
NGĀ TAONGA TŪTURU PROTOCOL

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER
FOR ARTS, CULTURE AND HERITAGE REGARDING THE RELATIONSHIP BETWEEN TE
RŪNANGA O NGĀTI WHARE
AND THE MINISTER FOR ARTS, CULTURE AND HERITAGE
AND MINISTRY FOR CULTURE AND HERITAGE**

This *4th* day of May 2012

1 INTRODUCTION

1.1. Ko Tūwatawata te Maunga

Ko Whirinaki te Awa

Ko Wharepakau te Tangata

Ko Ngāti Whare te Iwi

1.2. Ngāti Whare's vision for the future is centred on the following five fundamental principles:

(a) He Tapu te Whirinaki - The Sacredness of the Whirinaki;

(b) Kia Mau te Manamotuhake a Wharepakau - Political Development;

(c) Kia Mau te Mana o Wharepakau - Cultural Development;

(d) Manaaki te Katoa - Economic Development; and

(e) Awhi Ngā Uri o Wharepakau - Social Development

1.3. The Protocol Area identified is within the traditional rohe of Ngāti Whare. It is a culturally and spiritually significant place to the people of Ngāti Whare and the area over which they exercise their kaitiakitanga.

TERMS OF THIS PROTOCOL

2 TERMS OF ISSUE

2.1 This Protocol is issued pursuant to section 42 of the Ngāti Whare Claims Settlement Act 2012 (the Settlement Legislation) and Clause 5.25 of the Deed of Settlement and is subject to the Settlement Legislation and the terms of issue set out in clauses 5.27-5.28 of the Deed of Settlement.

2.2 In particular, this Protocol must be read subject to the provisions contained in clauses 5.27 and 5.28 of the Deed of Settlement.

3 SCOPE AND PURPOSE

3.1 The Minister and the Chief Executive acknowledge that, to Ngāti Whare, taonga that are highly prized by Ngāti Whare and derived through their whakapapa are not limited to the physical world alone, but include:

(a) Tangible objects such as types of heirlooms, artifacts, carvings, land and fisheries; and

(b) Intangible substance such as language, spiritual beliefs, ideas and metaphysical gifts.

(together, "Ngāti Whare Taonga").

3.2 The Minister and the Chief Executive also acknowledge that Ngāti Whare, as kaitiaki, view themselves as having a responsibility to future generations to ensure the continued survival of Ngāti Whare Taonga.

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- 3.3 The Minister and Chief Executive have certain functions, powers and duties in terms of the Protected Objects Act 1975 ("the Act"). The purpose of 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.
- 3.4 In exercising such functions and powers under the Act, the Minister and the Chief Executive are seeking a relationship with Ngāti Whare consistent with the principles of te Tiriti o Waitangi/the Treaty of Waitangi. The Minister and Chief Executive recognise that Ngāti Whare have an interest in relation to the preservation, protection and management of Ngāti Whare Taonga, including its taonga tūturu, which arises from their mana in their rohe.
- 3.5 Te Rūnanga o Ngāti Whare acknowledge, in relation to the provisions of this Protocol relating to the Protected Objects Act 1975 ("the Act"), that taonga tūturu, as a component of the tangible aspect of Ngāti Whare Taonga, is defined in section 2 of the Act.
- 3.6 The purpose of this Protocol is to:
- (a) Set out how Te Rūnanga o Ngāti Whare, the Minister, the Chief Executive and the Ministry will establish and maintain a positive, co-operative and enduring relationship regarding Ngāti Whare Taonga;
 - (b) Recognise that Ngāti Whare has an interest in the preservation, protection and management of all elements of Ngāti Whare Taonga in the Protocol Area and all taonga identified as being of Ngāti Whare origin elsewhere in New Zealand; and
 - (c) Provide for the better protection of certain objects through the mechanisms of the Act.

4 PROTOCOL AREA

- 4.1 This Protocol applies across the Protocol Area identified in the map included as Attachment A of this Protocol.

5 GOVERNING PRINCIPLES

- 5.1 Te Rūnanga o Ngāti Whare, the Minister and the Chief Executive agree that the following principles will govern the relationship between the three parties, the implementation of this Protocol and the exercise of their various roles and functions under this Protocol:
- (a) a spirit of co-operation and good faith;
 - (b) early engagement on issues that the Chief Executive has the mandate from the Minister to work on;
 - (c) commitment to the highest level of engagement as indicated in this Protocol;
 - (d) a 'no surprises' approach;
 - (e) acknowledgement that the relationship is evolving, not prescribed;

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- (f) respect for the independence of the parties and their individual mandates, roles and responsibilities impacting on the Protocol Area;
- (g) ensuring the relationship is consistent with the Treaty of Waitangi and its principles; and
- (h) commitment to establishing and maintaining a positive, cooperative and enduring relationship that actively contributes to the spiritual and physical health and well-being of Ngāti Whare.

6 ROLE OF THE PARTIES

6.1 *The role of Te Rūnanga o Ngāti Whare:*

6.1.1 The role of Te Rūnanga o Ngāti Whare in respect of this Protocol includes:

- (a) the preservation, protection and management of Ngāti Whare Taonga through Ngāti Whare tikanga and kaitiakitanga;
- (b) input in the policy and decision-making processes set out in this Protocol; and
- (c) the sharing of information.

6.2 *The role of the Chief Executive:*

6.2.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to Te Rūnanga o Ngāti Whare within the limits of the Act. From the date this Protocol is issued, the Chief Executive will:

- (a) Notify Te Rūnanga o Ngāti Whare in writing of any taonga tūturu found within the Protocol Area or identified as being of Ngāti Whare origin found elsewhere in New Zealand;
- (b) Provide for appropriate examination and recording of any taonga tūturu found within the Protocol Area or identified as being of Ngāti Whare origin found elsewhere in New Zealand;
- (c) Allow for Ngāti Whare kaitiakitanga as temporary custodians of any taonga tūturu found within the Protocol Area or identified as being of Ngāti Whare origin elsewhere in New Zealand, until ownership is determined, on such conditions agreed between Te Rūnanga o Ngāti Whare and the Chief Executive as to the care of the taonga tūturu;
- (d) Notify Te Rūnanga o Ngāti Whare 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 Whare origin found elsewhere in New Zealand;
- (e) Notify Te Rūnanga o Ngāti Whare in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession

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or custody of any taonga tūturu found within the Protocol Area or identified as being of Ngāti Whare origin found elsewhere in New Zealand;

- (f) Despite 6.2.1(c) above, there may be situations where the Chief Executive considers that other arrangements are more appropriate. If so, the Chief Executive may make other arrangements, but the Chief Executive must:
- (i) notify Te Rūnanga o Ngāti Whare in writing of those arrangements and reasons for them; and
 - (ii) seek and have regard to the views of Te Rūnanga o Ngāti Whare on those arrangements; and
 - (iii) notify Te Rūnanga o Ngāti Whare in writing of the final arrangements and the reasons for them.
 - (iv) notify Te Rūnanga o Ngāti Whare 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 Whare origin found elsewhere in New Zealand, or for any right, title, estate, or interest in any such taonga tūturu; and
 - (v) notify Te Rūnanga o Ngāti Whare 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 Whare origin found elsewhere in New Zealand, or for any right, title, estate, or interest in any such taonga tūturu.

6.2.2 Applications for Ownership

- (a) If Te Rūnanga o Ngāti Whare, on behalf of Ngāti Whare, lodges with the Chief Executive a claim of ownership of any taonga tūturu found within the Protocol Area or identified as being of Ngāti Whare origin found elsewhere in New Zealand and there are no competing claims of ownership, the Chief Executive, if satisfied that the claim is valid, will apply to the Registrar of the Māori Land Court for an order confirming ownership of the taonga tūturu by Ngāti Whare.
- (b) If there is a competing claim or claims lodged in conjunction with a Ngāti Whare claim of ownership, the Chief Executive will consult with Te Rūnanga o Ngāti Whare for the purpose of resolving the competing claims, and if satisfied that the competing claims have been resolved and that a resolution is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the taonga tūturu.
- (c) If the competing claims for ownership of any taonga tūturu found within the Protocol Area or identified as being of Ngāti Whare origin found elsewhere in New Zealand, cannot be resolved, the Chief Executive, at the request of Ngāti Whare, may facilitate an application to the Māori Land Court for determination of the ownership of the taonga tūturu.

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6.2.3 Applications for Custody

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 Whare origin found elsewhere in New Zealand by Ngāti Whare or any other person, the Chief Executive will:

- (a) Notify Te Rūnanga o Ngāti Whare in writing where there is any request from any other person for the custody of the taonga tūturu;
- (b) Seek and have regard to the views of Te Rūnanga o Ngāti Whare where there is any request from any other person for the custody of the taonga tūturu; and
- (c) Notify Te Rūnanga o Ngāti Whare in writing of the decision made by the Chief Executive on the custody of the taonga tūturu.

6.2.4 Export Applications

- (a) For the purpose of seeking an expert opinion from Te Rūnanga o Ngāti Whare on any export applications to remove any taonga tūturu of Ngāti Whare origin from New Zealand, the Chief Executive will register Te Rūnanga o Ngāti Whare on the Ministry for Culture and Heritage's Register of Expert Examiners.
- (b) Where the Chief Executive receives an export application to remove any taonga tūturu of Ngāti Whare origin from New Zealand, the Chief Executive will consult Te Rūnanga o Ngāti Whare as an Expert Examiner on that application, and notify Ngāti Whare in writing of his or her decision.

6.2.5 Registration as a collector of ngā taonga tūturu

The Chief Executive will register Te Rūnanga o Ngāti Whare as a Registered Collector of ngā taonga tūturu.

6.2.6 Board Appointments

The Chief Executive shall:

- (a) Notify Te Rūnanga o Ngāti Whare of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
- (b) Add Te Rūnanga o Ngāti Whare nominees onto the Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and
- (c) Notify Te Rūnanga o Ngāti Whare of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

6.2.7 Provision of Cultural and/or Spiritual practices and Professional Services

- (a) When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Te Rūnanga o Ngāti Whare within the Protocol Area, the Chief

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Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.

- (b) Where appropriate, the Chief Executive will consider using Te Rūnanga o Ngāti Whare as a provider of professional services.
- (c) The procurement by the Chief Executive of any such services set out in Clauses 6.3.7(a) and (b) 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.

6.2.8 History publications relating to Ngāti Whare

The Chief Executive shall:

- (a) Provide Te Rūnanga o Ngāti Whare with a list of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāti Whare and will supply these on request; and
- (b) discuss with the Te Rūnanga o Ngāti Whare any work the Ministry undertakes that deals specifically or substantially with Ngāti Whare.

6.2.9 Funds Administered by the Ministry

The Chief Executive will make best endeavours to notify Te Rūnanga o Ngāti Whare of any awards and funds administered by the Ministry to which applications can be made (for example, the Commemorating Waitangi Day Fund) and provide Te Rūnanga o Ngāti Whare with details of the application process and deadlines.

6.2.10 Changes to Policy and Legislation Affecting this Protocol

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:

- (a) Notify Te Rūnanga o Ngāti Whare of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
- (b) Make available to Te Rūnanga o Ngāti Whare the information provided to Māori as part of the consultation process referred to in this clause; and
- (c) report back to Te Rūnanga o Ngāti Whare on the outcome of any such consultation.

6.2.11 Consultation

Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with Te Rūnanga o Ngāti Whare in each case are:

- (a) Ensuring that Te Rūnanga o Ngāti Whare 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;

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- (b) Discussing whether a working party should be created between the Ministry and Te Rūnanga o Ngāti Whare to progress issues arising;
- (c) Providing Te Rūnanga o Ngāti Whare with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- (d) Ensuring that sufficient time is given for the participation of Te Rūnanga o Ngāti Whare in the decision making process, including the preparation of submissions by Te Rūnanga o Ngāti Whare, in relation to any of the matters that are the subject of the consultation;
- (e) Ensuring that the Chief Executive will approach the consultation with Te Rūnanga o Ngāti Whare with an open mind, and will genuinely consider the submissions of Te Rūnanga o Ngāti Whare, in relation to any of the matters that are the subject of the consultation; and
- (f) Reporting back to Te Rūnanga o Ngāti Whare, either in writing or in person, on any decisions made that relate to that consultation.

6.2.12 Other Matters

The Chief Executive will also:

- (a) Discuss with Te Rūnanga o Ngāti Whare concerns and issues notified by Te Rūnanga o Ngāti Whare about the Act;
- (b) Review the implementation of this Protocol from time to time, or at the request of Te Rūnanga o Ngāti Whare, unless otherwise agreed in writing by both Te Rūnanga o Ngāti Whare and the Chief Executive; and
- (c) 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.

6.3 The role of the Minister

- (a) The Minister has functions, powers and duties under the Act and may consult, notify and provide information to Te Rūnanga o Ngāti Whare within the limits of the Act. In circumstances where the Chief Executive originally consulted with Te Rūnanga o Ngāti Whare as an Expert Examiner, the Minister may consult with Te Rūnanga o Ngāti Whare where a person appeals the decision of the Chief Executive to:
 - (i) refuse permission to export any taonga tūturu, or ngā taonga tūturu, from New Zealand; or
 - (ii) impose conditions on the approval to export any taonga tūturu or ngā taonga tūturu from New Zealand.

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- (b) The Ministry will notify Te Rūnanga o Ngāti Whare in writing of the Minister's decision on an appeal in relation to an application to export any taonga tūturu where Te Rūnanga o Ngāti Whare was consulted as an Expert Examiner.

7 COMMUNICATION BETWEEN THE PARTIES

7.1 The Chief Executive and Te Rūnanga o Ngāti Whare will establish and maintain effective and efficient communication with each other on a continuing basis by:

- (a) Te Rūnanga o Ngāti Whare providing, and the Ministry maintaining, information on the Te Rūnanga o Ngāti Whare staff responsible for Protocol matters relating to the Protocol Area, including their addresses and contact details;
- (b) The Ministry providing, and Te Rūnanga o Ngāti Whare maintaining, information on primary Ministry contacts responsible for Protocol matters relating to the Protocol Area;
- (c) Providing reasonable opportunities for their relevant staff to meet with each other, including arranging meetings as required to discuss and (if possible) resolve any issue that has arisen between the parties; and
- (d) Identifying staff who will be working closely with staff of the other party, and informing those staff of the contents of this Protocol and their responsibilities and roles under it.

8 INFORMATION SHARING

- 8.1 Te Rūnanga o Ngāti Whare and the Chief Executive recognise the benefit of mutual information exchange. To this end, the Ministry and Te Rūnanga o Ngāti Whare will as far as possible exchange any information that is relevant to, and will assist with the management of, Ngāti Whare taonga within the Protocol Area and all taonga tūturu identified as being of Ngāti Whare origin elsewhere in New Zealand.
- 8.2 The Ministry will make available to Te Rūnanga o Ngāti Whare all existing information held by, or reasonably accessible to, the Ministry where that information is requested by Te Rūnanga o Ngāti Whare for the purposes of assisting them to exercise their rights fully under this Protocol.
- 8.3 The obligations in Clauses 8.1 and 8.2 of this Protocol do not apply to information that the Minister or Chief Executive is legally prevented from providing (for example, information that is the subject of an obligation of confidentiality or non-disclosure) or to information that the Minister or Chief Executive may withhold under the Official Information Act 1982.

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9 IMPLEMENTATION AND APPLICATION

- 9.1 The implementation and application of this Protocol will be carried out within the timeframes and priorities agreed between Te Rūnanga o Ngāti Whare and the Chief Executive.
- 9.2 The Protocol will apply to all functions, responsibilities and actions of the Minister and the Chief Executive that affect the Protocol Area or relate to taonga tūturu identified as being of Ngāti Whare origin elsewhere in New Zealand.

10 STAFF AWARENESS

- 10.1 From the date of signing this Protocol, the Chief Executive will as reasonably practicable (as resources allow) arrange for the relevant employees to be educated on:
- (a) The values and practices of Ngāti Whare; and
 - (b) The purpose, content and implications of this Protocol.

11 ESCALATION OF MATTERS

- 11.1 If one party considers that there has been a breach of this Protocol then that party may give written notice to the other that they are in dispute. The following process shall be undertaken once notice is received by either party to this Protocol:
- (a) Within 15 working days of being given written notice, the relevant contact person from the Ministry and Te Rūnanga o Ngāti Whare will meet to work in good faith to resolve the issue.
 - (b) If the dispute has not been resolved within 30 working days of receipt of the notice referred to in 11.1(a), the Chief Executive and a representative appointed by Te Rūnanga o Ngāti Whare will meet to work in good faith to resolve the issue.
 - (c) If the dispute has still not been resolved within 45 working days of receipt of the notice referred to in 11.1(a) and the matter remains of significance, the Minister and a representative appointed by Te Rūnanga o Ngāti Whare will meet to work in good faith to resolve this issue provided:
 - (i) it is not inconsistent with statutory obligations; and
 - (ii) the parties agree.

12 REVIEW AND AMENDMENT

- 12.1 The Minister and the Chief Executive and Te Rūnanga o Ngāti Whare agree that this Protocol is a living document which should be updated and adapted to take account of future developments and additional co-management opportunities.

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- 12.2 If requested by either party, the first review of this Protocol will take place no later than two years from the Settlement Date. Thereafter the Protocol will be reviewed on a two-yearly basis, if requested by either party.
- 12.3 Where the parties cannot reach agreement on any review or variation proposal they will use the escalation processes contained in Clause 11 of this Protocol.
- 12.4 In respect of the exercise of rights and obligations under this Protocol:
- (a) any right of Ngāti Whare will be exercised through Te Rūnanga o Ngāti Whare; and
 - (b) where the Minister, or the Chief Executive, is required to engage, or otherwise interact, with Ngāti Whare (including, without limitation, making available information, consulting, informing Ngāti Whare of certain matters, seeking advice, providing notice or assistance, or meeting with Ngāti Whare), the Minister or, the Chief Executive will satisfy that obligation by engaging, or otherwise interacting, with Te Rūnanga o Ngāti Whare.

13 ADDITIONAL REDRESS MECHANISMS

- 13.1 The Minister and Chief Executive agree to explore and have ongoing discussions with Te Rūnanga o Ngāti Whare regarding the development of additional redress mechanisms, as appropriate and necessary.

14 DEFINITIONS AND INTERPRETATIONS

- 14.1 The provisions of this Protocol shall be interpreted in a manner that best furthers the purpose of this Protocol and is consistent with Clauses 3.4 and 5 of this Protocol.
- 14.2 In this Protocol, unless the context requires otherwise, terms in the Deed of Settlement and the Settlement Legislation have the same meaning.
- 14.3 In this Protocol, unless the context otherwise requires:
- (a) terms defined in the Deed of Settlement and the Settlement Legislation have the same meaning in this Protocol;
 - (b) **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;
 - (c) **Crown** means Her Majesty The Queen in right of New Zealand and includes, where appropriate, the Minister 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;
 - (d) **Deed of Settlement** means the deed of settlement dated 8 December 2009 entered into between the Crown and Te Rūnanga o Ngāti Whare;
 - (e) **expert examiner** has the same meaning as in section 2 of the Protected Objects Act 1975 and means a body corporate or an association of persons;

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- (f) **found** has the same meaning as in section 2 of the Protected Objects Act 1975 and means:
- in relation to any taonga tūturu, 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 its finding is no longer alive; and 'finding' and 'finds' have corresponding meanings;
- (g) **ngā taonga tūturu** has the same meaning as in section 2 of the Protected Objects Act 1975 and means two or more taonga tūturu;
- (h) **Ngāti Whare Taonga** means those things that, to Ngāti Whare, are highly prized and derived through their whakapapa. This includes:
- (i) tangible objects such as types of heirlooms, artifacts, carvings, land and fisheries; and
- (ii) intangible substance such as language, spiritual beliefs, ideas and metaphysical gifts.
- (i) **Protocol Area** has the same meaning given in Clause 4 of this Protocol;
- (j) **settlement legislation** means the Ngāti Whare Claims Settlement Act 2012;
- (k) **taonga tūturu** has the same meaning as in section 2 of the Protected Objects Act 1975 and means an object that:
- (i) relates to Māori culture, history or society; and
- (ii) was or appears to have been:
- a. manufactured or modified in New Zealand by Māori; or
- b. brought into New Zealand by Māori; or
- c. used by Māori; and
- (iii) is more than 50 years old;
- (l) **Te Rūnanga o Ngāti Whare** means the trustees from time to time of the trust (formerly called Te Rūnanga o Ngāti Whare Iwi Trust) established by the Te Rūnanga o Ngāti Whare Trust Deed, in their capacity as such trustees; and, if the trustees have incorporated as a board under the Charitable Trusts Act 1957, means the Board so incorporated;
- (m) **Te Rūnanga o Ngāti Whare Trust Deed** means the deed of trust dated 14 February 1999 and includes:
- (i) any schedules to that deed of trust; and
- (ii) Any amendments to the deed of trust or its schedules, including the amended deed of trust dated 13 December 2008;


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- (n) Subject to clause 14.1, the rules of interpretation in the Deed of Settlement apply to the interpretation of this Protocol.

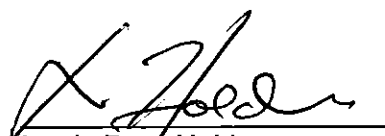
SIGNED by
**THE MINISTER FOR ARTS, CULTURE
AND HERITAGE** in the presence of:


Hon Christopher Finlayson


WITNESS


Name: *Harshish Jounaux*
Date: *4 May 2012*

SIGNED for and on behalf of **HER MAJESTY
THE QUEEN** in right of the Government of
New Zealand by the Chief Executive of the
Ministry for Culture and Heritage
in the presence of:


Lewis Dare Holden

WITNESS


Name: *Maiena Rawiri*
Date: *3/5/2012*

ACKNOWLEDGEMENT OF RECEIPT

TE RŪNANGA O NGĀTI WHARE acknowledges the receipt of this Taonga Tūturū Protocol this 25th of June 2012.

Signed for and on behalf of
Te Rūnanga o Ngāti Whare by:



David Carson
Chairperson

~~James Carlson~~
~~Trustee~~



Lena Brew
Trustee



Kohiti Kohiti
Trustee



Robert Taylor
Trustee



Pene Olsen
Trustee

Roberta Rickard
Trustee

