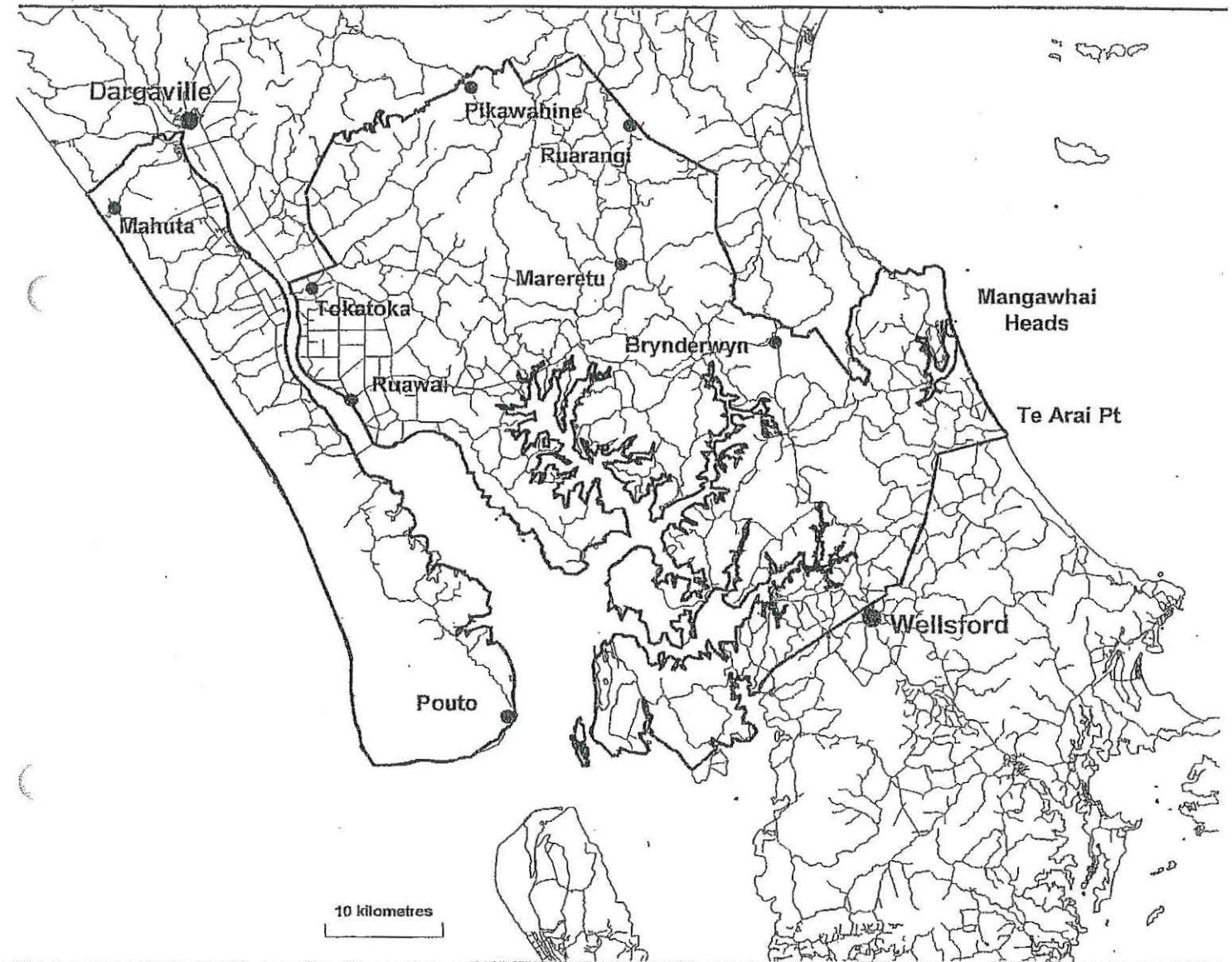
Occupation

Address

Kathryn Gray
General Manager
R.O. 2 Avenue R.O.
Kairua

EXECUTED on 15/12/04

ATTACHMENT A
TE URI O HAU MED PROTOCOL AREA



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ATTACHMENT B TERMS OF ISSUE

1. Definitions

In this Schedule, terms defined in this Protocol have the same meaning and:

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 Mineral means any 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 Crown Minerals Act 1991, and any prescribed substance within the meaning of the Atomic Energy Act 1945, that is the property of the Crown in accordance with sections 10 and 11 of the Crown Minerals Act 1991 and over which the Crown has jurisdiction in accordance with the Continental Shelf Act 1964;

Responsible Minister means the Minister of Energy, or any other Minister of the Crown authorised by the Prime Minister to exercise powers, duties and functions under Part 5 Subpart 7 of the Settlement Legislation;

Responsible Ministry means the Ministry of Economic Development, or any other department of State authorised by the Prime Minister to exercise powers, duties and functions under Part 5 Subpart 7 of the Settlement Legislation;

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, the Minister of Energy, or the Minister for Arts, Culture and Heritage and Chief Executive of the Ministry for Culture and Heritage, (as the case may be) to Te Uri o Hau Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol;

Te Uri o Hau means every individual who can trace Descent from one or more ancestors who Exercised Customary Rights:

- (a) Arising from Descent from one or more of the following
 - (i) Haumoewaarangi;
 - (ii) The tribal groups of Te Uri o Hau, Ngai Tahu, Ngati Tahinga, Ngati Rangi, Ngati Mauku, Ngati Kauae, Ngati Kaiwhare, and Ngati Kura; and
- (b) Predominantly within Te Uri o Hau Area of Interest from 1840;

Descent in relation to a person means direct descent by birth or adoption. In relation to descent from a tribal group, Descent means direct descent by birth or adoption from the acknowledged founding ancestor or ancestors of that tribal group;

Exercised Customary Rights in relation to an area means exercised rights to that area according to Maori customary law, including rights exercised in one or more of the following ways:

- (a) through occupancy;
- (b) through use and stewardship of lands or resources;
- (c) through burial; and/or
- (d) through affiliation to marae within the area; and

Te Uri o Hau Governance Entity means Te Uri o Hau Settlement Trust established by deed of trust dated 3 May 2001 in accordance with clause 2.1 of the deed of settlement.

2. Authority to issue, amend or cancel Protocols

Section 108 of the Settlement Legislation provides that:

- (1) A Responsible Minister may
 - (a) issue a Protocol of the appropriate kind and in the appropriate form referred to in clause 5.12.2 of the deed of settlement; and
 - (b) may, from time to time amend or cancel that Protocol.
- (2) Protocols may be amended or cancelled under subsection (1) at the initiative of either:
 - (a) the Minister who issued the Protocol; or
 - (b) Te Uri o Hau Governance Entity.
- (3) A Responsible Minister may amend or cancel a Protocol issued by that Minister under subsection (1) only after consulting with Te Uri o Hau Governance Entity, and having particular regard to its views.

3. Protocols subject to Crown obligations

Section 109 of the Settlement Legislation provides that:

- (1) all Protocols are issued and amended, subject to and without restriction on
 - (a) the obligations of each Responsible Minister and each Responsible Ministry to discharge their respective powers, duties, and functions in accordance with existing law and government policy;

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- (b) the Crown's powers to amend policy and to introduce legislation, including amending legislation.

4. Enforceability of Protocols

Section 112 of the Settlement Legislation provides that:

- (1) A Responsible Minister must comply with a Protocol issued by that Minister while it is in force.
- (2) If a Responsible Minister fails without good cause to comply with a protocol issued by that Minister, Te Uri o Hau Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the protocol by way of public law action against that Minister.
- (3) Despite subsection (2), damages or any other form of monetary compensation are not available as a remedy for failure to comply with a Protocol.
- (4) To avoid doubt, subsection (3) does not affect the ability of a court to award court costs in relation to proceedings referred to in subsection (2).
- (5) Subsection (1) does not apply to any guidelines developed in connection with the implementation of the Protocol.

5. Not breach of Deed

The Deed of Settlement provides that any failure by the relevant Minister to comply with a Protocol issued under clause 5.12.2 of the Deed of Settlement shall not constitute a breach of the Deed of Settlement.

6. Limitation of rights

Section 113(3) of the Settlement legislation provides that:

- (1) A Protocol referred to in clause 5.12.2(c) of the Deed of Settlement does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind relating to any Crown Owned Mineral held, managed, or administered under the Crown Minerals Act 1991.

7. Ministers may consult

The Deed of Settlement provides that nothing in any of the Protocols issued under clause 5.12.2 of the Deed of Settlement restricts the ability of the relevant Minister or Ministry to consult with, or detracts from the responsibilities of the relevant Minister or Ministry in relation to, other parties or entities in addition to Te Uri o Hau Governance Entity, including, but not limited to, any other iwi, hapu, marae, whanau, or other representatives of tangata whenua.

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