

**A PROTOCOL ISSUED BY THE CROWN THROUGH
THE MINISTER FOR ARTS, CULTURE AND HERITAGE
REGARDING INTERACTION WITH NGĀTI AWA ON ANTIQUITIES ISSUES**

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 27 March 2003 between Ngāti Awa 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 "*Antiquities Protocol*") setting out how the Minister and the Ministry for Culture and Heritage (the "*Ministry*") will interact with the Ngāti Awa Governance Entity (the "*Governance Entity*") on matters specified in the Antiquities Protocol. These matters are:
- (a) newly found Artifacts;
 - (b) the export of Artifacts; and
 - (c) the Antiquities Act 1975 and any amendment or substitution thereof (the "*Act*").
- 1.2 The Minister and Chief Executive of the Ministry (the "*Chief Executive*"), or other such persons acting in those capacities and Ngāti Awa 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 Antiquities Protocol, as set out in this Antiquities Protocol.
- 1.3 Ngāti Awa has an interest in relation to the preservation, protection and management of its Artifacts through its tino rangatiratanga and kaitiakitanga. This derives from Ngāti Awa's status as tangata whenua in the Antiquities Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 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.



PROTOCOL AREA

- 1.5** This Antiquities Protocol applies across the Antiquities Protocol Area, which means the area identified in the map included in *Attachment A* together with the adjacent waters.

2 TERMS OF ISSUE

- 2.1** This Protocol is issued pursuant to *clause 5.7.2* of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 2.2** This Protocol must be read subject to the terms of issue set out in *Attachment B*.

3 DEFINITIONS

- 3.1** Other terms are defined in *Attachment C*.

4 THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL

- 4.1** The Chief Executive has certain functions, powers and duties in terms of the Act and can consult, notify and provide information to the Governance Entity within the limits of the Act. The Chief Executive will:
- (a) provide the Governance Entity on request with information (including information on any Artifact identified as being of Ngāti Awa origin, including items found within the Antiquities Protocol Area or found anywhere else in New Zealand) in accordance with the Official Information Act 1982;
 - (b) notify the Governance Entity in writing of any registered Artifact found within the Antiquities Protocol Area and of any registered Artifacts identified as being of Ngāti Awa origin found anywhere else in New Zealand from the date of signing of this Protocol;
 - (c) notify the Governance Entity of its right to apply to the Maori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Awa origin found anywhere else in New Zealand;
 - (d) notify the Governance Entity of any application to the Maori Land Court from other persons for determination of the actual or traditional ownership, rightful possession



or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Awa origin found anywhere else in New Zealand;

- (e) If no application is made to the Maori Land Court by the Governance Entity or any other persons:
 - (i) consult the Governance Entity before a decision is made on who may have custody of an Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Awa origin found anywhere else in New Zealand;
 - (ii) notify the Governance Entity in writing of the decision made by the Chief Executive on the custody of an Artifact where the Governance Entity has been consulted;
 - (iii) consult the Governance Entity where there are requests from persons for the custody of Artifacts found within the Antiquities Protocol Area or identified as being of Ngāti Awa origin found anywhere else in New Zealand;
- (f) seek from the Governance Entity an expert opinion on any Artifacts of Ngāti Awa origin for which a person has applied to the Chief Executive for permission to export from New Zealand; and
- (g) notify the 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 the Governance Entity.

4.2 The Chief Executive will also:

- (a) review the implementation of this Protocol biennially unless otherwise mutually agreed in writing by the Chief Executive and the Governance Entity; and
- (b) as far as reasonably practicable ensure relevant employees within the Ministry 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 can consult, notify and provide information to the Governance Entity within the limits of the Act. The Minister



will consult with the Governance Entity where a person appeals the decision of the Chief Executive to:

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

in the circumstances where the Governance Entity was originally asked for an expert opinion by the Chief Executive.

6 CONSULTATION

6.1 Where the Ministry is required to consult under *clauses 5.1(e)(i) and (iii) and clause 6.1* of this Protocol, the basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

- (a) ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
- (b) 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;
- (c) ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation; and
- (d) ensuring that the Ministry 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.

7 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

7.1 If the Ministry consults with Maori generally on policy development or any proposed legislative amendment to the Act which impacts upon this Protocol the Ministry shall:

- (a) notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which Maori generally will be consulted; and
- (b) make available to the Governance Entity the information provided to Maori as part of the consultation process referred to in this clause.

ISSUED on this *7th* day of *April* 2005

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



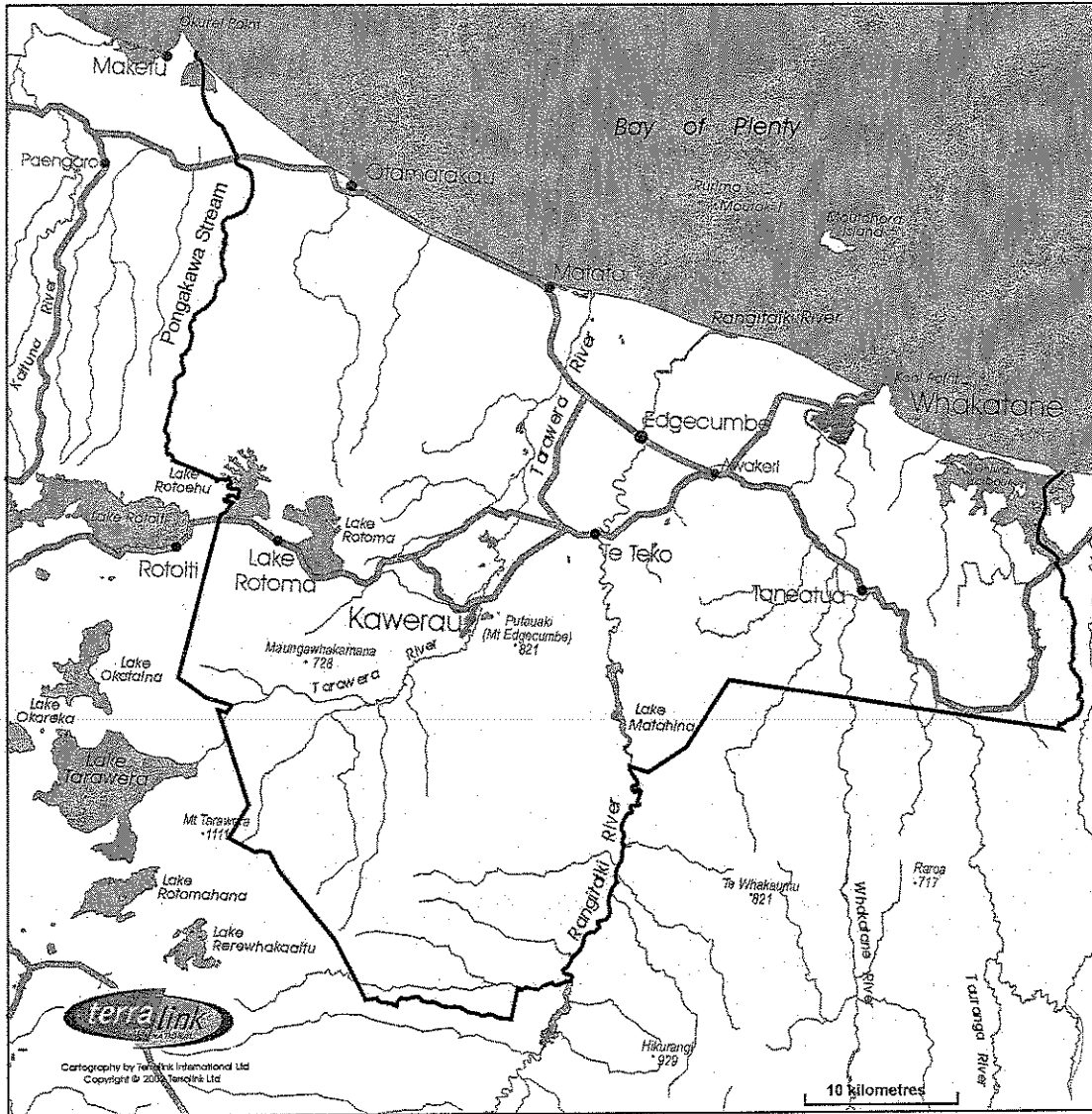
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Name: *AR McLean*

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ATTACHMENT A
NGĀTI AWA
ANTIQUITIES 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:

Conservation Legislation means the Conservation Act 1987 and the statutes listed under the First Schedule to that Act;

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;

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

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

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

Ngāti Awa has the meaning set out in clause 1.2 of the Deed of Settlement;

Ngāti Awa Governance Entity means Te Runanga o Ngāti Awa established under section 5 of the Te Runanga o Ngāti Awa Act 2005; and

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage (as the case may be), to the Ngāti Awa Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

Settlement Legislation means the Ngāti Awa Claims Settlement Act 2005.

2 Authority to issue, amend or cancel Protocols

Section 21 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 21 of the Settlement Legislation at the initiative of either the Minister or the Ngāti Awa Governance Entity; and
- (c) The relevant Minister may amend or cancel a Protocol, only after consulting with, and having particular regard to the views of, the Ngāti Awa Governance Entity.

3 Protocols subject to Crown obligations

Section 22 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, including, without limitation, the ability of the relevant Minister or Ministry to interact or consult with any person or persons the Crown considers appropriate (including, without limitation, any other iwi, hapū, marae, whānau, or other representatives of tangata whenua); and
- (b) The Crown's powers to amend policy and introduce legislation, including amending legislation.

4 Noting of Protocols

Sections 25 and 26 of the Settlement Legislation provides:

- (a) The existence of the Protocol issued under *clause 5.7.2(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 12 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;
- (b) That such noting of the Protocol issued under *clause 5.7.2(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 5.7.2(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 12 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 5.7.2(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 23 of the Settlement Legislation provides that:

- (a) The Crown must comply with its obligations under a Protocol as long as it remains in force;
- (b) If the Crown fails, without good cause, to comply with its obligations under a Protocol, the Ngāti Awa Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol;
- (c) Notwithstanding section 23(2) of the Settlement Legislation, the Ngāti Awa Governance Entity may not recover damages, or any form of monetary compensation (other than any costs related to the bringing of proceedings awarded by a Court), from the Crown for failure to comply with the Protocol; and
- (d) Section 23(1) and (2) of the Settlement Legislation does not apply to any guidelines developed in relation to a 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 5.7.2* 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 5.7.2(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 Legislation.
- (b) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(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 5.7.2(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, antiquities or artifacts, managed or administered under the Antiquities Act 1975.

A handwritten signature in black ink, appearing to be 'HSE', located at the bottom right of the page.

ATTACHMENT C
DEFINITIONS

In this Protocol:

"Antiquity" has the same meaning as in section 2 of the Antiquities Act 1975 being:

- (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 Moa 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.” (section 2, Antiquities Act 1975).

“*Artifact*” has the same meaning as in 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.” (section 2, Antiquities Act 1975).

AEC