

# TAONGA TŪTURU PROTOCOL

<p><b>A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀTI KŌATA ON SPECIFIED ISSUES</b></p>
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## 1 INTRODUCTION

1.1 This Taonga Tūturu Protocol covers the following matters:

- 1.1.1 newly found taonga tūturu;
- 1.1.2 the export of taonga tūturu; and
- 1.1.3 the Protected Objects Act 1975 and any amendment or substitution thereof.

1.2 Under the Deed of Settlement 21 December 2012 between Ngāti Kōata, Te Pātaka a Ngāti Kōata 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 “**Protocol**”) setting out how the Minister and the Chief Executive for the Ministry for Culture and Heritage (the “**Chief Executive**”) will interact with Te Pātaka a Ngāti Kōata on matters specified in the Protocol. These matters are:

- 1.2.1 Protocol Area – Part 2;
- 1.2.2 Terms of issue – Part 3;
- 1.2.3 Implementation and communication – Part 4;
- 1.2.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5;
- 1.2.5 The role of the Minister under the Protected Objects Act 1975 – Part 6;
- 1.2.6 Ngāti Kōata Ngā Taonga Tūturu held by Te Papa – Part 7;
- 1.2.7 Effects on Ngāti Kōata interest in the Protocol Area – Part 8;
- 1.2.8 Registration as a collector of Ngā Taonga Tūturu – Part 9;
- 1.2.9 Board Appointments – Part 10;
- 1.2.10 National Monuments, War Graves and Historical Graves – Part 11;
- 1.2.11 History publications relating to Ngāti Kōata – Part 12;
- 1.2.12 Cultural and/or Spiritual Practices and Tendering – Part 13;
- 1.2.13 Consultation – Part 14;
- 1.2.14 Changes to legislation affecting this Protocol – Part 15; and
- 1.2.15 Definitions – Part 16.

- 1.3 For the purposes of this Protocol Te Pātaka a Ngāti Kōata is the body representative of the whānau, hapū, and iwi of Ngāti Kōata who have an interest in the matters covered under this Protocol. This derives from the status of Te Pātaka a Ngāti Kōata as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The Ministry for Culture and Heritage (the “**Ministry**”) and Te Pātaka a Ngāti Kōata are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.
- 1.5 The purpose of the Protected Objects Act 1975 (the “**Act**”) is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tūturu, and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.
- 1.6 The Minister and Chief Executive have certain roles in terms of the matters mentioned in clause 1.1. In exercising such roles, the Minister and Chief Executive will provide Te Pātaka a Ngāti Kōata with the opportunity for input, into matters set out in clause 1.1 and clause 1.2.

## **2. PROTOCOL AREA**

- 2.1 This Protocol applies across the Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the “**Protocol Area**”).

## **3. SUMMARY OF THE TERMS OF ISSUE**

- 3.1 This Protocol is issued pursuant to section 33(1)(a) of the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (the “**Settlement Legislation**”) that implements the Ngāti Kōata 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 summary of the terms of issue set out in Attachment B.

## **4. IMPLEMENTATION AND COMMUNICATION**

- 4.1 The Chief Executive will maintain effective communication with Te Pātaka a Ngāti Kōata by:
  - 4.1.1 maintaining information provided by Te Pātaka a Ngāti Kōata on the office holders of Te Pātaka a Ngāti Kōata and their addresses and contact details;
  - 4.1.2 discussing with Te Pātaka a Ngāti Kōata concerns and issues notified by Te Pātaka a Ngāti Kōata about this Protocol;
  - 4.1.3 as far as reasonably practicable, providing opportunities for Te Pātaka a Ngāti Kōata to meet with relevant Ministry Managers and staff;
  - 4.1.4 meeting with Te Pātaka a Ngāti Kōata to review the implementation of this Protocol at least once a year, if requested by either party;

- 4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol;
- 4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
- 4.1.7 including a copy of the Protocol with Te Pātaka a Ngāti Kōata on the Ministry's website.

## **5. THE ROLE OF THE CHIEF EXECUTIVE UNDER THE PROTECTED OBJECTS ACT 1975**

### **General**

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to Te Pātaka a Ngāti Kōata within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
  - 5.1.1 notify Te Pātaka a Ngāti Kōata in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Kōata origin found anywhere else in New Zealand;
  - 5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Kōata origin found anywhere else in New Zealand;
  - 5.1.3 notify Te Pātaka a Ngāti Kōata 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 Ngāti Kōata origin found anywhere else in New Zealand;
  - 5.1.4 notify Te Pātaka a Ngāti Kōata in writing of its right to apply directly to the Māori 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 Ngāti Kōata origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
  - 5.1.5 notify Te Pātaka a Ngāti Kōata in writing of any application to the Māori 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 Ngāti Kōata origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

### **Applications for Ownership**

- 5.2 If Te Pātaka a Ngāti Kōata 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 Ngāti Kōata 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.
- 5.3 If there is a competing claim or claims lodged in conjunction with the claim of ownership of Te Pātaka a Ngāti Kōata, the Chief Executive will consult with Te Pātaka

a Ngāti Kōata 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.

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

### **Applications for Custody**

- 5.5 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 Ngāti Kōata origin found elsewhere in New Zealand by Te Pātaka a Ngāti Kōata or any other person, the Chief Executive will:

- 5.5.1 consult Te Pātaka a Ngāti Kōata where there is any request from any other person for the custody of the Taonga Tūturu;
- 5.5.2 consult Te Pātaka a Ngāti Kōata before a decision is made on who may have custody of the Taonga Tūturu; and
- 5.5.3 notify Te Pātaka a Ngāti Kōata in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

### **Export Applications**

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

## **6. THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975**

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

## **7. NGĀTI KŌATA - NGA TAONGA TŪTURU HELD BY TE PAPA TONGAREWA**

- 7.1 The Chief Executive will invite Te Papa Tongarewa to enter into a relationship with Te Pātaka a Ngāti Kōata, for the purposes of Te Papa Tongarewa compiling a full inventory of Taonga Tūturu held by Te Papa Tongarewa, which are of cultural, spiritual and historical importance to Ngāti Kōata; and
- 7.2 Associated costs and/or additional resources required to complete the obligations under paragraph 7.1 will be funded by Te Papa Tongarewa, as resources allow.

## **8. EFFECTS ON NGĀTI KŌATA INTERESTS IN THE PROTOCOL AREA**

- 8.1 The Chief Executive and Te Pātaka a Ngāti Kōata shall discuss any policy and legislative development, which specifically affects Ngāti Kōata interests in the Protocol Area.
- 8.2 The Chief Executive and Te Pātaka a Ngāti Kōata shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Kōata interests in the Protocol Area.
- 8.3 Notwithstanding paragraphs 8.1 and 8.2 above the Chief Executive and Te Pātaka a Ngāti Kōata shall meet to discuss Ngāti Kōata interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

## **9. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU**

- 9.1 The Chief Executive will register Te Pātaka a Ngāti Kōata as a Registered Collector of Taonga Tūturu.

## **10. BOARD APPOINTMENTS**

- 10.1 The Chief Executive shall:
- 10.1.1 notify Te Pātaka a Ngāti Kōata of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
  - 10.1.2 add Te Pātaka a Ngāti Kōata's nominees onto the Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and
  - 10.1.3 notify Te Pātaka a Ngāti Kōata of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

## **11. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES**

- 11.1 The Chief Executive shall seek and consider the views of Te Pātaka a Ngāti Kōata on any national monument, war grave, historical grave, managed or administered by the Ministry, which specifically relates to Ngāti Kōata interests.
- 11.2 The Chief Executive will provide for the marking and maintenance of any historic war grave identified by the Te Pātaka a Ngāti Kōata, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a

combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

## **12. HISTORICAL PUBLICATIONS RELATING TO NGĀTI KŌATA**

### **12.1 The Chief Executive shall:**

12.1.1 provide Te Pātaka a Ngāti Kōata with a list of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāti Kōata, and will supply these on request; and

12.1.2 discuss with Te Pātaka a Ngāti Kōata any work the Ministry undertakes that deals specifically or substantially with Ngāti Kōata.

## **13. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES**

13.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngāti Kōata within the Protocol Area, the Chief Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.

13.2 Where appropriate, the Chief Executive will consider using Te Pātaka a Ngāti Kōata as a provider of professional services.

13.3 The procurement by the Chief Executive of any such services set out in clauses 13.1 and 13.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

## **14. CONSULTATION**

14.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with Te Pātaka a Ngāti Kōata in each case are:

14.1.1 ensuring that Te Pātaka a Ngāti Kōata 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;

14.1.2 providing Te Pātaka a Ngāti Kōata with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;

14.1.3 ensuring that sufficient time is given for the participation of Te Pātaka a Ngāti Kōata in the decision making process including the preparation of submissions by Te Pātaka a Ngāti Kōata in relation to any of the matters that are the subject of the consultation;

14.1.4 ensuring that the Chief Executive will approach the consultation with Te Pātaka a Ngāti Kōata with an open mind, and will genuinely consider the submissions of Te Pātaka a Ngāti Kōata in relation to any of the matters that are the subject of the consultation; and

14.1.5 report back to Te Pātaka a Ngāti Kōata, either in writing or in person, in regard to any decisions made that relate to that consultation.

## 15. CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

15.1 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 shall:

15.1.1 notify Te Pātaka a Ngāti Kōata of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

15.1.2 make available to Te Pātaka a Ngāti Kōata the information provided to Māori as part of the consultation process referred to in this clause; and

15.1.3 report back to Te Pātaka a Ngāti Kōata on the outcome of any such consultation.

## 16. DEFINITIONS

16.1 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 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;

**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 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;

**Ngā Taonga Tūturu** has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu;

**Ngāti Kōata** has the meaning set out in clause 8.8 of the Deed of Settlement;

**Protocol** means a statement in writing, issued by the Crown through the Minister to Te Pātaka a Ngāti Kōata under the Settlement Legislation and the Deed of Settlement and includes this Protocol; and

**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 Pātaka a Ngāti Kōata** means the trustees for the time being of Te Pātaka a Ngāti Kōata.

**ISSUED** on

**SIGNED** for and on behalf of )  
**THE SOVEREIGN** in right of New Zealand by )  
the Minister of Arts, Culture and Heritage )  
in the presence of: ) \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness:

Witness Name:

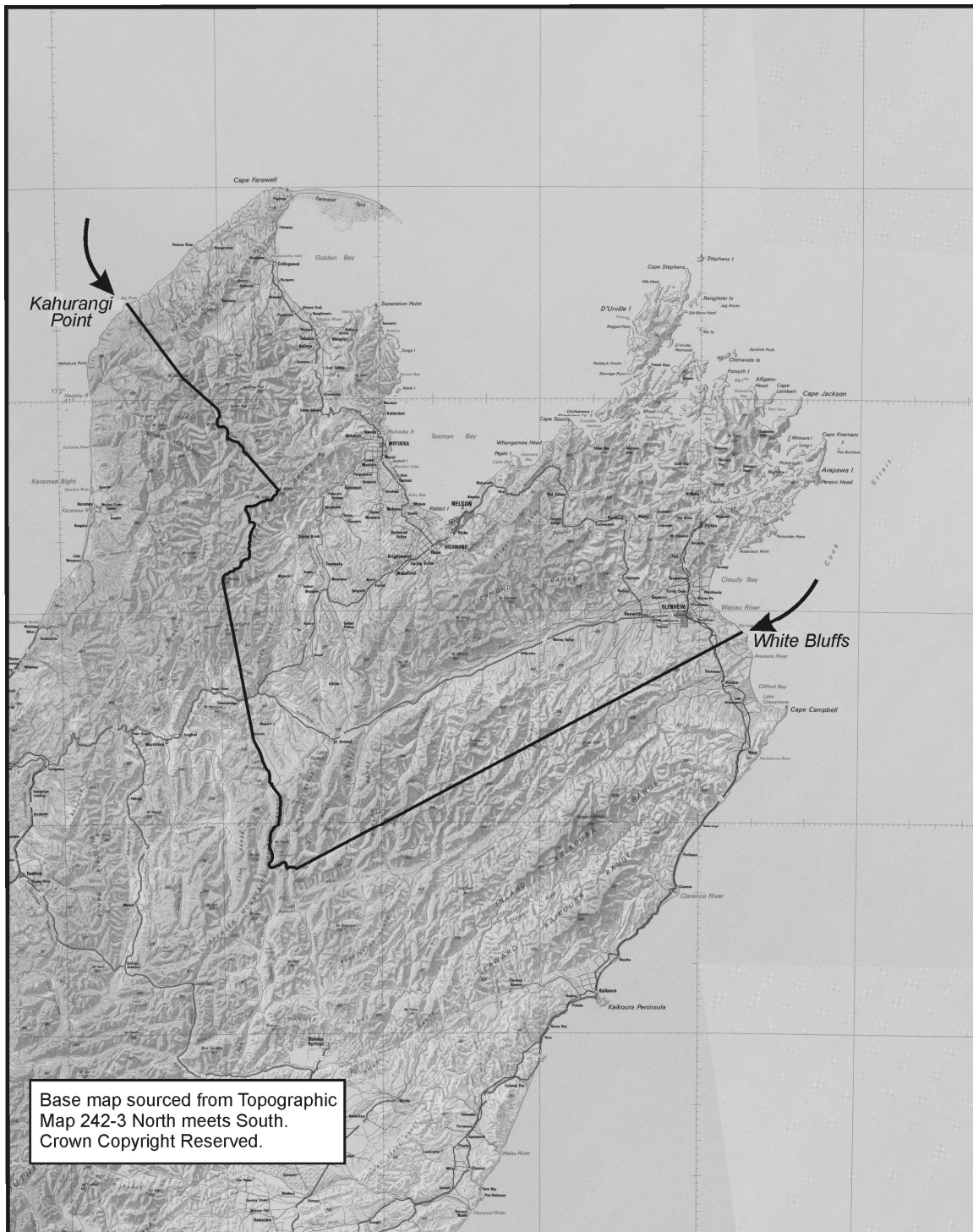
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ATTACHMENT A

NGĀTI KŌATA TAONGA TŪTURU PROTOCOL AREA



## 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 may amend or cancel this protocol, but only after consulting with Te Pātaka a Ngāti Kōata trustees and having particular regard to their views (section 33(2) and (3)).

#### 2. **Limits**

- 2.1 This protocol does not:

2.1.1 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 representative of tangata whenua (section 34(a) and (b)); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of the Ngāti Kōata (section 34(c)); or

2.1.3 grant, create, or evidence an estate or interest in, or rights relating to, taonga tūturu.

#### 3. **Breach**

- 3.1 Subject to the Crown Proceedings Act 1950, Te Pātaka a Ngāti Kōata trustees may enforce this protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 35(2) and (3)).

- 3.2 A breach of this protocol is not a breach of the deed of settlement (clause 5.51).