

A PROTOCOL issued by the CROWN through the MINISTER FOR ARTS, CULTURE AND HERITAGE and CHIEF EXECUTIVE OF THE MINISTRY FOR CULTURE AND HERITAGE regarding INTERACTION with TE URI O HAU on ANTIQUITIES ISSUES

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 13 December 2000 between Te Uri o Hau and the Crown (*the Deed of Settlement*), the Crown, through the Minister for Arts, Culture and Heritage (*the Minister*) and Chief Executive of the Ministry for Culture and Heritage (*the Chief Executive*), agreed to issue a Protocol on the following matters:
- (a) Newly found Artifacts;
 - (b) The export of Artifacts; and
 - (c) The Antiquities Act 1975 legislative framework.
- 1.2 The Minister and the Chief Executive, or other such persons acting in those capacities, and Te Uri o Hau are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi principle of partnership. That principle imposes on both Treaty partners the duty to act reasonably and in good faith and provides the basis of the actions of the Minister and the Chief Executive, as set out in this Protocol.
- 1.3 The Minister and the Chief Executive have certain functions, powers and duties in terms of the Antiquities Act 1975. In exercising such functions, powers and duties, the Minister and the Chief Executive will provide Te Uri o Hau Governance Entity with the opportunity for input, consistent with the Antiquities Act 1975, in the policy and decision making processes relating to the matters set out in this Protocol.
- 1.4 The Prime Minister authorises the Minister to be the Minister of the Crown responsible for the Antiquities Act 1975. The Minister and Chief Executive will notify Te Uri o Hau Governance Entity of the office name and contact details of the person acting in those capacities from time to time.

2 PROTOCOL AREA

This Protocol applies across Te Uri o Hau Antiquities Protocol Area, which means the area identified in the map included in *Attachment A* of this Protocol together with:

- (a) The Mangawhai Harbour;
- (b) The Kaipara Harbour and its tributaries; and
- (c) The waters (including the foreshore and seabed) of the coastal areas adjacent to the coastal boundary of the area shown on that map extending to the outer limit of the territorial sea (as defined in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977).

3 TERMS OF ISSUE

This Protocol is issued pursuant to section 108 of Te Uri o Hau Claims Settlement Act 2002 (*the Settlement Legislation*) and *clause 5.12* of the Deed of Settlement, 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 OTHER TERMS

Other terms are defined in the attached *Attachment C* of this Protocol.

5 THE ROLE OF THE CHIEF EXECUTIVE OF THE MINISTRY FOR CULTURE AND HERITAGE UNDER THIS PROTOCOL

The Chief Executive has certain functions, powers and duties in terms of the Antiquities Act 1975 and will consult, notify and provide information to Te Uri o Hau Governance Entity within the limits of that legislation. The Chief Executive will:

- (a) Provide Te Uri o Hau Governance Entity on request with access to information held by the Ministry for Culture and Heritage, as provided for by the Official Information Act 1982, including information on any Artifact identified as being of Te Uri o Hau origin, including items found within Te Uri o Hau Antiquities Protocol Area or found anywhere else in New Zealand;
- (b) Notify Te Uri o Hau Governance Entity in writing of any registered Artifact found within Te Uri o Hau Antiquities Protocol Area and of any registered

Artifacts identified as being of Te Uri o Hau origin found anywhere else in New Zealand from the date of signing of this Protocol;

- (c) Consult with Te Uri o Hau Governance Entity when making a decision on who may have custody of an Artifact found within Te Uri o Hau Antiquities Protocol Area or identified as being of Te Uri o Hau origin found anywhere else in New Zealand;
- (d) Notify Te Uri o Hau Governance Entity in writing of the decision made by the Chief Executive on the custody of an Artifact where Te Uri o Hau Governance Entity has been consulted;
- (e) Consult with Te Uri o Hau Governance Entity in circumstances where there are requests from non-Te Uri o Hau persons or entities for the custody of Artifacts found within Te Uri o Hau Antiquities Protocol Area or identified as being of Te Uri o Hau origin found anywhere else in New Zealand;
- (f) Seek from Te Uri o Hau Governance Entity an expert opinion on any Artifact of Te Uri o Hau origin for which a person has applied to the Chief Executive for permission to export from New Zealand;
- (g) Notify Te Uri o Hau Governance Entity in writing of the decision made by the Chief Executive on an application to export an Artifact where the expert opinion was sought from Te Uri o Hau Governance Entity;
- (h) Consult with Te Uri o Hau Governance Entity regarding their concerns and issues, notified by Te Uri o Hau Governance Entity, about the Antiquities legislative framework;
- (i) Review the implementation of this Protocol biennially unless otherwise mutually agreed in writing by the Chief Executive and Te Uri o Hau Governance Entity; and
- (j) Train relevant Ministry for Culture and Heritage staff on this Protocol, as far as reasonably practicable, and provide ongoing training as required.

6 THE ROLE OF THE MINISTER FOR ARTS, CULTURE AND HERITAGE UNDER THIS PROTOCOL

The Minister has certain functions, powers and duties under the Antiquities Act 1975 and can consult, notify and provide information to Te Uri o Hau Governance Entity within the limits of that legislation. The Minister will consult with Te Uri o Hau Governance Entity where a person appeals the decision of the Chief Executive to:

- (a) Refuse permission to remove any Artifact from New Zealand; or
- (b) Impose conditions on an approval to export any Artifacts from New Zealand;

in the circumstances where Te Uri o Hau Governance Entity were originally asked for an expert opinion by the Chief Executive.

ISSUED on the 12th day of November 2002

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



Helen Clark

Witness [Redacted]
 Occupation Private Secretary
 Address [Redacted]

SIGNED by the Trustees of)
 TE URI O HAU SETTLEMENT TRUST)
 in the presence of:)

[Redacted]

Sir Graham Stanley Latimer

[Redacted]

Morehu Kena

[Redacted]

Jimmy Maramatanga Connelly

[Redacted]

Russell Rata Kemp

[Redacted]

Rawson Sydney Ambrose Wright

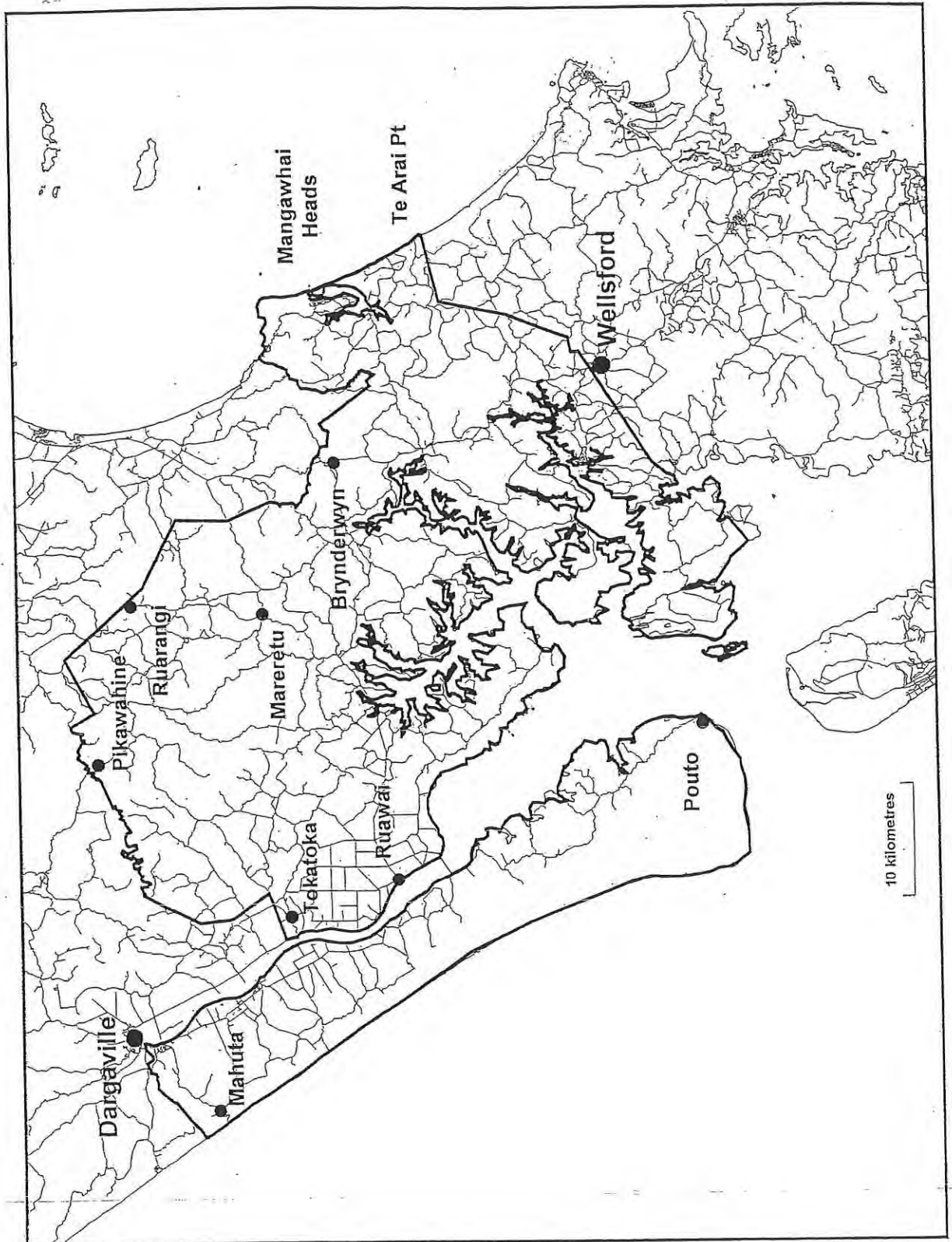
[Redacted]

Tapihana Shelford

Witness [Redacted]
 Occupation MANA AHEI
 Address [Redacted]

ATTACHMENT A
TE URI O HAU ANTIQUITIES PROTOCOL AREA

[map to be attached and placed behind this page]



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 Minerals 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 within the scope of the relevant minerals programmes, 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;

Fisheries Legislation means the Fisheries Act 1996 or the Fisheries Act 1983;

Minister means the Minister of Conservation, the Minister of Fisheries, the Minister of Energy, or the Minister for Arts, Culture and Heritage (as the case may be);

Ministry means the Department of Conservation, the Ministry of Fisheries, the Ministry of Economic Development, or the Ministry for Culture and Heritage (as the case may be);

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:

- (i) Haumoewaarangi; and/or
 - (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 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 with respect to an area means exercised rights to that area according to Maori customary law, including through:

- (a) Occupancy;
- (b) Use and stewardship of lands or resources;
- (c) Burial; and/or
- (d) Affiliation to marae within the area; and

Te Uri o Hau Governance Entity means Sir Graham Stanley Latimer, Morehu Kena, Jimmy Maramatanga Connelly, Russell Rata Kemp, Rawson Sydney Ambrose Wright, Taphana Shelford as the Trustees for the time being of Te Uri o Hau Settlement Trust.

2 Authority to issue, amend or cancel Protocols

Section 108 of the Settlement Legislation provides that:

- (a) Subject to clause (2)(c), each Minister may issue a Protocol, and may, from time to time, amend or cancel that Protocol;
- (b) A Protocol may be amended or cancelled pursuant to section 108(1) of the Settlement Legislation at the initiative of either the Minister or Te Uri o Hau Governance Entity; and
- (c) The relevant Minister may amend or cancel a Protocol, only after consulting with, and having particular regard to, Te Uri o Hau Governance Entity.

3 Protocols subject to Crown obligations

Section 109 of the Settlement Legislation provides that all Protocols shall be issued and amended, subject to, and without restriction upon:

- (a) The obligations of the relevant Minister and the relevant Ministry to discharge their respective functions, powers and duties in accordance with existing law and government policy from time to time; and
- (b) The Crown's powers to amend policy and introduce legislation, including amending legislation.

4 Noting of Protocols

Sections 110 and 111 of the Settlement Legislation provides:

- (a) The existence of the Protocol issued under *clause 5.12.2(a)* of the Deed of Settlement, once issued, and as amended from time to time, and including a definition of the Protocols as set out in section 107 of the Settlement Legislation and a summary of the terms of issue of the Protocols, shall be noted in conservation management strategies, conservation management plans and national park management plans from time to time affecting the area covered by the Protocol; and
- (b) That such noting of the Protocol issued under *clause 5.12.2(a)* of the Deed of Settlement shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 171 of the Conservation Act 1987 or section 46 of the National Parks Act 1980;
- (c) That the existence of the Protocol issued under *clause 5.12.2(b)* of the Deed of Settlement, once issued, and as amended from time to time, and including a definition of the Protocols as set out in section 107 of the Settlement Legislation and a summary of the terms of issue of the Protocols, shall be noted in fisheries plans from time to time affecting the area covered by the Protocol; and
- (d) That such noting of the Protocol issued under *clause 5.12.2(b)* of the Deed of Settlement shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 11A of the Fisheries Act 1996.

5 Enforceability of Protocols

Section 112 of the Settlement Legislation provides that:

- (a) The Minister must comply with the Protocol issued by that Minister as long as it remains in force;
- (b) If the Minister fails unreasonably to comply with the 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 the Minister;
- (c) Notwithstanding section 112(2) of the Settlement Legislation, damages are not available as a remedy for failure to comply with the Protocol; and
- (d) Section 112(1) of the Settlement Legislation does not apply to any guidelines developed in respect of the implementation of the Protocol.

6 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.

7 Limitation of rights

- (a) The Settlement Legislation provides that a Protocol issued under *clause 5.12.2(a)* 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 whatsoever relating to, land held, managed or administered, or flora and fauna managed or administered, under the Conservation Act 1987 or the statutes listed in the First Schedule to that Act.
- (b) The Settlement Legislation provides that a Protocol issued under *clause 5.12.2(b)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, any assets or other property rights held, managed or administered under the Fisheries Legislation (including fish, aquatic life or seaweed).
- (c) The Settlement Legislation provides that a Protocol issued under *clause 5.12.2(c)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to any Crown Owned Minerals held, managed or administered under the Crown Minerals Act 1991.
- (d) The Settlement Legislation provides that a Protocol issued under *clause 5.12.2(d)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any

kind whatsoever relating to, antiquities or artifacts, managed or administered under the Antiquities Act 1975.

8 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.

ATTACHMENT C
OTHER TERMS

In this Protocol:

“Antiquity” has the same meaning as section 2 of the Antiquities Act 1975:

- (a) Any chattel of any kind whatsoever, not being a chattel to which any of paragraphs (b) to (h) of this definition applies which:
 - (i) is of national, historical, scientific, or artistic importance; and
 - (ii) relate to the European discovery, settlement, or development of New Zealand; and
 - (iii) is, or appears to be, more than 60 years old.
- (b) Any artifact;
- (c) Any book, diary, letter, document, paper, record, or other written matter (whether in manuscript or printed form), photographic negative or print, film, printed reproduction of any picture, or sound recording:
 - (i) which relates to New Zealand and is of national, historical, scientific, artistic, or literary importance; and
 - (ii) which is more than 60 years old; and
 - (iii) of which, in the case of a book first printed and published in New Zealand, no copy is in the custody of the National Library of New Zealand;
- (d) Any work of art which relates to New Zealand, is more than 60 years old, and is of national, historical, or artistic value or importance;
- (e) Any type specimen of any animal, plant, or mineral existing or formally existing in New Zealand;
- (f) Any meteorite or part of a meteorite recovered in New Zealand;

- (g) Any bones, feathers, or other parts or the eggs of the Mōa or other species of animals, birds, reptiles, or amphibians native to New Zealand which are generally believed to be extinct;
- (h) Any ship, boat, or aircraft, or any part of any ship, boat or aircraft, equipment, cargo, or article belonging to any ship, boat, or aircraft in any case where that ship, boat, or aircraft has been, or appears to have been, a wreck in New Zealand, or within the territorial waters of New Zealand, for more than 60 years and that ship, boat, aircraft, equipment, cargo, or article, as the case may be, is of national, historical, scientific, or artistic value or importance.”

“Artifact” has the same meaning as section 2 of the Antiquities Act 1975, being:

“Any chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Māori or other pre-European inhabitants of New Zealand and which was or appears to have been manufactured or modified in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor by any such inhabitant, or used by any such inhabitant, prior to 1902.”