

TE ROROA - TAONGA TŪTURU PROTOCOL
**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS,
CULTURE AND HERITAGE REGARDING INTERACTION WITH TE ROROA ON
PROTECTED NEW ZEALAND OBJECTS ISSUES**

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 17 December 2005 between Te Roroa and the Crown (the "Deed of Settlement"), the Crown agreed that the Minister for Arts, Culture and Heritage (the "Minister") would issue a Protocol (the "Te Roroa - Taonga Tūturu Protocol") setting out how the Minister and the Chief Executive for the Ministry for Culture and Heritage (the "Chief Executive") will interact with the Governance Entity on matters specified in the Te Roroa - Taonga Tūturu Protocol. These matters are:
- 1.1.1 newly found Taonga Tūturu;
 - 1.1.2 the export of Taonga Tūturu from New Zealand; and
 - 1.1.3 the Protected Objects Act 1975 and any amendment (the "Act").
- 1.2 The Minister and the Chief Executive or other such persons acting in those capacities, and Te Roroa are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Te Roroa - Taonga Tūturu Protocol, as set out in this Protocol.
- 1.3 The Chief Executive recognises that Te Roroa has an interest in relation to the preservation, protection and management of Taonga Tūturu through its tino rangatiratanga and kaitiakitanga. This derives from Te Roroa's status as tangata whenua in the Te Roroa - Taonga Tūturu Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The purpose of the Act is to provide for the better protection of certain objects by, among other things, regulating the export of protected New Zealand objects, and by establishing and recording the ownership of Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.
- 1.5 The Minister and Chief Executive have certain functions, powers and duties in terms of the Act. In exercising such functions, powers and duties, the Minister and Chief Executive will provide the Governance Entity with the opportunity for input in the policy and decision-making processes as set out in this Protocol.
- 1.6 In respect of Taonga Tūturu of Te Roroa found prior to 1 April 1976, the Minister and Chief Executive recognise the importance of such Taonga Tūturu to Te Roroa and acknowledge the efforts of Te Roroa to protect and repatriate those Taonga Tūturu.

2 PROTOCOL AREA

- 2.1 This Protocol applies across the Te Roroa - Taonga Tūturu Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the "Protocol Area").

3 TERMS OF ISSUE

- 3.1 The Te Roroa - Taonga Tūturu Protocol is issued pursuant to section 19 of the Te Roroa Claims Settlement Act 2007 ("the Settlement Legislation") that implements clause 8.7 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

4 THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL

General

- 4.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the Governance Entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
- 4.1.1 notify the Governance Entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Te Roroa origin found anywhere else in New Zealand;
 - 4.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Te Roroa origin found anywhere else in New Zealand;
 - 4.1.3 notify the Governance Entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Te Roroa origin found anywhere else in New Zealand;
 - 4.1.4 notify the Governance Entity in writing of its right to apply directly to the Maori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Te Roroa origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
 - 4.1.5 notify the Governance Entity in writing of any application to the Maori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Te Roroa origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

Applications for Ownership

- 4.2. If the Governance Entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Te Roroa origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 4.3 If there is a competing claim or claims lodged in conjunction with the Governance Entity's claim of ownership, the Chief Executive will consult with the Governance Entity for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.

- 4.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Te Roroa origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the Governance Entity may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

Applications for Custody

- 4.5 If no ownership application is made to the Māori Land Court for any Taonga Tūturu found within the Protocol Area or identified as being of Te Roroa origin found elsewhere in New Zealand by the Governance Entity or any other person, the Chief Executive will:
- 4.5.1 consult the Governance Entity where there is any request from any other person for the custody of the Taonga Tūturu;
 - 4.5.2 consult the Governance Entity before a decision is made on who may have custody of the Taonga Tūturu; and
 - 4.5.3 notify the Governance Entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

Export Applications

- 4.6 For the purpose of seeking an expert opinion from the Governance Entity on any export applications to remove any Taonga Tūturu of Te Roroa origin from New Zealand, the Chief Executive will register the Governance Entity on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 4.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Te Roroa origin from New Zealand, the Chief Executive will consult the Governance Entity as an Expert Examiner on that application, and notify the Governance Entity in writing of his or her decision.

Other Matters

- 4.8 The Chief Executive will also:
- 4.8.1 discuss with the Governance Entity concerns and issues notified by the Governance Entity about the Act;
 - 4.8.2 review the implementation of this Protocol from time to time, or at the request of the Governance Entity, unless otherwise agreed in writing by both the Governance Entity and the Chief Executive; and
 - 4.8.3 as far as reasonably practicable train relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol.

5 THE ROLE OF THE MINISTER UNDER THIS PROTOCOL

- 5.1 The Minister has functions, powers and duties under the Act and will consult, notify and provide information to the Governance Entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the Governance Entity as an Expert Examiner, the Minister will consult with the Governance Entity where a person appeals the decision of the Chief Executive to:
- 5.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or
 - 5.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand.
- 5.2 The Ministry will notify the Governance Entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the Governance Entity was consulted as an Expert Examiner.

6 CONSULTATION

- 6.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the Governance Entity in each case are:
- 6.1.1 ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;
 - 6.1.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - 6.1.3 ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;
 - 6.1.4 ensuring that the Chief Executive 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 that are the subject of the consultation; and
 - 6.1.5 report back to the Governance Entity, either in writing or in person, on any decisions made that relate to that consultation.

7 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 7.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive will:
- 7.1.1 notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

7.1.2 make available to the Governance Entity the information provided to Māori as part of the consultation process referred to in this clause; and

7.1.3 report back to the Governance Entity on the outcome of any such consultation.

8 DEFINITIONS

8.1 In this Protocol:

Chief Executive means the Chief Executive of the Ministry for Culture and Heritage and includes any authorised employee of the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive

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

Expert Examiner has the same meaning as in section 2 of the Act and means a body corporate or an association of persons

Found has the same meaning as in section 2 of the Act and means:

in relation to any taonga tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the taonga tūturu and which suggest that the taonga tūturu was last in the lawful possession of a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meanings

Governance Entity means the Trustees of the Te Roroa Manawhenua Trust.

Nga Taonga Tūturu has the same meaning as in section 2 of the Act and means 2 or more Taonga Tūturu

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 Te Roroa - Taonga Tūturu Protocol

Taonga Tūturu has the same meaning as in section 2 of the Act and means:

an object that—

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been,—
 - (i) manufactured or modified in New Zealand by Māori; or
 - (ii) brought into New Zealand by Māori; or
 - (iii) used by Māori; and
- (c) Is more than 50 years old

Te Roroa has the meaning set out in clause 1.5 of the Deed of Settlement.

ISSUED on this 27th day of October 2008

SIGNED for and on behalf of HER
MAJESTY THE QUEEN in right of
New Zealand by the Minister for Arts,
Culture and Heritage

Helmi Clark

in the presence of:

WITNESS

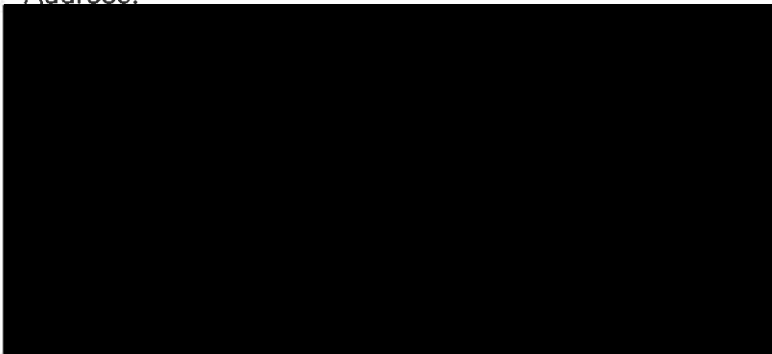


PETER DAVIS

Name:

Occupation: Professor

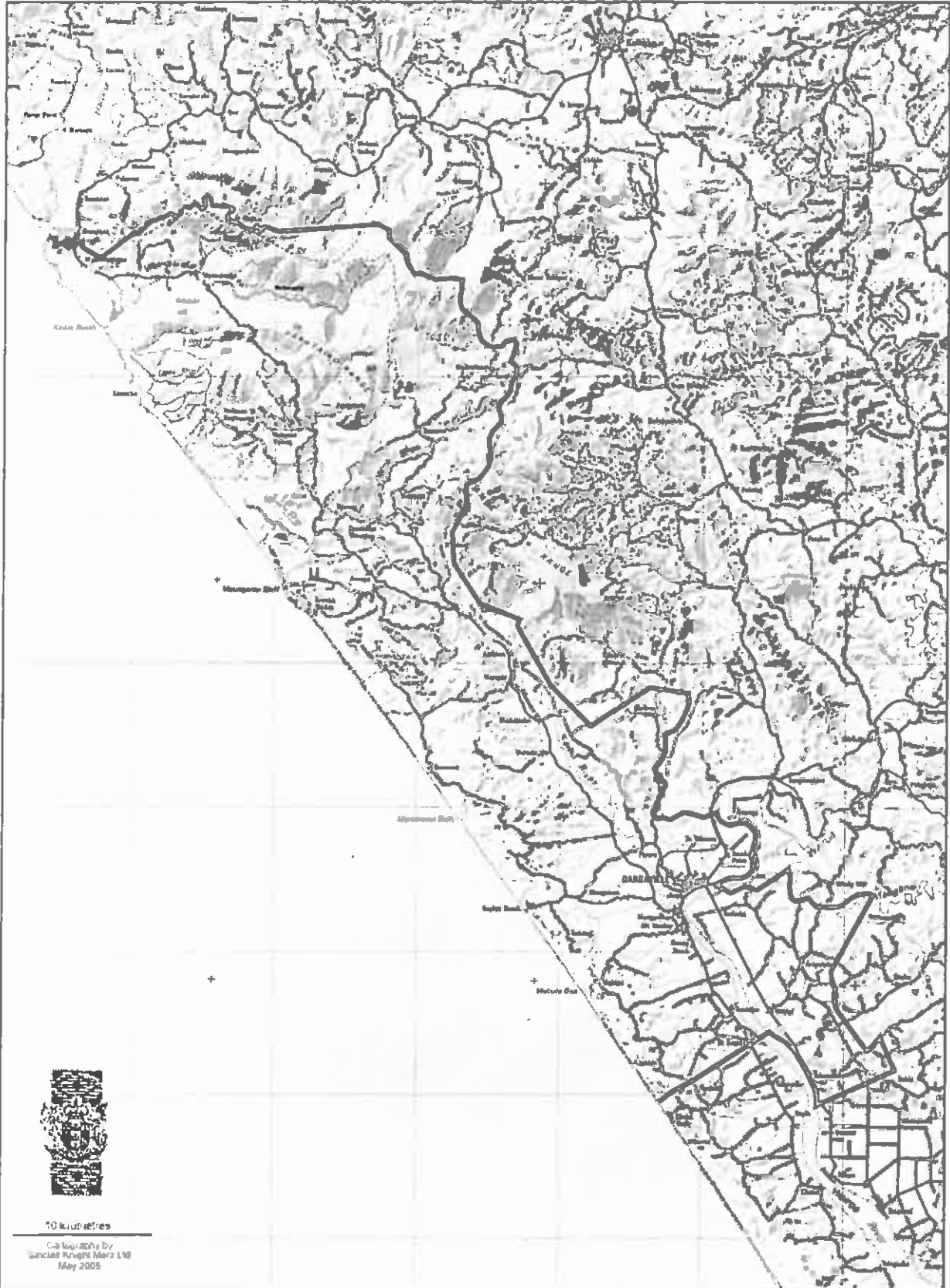
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ATTACHMENT A

TE ROROA-TAONGA TŪTURU PROTOCOL

TAONGA TŪTURU PROTOCOL AREA



ATTACHMENT B

TERMS OF ISSUE

This 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 Deed of Settlement relating to Protocol

1.1 The Deed 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 8.10); and
- 1.1.2 this Te Roroa - Taonga Tūturu Protocol does not restrict the ability of the Crown to interact or consult with any person the Crown considers appropriate including any iwi, hapū, marae, whānau or other representative of tāngata whenua (clause 8.11.3) of the Deed of Settlement; and
- 1.1.3 this Te Roroa - Taonga Tūturu Protocol does not override or diminish:
 - (a) the requirements of the legislation;
 - (b) the functions, duties and powers of the Ministers, officials and others under legislation; or
 - (c) the rights of Te Roroa, or a Representative Entity, under the Deed of Settlement (clause 8.24.2).

- 1.2 **Representative Entity** has the same meaning in clause 1.1.3(c) of these terms of issues as it has in clause 1.9 of the Deed of Settlement.

2 Authority to issue, amend or cancel Protocols

Section 19 of the Settlement Legislation provides that:

- (1) Each responsible Minister may-
 - (a) issue a protocol to the trustees of the Manawhenua Trust in the form set out in Part 1 of Schedule 1 of the Deed of Settlement; and
 - (b) amend or cancel that protocol.
- (2) A protocol maybe amended or cancelled under **subsection (1)** at the initiative of either-
 - (a) The trustees of the Manawhenua Trust; 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 the Manawhenua Trust.

3 Protocols subject to rights, functions and obligations

Section 20 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, including (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, hapu, marae, whanau, or representative of tangata whenua; or
- (b) The responsibilities of a responsible Minister or a responsible Ministry; or
- (c) The legal rights of Te Roroa or a representative entity.

4 Enforceability of Protocol

Section 21 of the Settlement Legislation provides that:

- (1) The Crown must comply with the protocol while it is in force.
- (2) If the Crown fails, without good cause, to comply with a protocol, the Trustees of the Manawhenua Trust 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 Crown to comply with a protocol.
- (4) 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 in enforcing the protocol under **subsections (2)**.

5 Limitation of Rights

Section 25 of the Settlement Legislation provides that:

The Te Roroa - Taonga Tūturu Protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to ngā taonga tūturu.