

**TAONGA TŪTURU PROTOCOL**

**MINISTER FOR ARTS, CULTURE AND HERITAGE**

**and**

**NGĀTI WHĀTUA O KAIPARA**

---

**TAONGA TŪTURU PROTOCOL**

---

---

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE  
AND HERITAGE REGARDING INTERACTION WITH NGĀTI WHĀTUA O KAIPARA ON  
SPECIFIED ISSUES**

## **1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated 9 September 2011 between Ngāti Whātua o Kaipara and the Crown (the “Deed of Settlement”), the Crown agreed that the Minister for Arts, Culture and Heritage (the “Minister”) would issue a Protocol setting out how the Minister and the Chief Executive for the Ministry for Culture and Heritage (the “Chief Executive”) will interact with the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited on matters specified in the Protocol. These matters are:
- 1.1.1 Protocol Area – Part 2;
  - 1.1.2 Terms of issue – Part 3;
  - 1.1.3 Implementation and communication – Part 4;
  - 1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5;
  - 1.1.5 The role of the Minister under the Protected Objects Act 1975 – Part 6;
  - 1.1.6 Ngāti Whātua o Kaipara Taonga held by Te Papa Tongarewa – Part 7;
  - 1.1.7 Effects on Ngāti Whātua o Kaipara interest in the Protocol Area – Part 8;
  - 1.1.8 Registration as a collector of Ngā Taonga – Part 9;
  - 1.1.9 Board Appointments – Part 10;
  - 1.1.10 National Monuments, War Graves and Historical Graves – Part 11;
  - 1.1.11 History publications relating to Ngāti Whātua o Kaipara – Part 12;
  - 1.1.12 Cultural and/or Spiritual Practices and Tendering – Part 13;
  - 1.1.13 Consultation – Part 14;
  - 1.1.14 Changes to legislation affecting this Protocol – Part 15; and
  - 1.1.15 Definitions – Part 16;
- 1.2 The Minister and the Chief Executive or other such persons acting in those capacities, and Ngāti Whātua o Kaipara are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties, as set out in this Protocol.
- 1.3 The Chief Executive recognises that Ngāti Whātua o Kaipara have an interest in relation to the preservation, protection and management of Taonga through its tino rangatiratanga and kaitiakitanga. This derives from the status of Ngāti Whātua o Kaipara as tangata whenua within the Protocol Area.

- 
- 1.4 The purpose of the Act is to provide for the better protection of certain objects by, among other things, regulating the export of protected New Zealand objects, and by establishing and recording the ownership of Taonga found after the commencement of the Act, namely 1 April 1976.
  - 1.5 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 trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited with the opportunity for input in the policy and decision-making processes as set out in this Protocol.
  - 1.6 In respect of Taonga of Ngāti Whātua o Kaipara found prior to 1 April 1976, the Minister and Chief Executive recognise the importance of such Taonga to Ngāti Whātua o Kaipara and acknowledge the efforts of Ngāti Whātua o Kaipara to protect and repatriate those Taonga.

## **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 TERMS OF ISSUE**

- 3.1 The Protocol is issued under clause 5.10 of the deed of settlement and section 72 to 76 of the Ngāti Whātua o Kaipara Claims Settlement Act 2013 ("the Settlement Legislation"), and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 A summary is attached of the terms of issue of this Protocol in the deed of settlement and the settlement legislation.

## **4 IMPLEMENTATION AND COMMUNICATION**

- 4.1 The Chief Executive will maintain effective communication with the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited by:
  - 4.1.1 maintaining information provided by the trustees on the office holders of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited and their addresses and contact details;
  - 4.1.2 discussing with them concerns and issues notified by the trustees about this Protocol;
  - 4.1.3 as far as reasonably practicable, providing opportunities for the trustees to meet with relevant Ministry Managers and staff;
  - 4.1.4 meeting with the trustees 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, informing other organisations with whom it works, central government agencies and stakeholders about this Protocol and providing ongoing information; and

---

4.1.7 including a copy of this Protocol 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited within the limits of the Act. From the date this Protocol is issued the Chief Executive will:

5.1.1 notify the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited in writing of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand;

5.1.2 provide for the care, recording and custody of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand;

5.1.3 notify the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited in writing of their right to lodge a claim with the Chief Executive for ownership of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand;

5.1.4 notify the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited in writing of their right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga; and

5.1.5 notify the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited 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 found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga.

### **Applications for Ownership**

5.2. If the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited lodge a claim of ownership with the Chief Executive and there are no competing claims for any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara 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.

5.3 If there is a competing claim or claims lodged in conjunction with the claim of ownership of the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited, the Chief Executive will consult with the trustees 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.

5.4 If the competing claims for ownership of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand,

---

cannot be resolved, the Chief Executive at the request of the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited may facilitate an application to the Māori Land Court for determination of ownership of the Taonga.

#### **Applications for Custody**

- 5.5 If no ownership application is made to the Māori Land Court for any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found elsewhere in New Zealand by the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited or any other person, the Chief Executive will:
- 5.5.1 consult the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited where there is any request from any other person for the custody of the Taonga;
  - 5.5.2 consult the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited before a decision is made on who may have custody of the Taonga; and
  - 5.5.3 notify the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited in writing of the decision made by the Chief Executive on the custody of the Taonga.

#### **Export Applications**

- 5.6 For the purpose of seeking an expert opinion from the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited on any export applications to remove any Taonga of Ngāti Whātua o Kaipara origin from New Zealand, the Chief Executive will register the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited 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 of Ngāti Whātua o Kaipara origin from New Zealand, the Chief Executive will consult the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited as an Expert Examiner on that application, and notify the trustees 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited within the limits of the Act. In circumstances where the Chief Executive originally consulted the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited as an Expert Examiner, the Minister may consult with the trustees where a person appeals the decision of the Chief Executive to:
- 6.1.1 refuse permission to export any Taonga from New Zealand; or
  - 6.1.2 impose conditions on the approval to export any Taonga from New Zealand;
- 6.2 The Ministry will notify the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited in writing of the Minister's decision on an appeal in relation to an application to export any Taonga where the trustees were consulted as an Expert Examiner.

---

**7. NGĀTI WHĀTUA O KAIPARA NGĀ TAONGA TŪTURU HELD BY TE PAPA TONGAREWA**

- 7.1 The Chief Executive will invite Te Papa Tongarewa to enter into a relationship with the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited, for the purposes of Te Papa Tongarewa compiling a full inventory of Taonga held by Te Papa Tongarewa, which are of cultural, spiritual and historical importance to Ngāti Whātua o Kaipara.
- 7.2 Associated costs and/or additional resources required to complete the obligations under clause 7.1 will be funded by Te Papa Tongarewa, as resources allow.

**8. EFFECTS ON NGĀTI WHĀTUA O KAIPARA INTERESTS IN THE PROTOCOL AREA**

- 8.1 The Chief Executive and the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited shall discuss any policy and legislative development, which specifically affects Ngāti Whātua o Kaipara interests in the Protocol Area.
- 8.2 The Chief Executive and the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Whātua o Kaipara interests in the Protocol Area.
- 8.3 Notwithstanding clauses 8.1 and 8.2 above the Chief Executive and the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited shall meet to discuss Ngāti Whātua o Kaipara interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

**9. REGISTRATION AS A COLLECTOR OF TAONGA**

- 9.1 The Chief Executive will register the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited as a Registered Collector of Taonga.

**10. BOARD APPOINTMENTS**

- 10.1 The Chief Executive shall:
- 10.1.1 notify the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
  - 10.1.2 add nominees of the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited on any national monument, war grave, historical grave or urupā, managed or administered by the Ministry, which specifically relates to Ngāti Whātua o Kaipara interests.

**12. HISTORY PUBLICATIONS RELATING TO NGĀTI WHĀTUA O KAIPARA**

---

12.1 The Chief Executive shall:

12.1.1 provide the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited with a list and copies of all history publications commissioned or undertaken by the Ministry that relate substantially to Ngāti Whātua o Kaipara; and

12.1.2 where reasonably practicable, consult with the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited on any work the Ministry undertakes that relates substantially to Ngāti Whātua o Kaipara:

- (a) from an early stage;
- (b) throughout the process of undertaking the work; and
- (c) before making the final decision on the material of a publication.

12.2 The trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited accept that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the trustees, is entitled to make the final decision on the material of the historical publication.

**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 Whātua o Kaipara 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited in each case are:

14.1.1 ensuring that the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited are 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited in the decision making process including the preparation of submissions by the trustees 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited with an open mind, and will genuinely consider their submissions in relation to any of the matters that are the subject of the consultation; and

14.1.5 reporting back to the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited, 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

15.1.2 make available to the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited the information provided to Māori as part of the consultation process referred to in this clause; and

15.1.3 report back to the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited 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 means:

in relation to any Taonga, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga and which suggest that the Taonga 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 Maunga Whakahii o Kaipara Nga Maunga Whakahii o Kaipara Custodian Trustee Limited** has the same meaning as in the Deed of Settlement;

**Protocol** means a statement in writing, issued by the Crown through the Minister to the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited under the Settlement Legislation and the Deed of Settlement and includes this Protocol;



---

**Trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited** means the trustees for the time being of Ngā Maunga Whakahii o Kaipara Nga Maunga Whakahii o Kaipara Custodian Trustee Limited, in their capacity as trustees;

**Taonga** has the same meaning given to "Taonga Tūturu" in section 2 of the Protected Object Act 1975. Taonga Tūturu is defined in section 2 of the Act as:

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;


**Ngāti Whātua o Kaipara** has the meaning set out in clauses 11.4 and 11.5 of the Deed of Settlement.

ISSUED on 26/6/2013

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



WITNESS

  
Name: Leah Johnston  
Occupation: Private Secretary  
Address: Parliament Buildings



---

## 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 the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited and having particular regard to their views (*section 73* of the Act).

#### 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 74 (iii)* of the Act); or
  - 2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Whātua o Kaipara (*section 74 (b)*); 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, the trustees of the Nga Maunga Whakahii o Kaipara Custodian Trustee Limited may enforce this protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section 76 (2) and (3)* of the Act).
- 3.2 A breach of this protocol is not a breach of the deed of settlement (*clause 5.13*).