

**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 NGATI RUANUI
on ANTIQUITIES ISSUES**

1. INTRODUCTION

- 1.1 Under the deed of settlement dated 12 May 2001 between Ngati Ruanui 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 Ministry for Culture and Heritage (the “**Ministry**”) will interact with the Ngati Ruanui Governance Entity (the “**Governance Entity**”) on matters specified in the Antiquities Protocol. These matters are:
- 1.1.1 newly found Artifacts;
 - 1.1.2 the export of Artifacts; and
 - 1.1.3 the Antiquities legislative framework.
- 1.2 The Minister and the Chief Executive of the Ministry (the “**Chief Executive**”) or other such persons acting in those capacities, and Ngati Ruanui 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 Ngati Ruanui has an interest in relation to the preservation, protection and management of its Artifacts through its tino rangatiratanga and kaitiakitanga. This derives from Ngati Ruanui’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 Antiquities Act 1975 (the “**Act**”). In exercising such functions, powers and duties, the Minister and Chief Executive will provide the Governance Entity with the opportunity for input, into the policy and decision making processes relating to the matters set out in this protocol.
- 1.5 The Prime Minister authorises the Minister to be the Minister of the Crown responsible for the Act. The Minister and Chief Executive will notify the Governance Entity of the office, name and contact details of the person acting in those capacities from time to time.

2. PROTOCOL AREA

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

3. **TERMS OF ISSUE**

- 3.1 This protocol is issued pursuant to section 26 of the Ngati Ruanui Claims Settlement Act 2003 (the “**Settlement Legislation**”) and **clause 9.1.11** 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. **OTHER TERMS**

- 4.1 Other terms are defined in **Attachment C** of this protocol.

5. **THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL**

- 5.1 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. The Chief Executive will:
- 5.1.1 provide the Governance Entity on request with access to information held by the Ministry as provided for by the Official Information Act 1982, including information on any Artifact identified as being of Ngati Ruanui origin, including items found within the Antiquities Protocol Area or found anywhere else in New Zealand;
 - 5.1.2 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 Ngati Ruanui origin found anywhere else in New Zealand from the date of signing of this protocol;
 - 5.1.3 consult with the Governance Entity when making a decision on who may have custody of an Artifact found within the Antiquities Protocol Area or identified as being of Ngati Ruanui origin found anywhere else in New Zealand;
 - 5.1.4 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;
 - 5.1.5 consult with the Governance Entity where there are requests from persons or entities for the custody of Artifacts found within the Antiquities Protocol Area or identified as being of Ngati Ruanui origin found anywhere else in New Zealand;
 - 5.1.6 seek from the Governance Entity an expert opinion on any Artifacts of Ngati Ruanui origin for which a person has applied to the Chief Executive for permission to export from New Zealand; and
 - 5.1.7 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.
- 5.2 The Chief Executive will also:

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- 5.2.1 consult with the Governance Entity regarding their concerns and issues, notified by the Governance Entity, about the Antiquities legislative framework;
- 5.2.2 review the implementation of this protocol biennially unless otherwise mutually agreed in writing by the Chief Executive and the Governance Entity; and
- 5.2.3 train relevant Ministry staff on this protocol, as far as reasonably practicable, and provide ongoing training as required.

6. THE ROLE OF THE MINISTER UNDER THIS PROTOCOL

6.1 The Minister has certain 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:

- 6.1.1 refuse permission to remove an Artifact, or Artifacts, from New Zealand; or
- 6.1.2 impose conditions on an approval to export an Artifact, or Artifacts, from New Zealand;

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

ISSUED this 3rd day of June 2003

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

Aden Clark

Witness: [Redacted]
 Occupation: Press Secretary
 Address: Parliament, Wellington

and
 by **MARTIN MATTHEWS**)
 the Chief Executive of the Ministry for Culture)
 and Heritage)

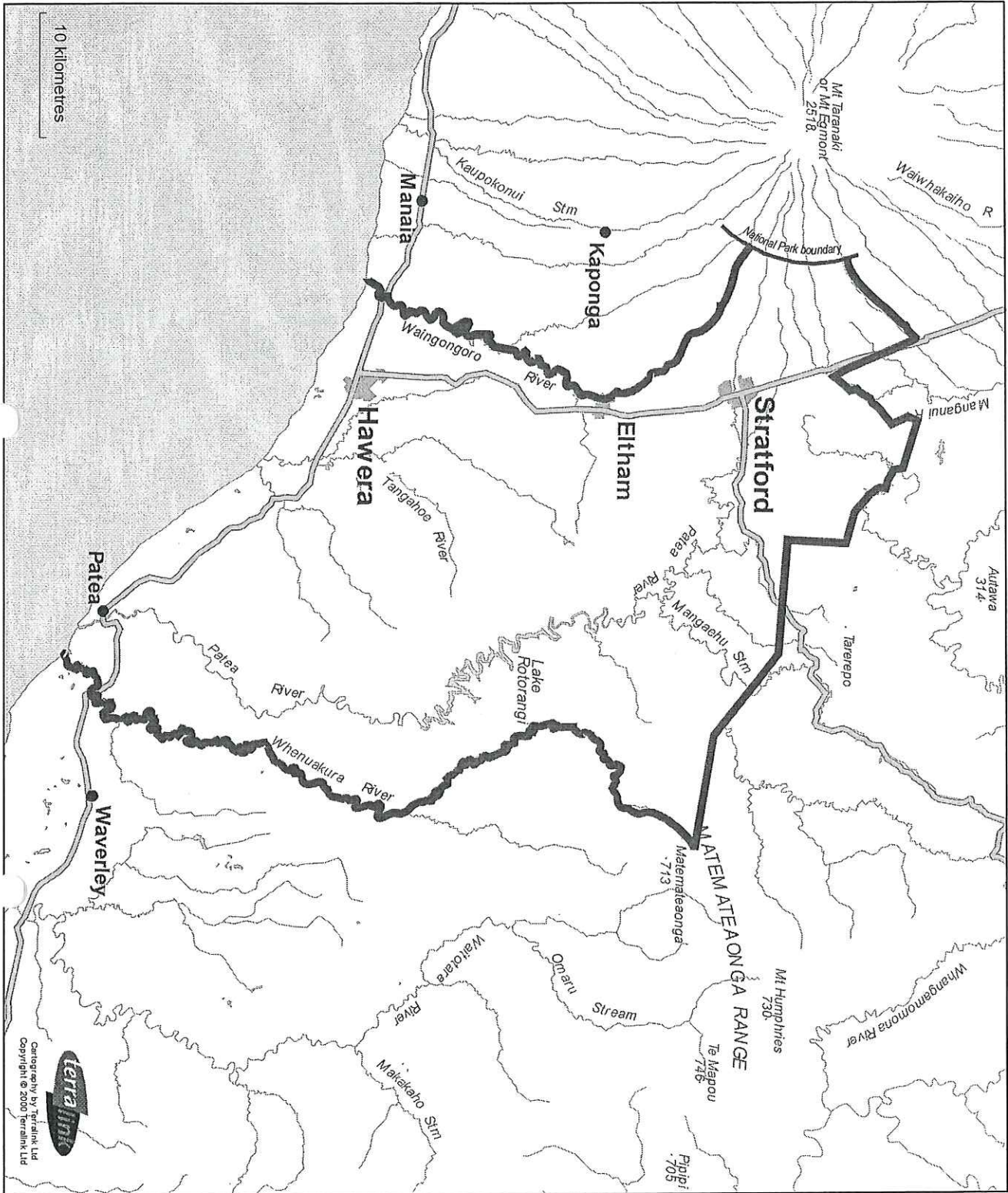
Martin Matthews

Witness: [Redacted]
 Occupation: Personal Assistant
 Address: Wellington

ATTACHMENT A
ANTIQUITIES PROTOCOL AREA

The map follows this page

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ATTACHMENT B:

TERMS OF ISSUE

1. DEFINITIONS

In this Attachment terms defined in this Antiquities 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;

Governance Entity means Te Runanga o Ngati Ruanui Trust established by Deed of Trust dated 10 December 2001, in accordance with **clause 3.3** of the Deed of Settlement;

Ngati Ruanui has the meaning set out in **clause 1.4** of the Deed of Settlement; and

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 Antiquities Protocol.

2. AUTHORITY TO ISSUE, AMEND OR CANCEL PROTOCOLS

2.1 Section 26 of the Settlement Legislation provides that:

2.1.1 subject to **clause 2.1.2(b)**, the Minister may issue a Protocol and may amend or cancel that Protocol; and

2.1.2 a Protocol may be amended or cancelled at the initiative of:

- (a) the Governance Entity; or
- (b) the Minister only after consulting with, and having particular regard to the views of, the Governance Entity.

3. PROTOCOLS SUBJECT TO RIGHTS AND OBLIGATIONS

3.1 Section 27 of the Settlement Legislation provides that the Protocol will not:

3.1.1 restrict the ability of the Crown to:

- (a) perform its functions and duties, and exercise its powers, in accordance with the law and government policy; and

- (b) introduce legislation (including amending legislation) and change government policy; or
- (c) interact or consult with any person or persons the Crown considers appropriate including, without limitation, any other iwi, hapu, marae, whanau or other representatives of tangata whenua;

3.1.2 detract from the responsibilities of the Minister or the Ministry; or

3.1.3 restrict the legal rights of Ngati Ruanui.

4. **ENFORCEABILITY OF PROTOCOLS**

4.1 Section 28 of the Settlement Legislation provides that:

4.1.1 the Crown must comply with its obligations under a Protocol as long as the Protocol is in force; and

4.1.2 if the Crown fails, without good cause, to comply with its obligations under a Protocol, the Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol, but 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.

4.2 The provisions included in the Settlement Legislation under **clause 9.1.16** of the Deed of Settlement will not apply to any guidelines developed in relation to a Protocol.

5. **BREACH OF PROTOCOLS NOT BREACH OF DEED**

5.1 The Deed of Settlement provides that a failure by the Crown to comply with its obligations under a Protocol is not a breach of the Deed.

6. **LIMITATION OF RIGHTS**

6.1 Section 29(4) of the Settlement Legislation provides that the Antiquities Protocol 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, Antiquities or Artifacts, managed or administered under the Act.

ATTACHMENT C

OTHER TERMS

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 formerly 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; and
- (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 in 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 Maori 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.”