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#### NGĀ HAPŪ O NGĀTI POROU

# INTRODUCTION

# THIS ARTEFACT RELATIONSHIP INSTRUMENT IS MADE BETWEEN

NGĀ HAPŪ O NGĀTI POROU

AND

THE MINISTER FOR ARTS, CULTURE AND HERITAGE (the Minister)

### BACKGROUND

- A. Ngā hapū o Ngāti Porou and Her Majesty the Queen in right of New Zealand (the Crown) are parties to a deed of agreement dated 31 October 2008 (the deed) relating to how the Crown will contribute to the legal expression, protection and recognition of the mana of ngā hapū o Ngāti Porou in relation to ngā rohe moana o ngā hapū o Ngāti Porou.
- B. This artefact relationship instrument is entered into by ngā hapū o Ngāti Porou and the Minister to give effect to the obligation under paragraph 18.1 of part E of schedule 2 to the deed and, except to the extent stated otherwise, comes into force on the effective date.
- C. This artefact relationship instrument sets out how ngā hapū o Ngāti Porou, the Minister and the chief executive (the chief executive) of the Ministry for Culture and Heritage (the Ministry) will establish and maintain a positive and collaborative relationship:
  - > in respect of:
    - i. newly found artefacts found within ngā rohe moana o ngā hapū o Ngāti Porou; and
    - ii. newly found artefacts identified as being of ngā hapū o Ngāti Porou origin and found anywhere else in New Zealand; and
    - iii. the management and regulation of artefacts identified as being of ngā hapū o Ngāti Porou origin; and
  - to contribute to the Crown's recognition of the ongoing and enduring mana of ngā hapū o Ngāti Porou in respect of artefacts within ngā rohe moana o ngā hapū o Ngāti Porou that are identified as being of ngā hapū o Ngāti Porou origin.

# TERMS OF THIS ARTEFACT RELATIONSHIP INSTRUMENT

# 1 PRINCIPLES UNDERLYING THIS ARTEFACT RELATIONSHIP INSTRUMENT

1.1 The following principles underlie the legal expression, protection and recognition of the mana of ngā hapū o Ngāti Porou in relation to ngā rohe moana o ngā hapū o Ngāti Porou, as expressed in the deed, and underlie this artefact relationship instrument:

# Toitū te mana atua (principle 1)

It is acknowledged that ngā hapū o Ngāti Porou have, in accordance with their tikanga, an unbroken, inalienable and enduring relationship with ngā rohe moana o ngā hapū o Ngāti Porou. The deed will contribute to the legal expression, protection and recognition of the ability of ngā hapū o Ngāti Porou to continue to regulate and undertake activities on, over or within ngā rohe moana o ngā hapū o Ngāti Porou in accordance with their tikanga.

# Toitū te mana whenua me te mana moana (principle 2)

The deed contributes to the legal expression, protection and recognition of the unbroken, inalienable and enduring mana of ngā hapū o Ngāti Porou in relation to ngā rohe moana o ngā hapū o Ngāti Porou.

# Toitū te mana tangata (principle 3)

The deed contributes to the legal expression, protection and recognition of the right of ngā hapū o Ngāti Porou to exercise influence over persons carrying out activities within, or impacting upon, ngā rohe moana o ngā hapū o Ngāti Porou.

### Toitū te Tiriti o Waitangi (principle 4)

Consistent with the partnership principle underlying Te Tiriti o Waitangi/the Treaty of Waitangi, ngā hapū o Ngāti Porou and the Crown have entered into the deed in good faith and as equals.

The parties to the deed acknowledge that they are obliged to give effect to the deed and to act in good faith, fairly, reasonably and honourably towards each other.

1.2 It is agreed by the Crown and ngā hapū o Ngāti Porou that any issue of interpretation relating to how the deed contributes to the legal expression, protection and recognition of the mana of ngā hapū o Ngāti Porou shall be resolved after taking into account the principles in clause 1.1 of the deed.

#### 2 ROLE OF EACH PARTY

- 2.1 Ngā hapū o Ngāti Porou assert ownership to ngā rohe moana o ngā hapū o Ngāti Porou and the resources within it, and the associated responsibilities including kaitiakitanga, based on, amongst other things, the sacred relationship with ngā rohe moana o ngā hapū o Ngāti Porou, unbroken occupation, the continued exercise of ancestral mana, and the fact that title to ngā rohe moana o ngā hapū o Ngāti Porou has never been ceded to the Crown.
- 2.2 The Minister and the chief executive have certain functions, powers and duties in terms of the Protected Objects Act 1975. The purpose of the Protected Objects Act 1975 is to provide for the better protection of certain objects by, amongst other things, regulating the export of artefacts, and by establishing and recording the ownership of artefacts found after 1 April 1976.
- 2.3 In exercising functions and powers under the Protected Objects Act 1975, the Minister and the chief executive are seeking a relationship with ngā hapū o Ngāti Porou consistent with the principles of te Tiriti o Waitangi/the Treaty of Waitangi. The Minister and the chief executive recognise that ngā hapū o Ngāti Porou have an interest in relation to the preservation, protection and management of artefacts, which arises from their mana in ngā rohe moana o ngā hapū o Ngāti Porou.
- 3 HOW THIS ARTEFACT RELATIONSHIP INSTRUMENT WILL LEGALLY EXPRESS, PROTECT, AND RECOGNISE THE MANA OF NGĀ HAPŪ O NGĀTI POROU
- 3.1 Newly found artefacts within ngā rohe rohe moana o ngā hapū o Ngāti Porou except for customary marine title areas:

#### General

- a. For any artefact found within ngā rohe moana o ngā hapū o Ngāti Porou, other than within a customary marine title area, or identified as being of ngā hapū o Ngāti Porou origin and found anywhere else in New Zealand, the chief executive will:
  - i. notify ngā hapū o Ngāti Porou in writing of the finding of the artefact; and
  - ii. provide for the interim care, recording and custody of the artefact; and
  - notify ngā hapū o Ngāti Porou in writing of their right to lodge a claim with the chief executive for ownership of the artefact; and
  - iv. notify ngā hapū o Ngāti Porou in writing of their right to apply directly to the Māori Land Court for:
    - A. determination of the actual or traditional ownership, rightful possession or custody of the artefact; or

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- B. any right, title, estate, or interest in the artefact; and
- v. notify ngā hapū o Ngāti Porou in writing of any application to the Māori Land Court from any other person for:
  - A. determination of the actual or traditional ownership, rightful possession or custody of the artefact; or
  - B. any right, title, estate, or interest in the artefact.

# Applications for Ownership

- b. The chief executive will apply to the Registrar of the Māori Land Court for an order confirming ownership of any artefact by ngā hapū o Ngāti Porou if:
  - i. ngā hapū o Ngāti Porou lodge a claim of ownership with the chief executive for the artefact; and
  - the artefact was found within ngā rohe moana o ngā hapū o Ngāti Porou or was identified as being of ngā hapū o Ngāti Porou origin and found anywhere else in New Zealand; and
  - iii. the chief executive is satisfied that the claim is valid; and
  - iv. there are no claims by other persons for the artefact.
- c. Where there is a claim or claims by other persons lodged at the same time as the claim of ownership by ngā hapū o Ngāti Porou , the chief executive will:
  - seek and consider the views of ngā hapū o Ngāti Porou; and
  - ii. apply to the Registrar of the Māori Land Court for an order confirming ownership of the artefact by ngā hapū o Ngāti Porou, if the chief executive is satisfied that the claims lodged by other persons have been resolved in favour of ngā hapū o Ngāti Porou.
- d. Where the claims for ownership by ngā hapū o Ngāti Porou and other persons in respect of the same artefact found in ngā rohe moana o ngā hapū o Ngāti Porou, or identified as being of the ngā hapū o Ngāti Porou origin and found anywhere else in New Zealand, cannot be resolved, the chief executive, at the request of ngā hapū o Ngāti Porou, will facilitate an application to the Māori Land Court for:
  - i. determination of the actual or traditional ownership, rightful possession or custody of the artefact; or
  - ii. any right, title, estate, or interest in the artefact.

# Applications for Custody

- e. Where no ownership application is made to the Māori Land Court for any artefact found within ngā rohe moana o ngā hapū o Ngāti Porou or identified as being of ngā hapū o Ngāti Porou origin and found anywhere else in New Zealand, the chief executive will seek and consider the views of ngā hapū o Ngāti Porou:
  - i. where any other person requests the custody of the artefact; and
  - ii. before a decision is made on who may have custody of the artefact.
- f. The chief executive will notify ngā hapū o Ngāti Porou in writing of the decision made on who may have custody of the artefact.

# 3.1A Newly found artefacts in a customary marine title area

a. In relation to customary marine title areas, there will be a taonga tūturu mechanism, which is described in Part E to Schedule 4 of the deed.

# 3.2 Information sharing:

- a. The chief executive will make available to ngā hapū o Ngāti Porou all existing information held by, and reasonably accessible to, the Ministry and/or the chief executive where that information is requested by ngā hapū o Ngāti Porou for the purpose of assisting them to fully exercise their rights under this artefact relationship instrument.
- b. In addition to the provision of information described in clause 3.2a, the chief executive will, where requested by ngā hapū o Ngāti Porou, make available to them:
  - i. a copy of any relevant information held by the Ministry and/or the chief executive that relates to:
    - A. newly found artefacts found within ngā rohe moana o ngā hapū o Ngāti Porou or identified as being of ngā hapū o Ngāti Porou origin and found anywhere else in New Zealand:
    - B. ngā rohe mana moana o ngā hapū o Ngāti Porou; and
  - ii. a copy of any relevant report produced by the Ministry that relates to:
    - A. newly found artefacts found within ngā rohe moana o ngā hapū o Ngāti Porou or identified as being of ngā hapū o Ngāti Porou origin and found anywhere else in New Zealand:
    - B. ngā rohe moana o ngā hapū o Ngāti Porou.

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c. The obligations in clauses 3.2a and 3.2b of this artefact relationship instrument do not apply to information that the Ministry and/or the 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 Ministry and/or the chief executive may withhold under the grounds set out in the Official Information Act 1982, provided that when making decisions under section 9 of that Act, officials must consider the public interest associated with providing information to assist in the exercise of the enduring and ongoing mana of ngā hapū o Ngāti Porou where that information is relevant to ngā rohe moana o ngā hapū o Ngāti Porou.

# 3.3 Export of artefacts of ngā hapū o Ngāti Porou origin from New Zealand:

- a. For the purpose of seeking an expert opinion from ngā hapū o Ngāti Porou on any export application to remove any artefact of ngā hapū o Ngāti Porou origin from New Zealand, the chief executive will register ngā hapū o Ngāti Porou on the Ministry's register of expert examiners.
- b. Where the chief executive receives an export application to remove any such artefacts from New Zealand, the chief executive will seek and consider the views of ngā hapū o Ngāti Porou as an expert examiner on that application.
- c. In circumstances where the chief executive has sought and considered the views of ngā hapū o Ngāti Porou as an expert examiner, the Minister may seek and consider the views of ngā hapū o Ngāti Porou where a person appeals the decision of the chief executive to:
  - i. refuse permission to export the artefact from New Zealand; or
  - ii. impose conditions on the approval to export the artefact from New Zealand.
- d. Where the chief executive has sought and considered the views of ngā hapū o Ngāti Porou as an expert examiner, he or she will notify ngā hapū o Ngāti Porou in writing of the decision or the outcome of an appeal in relation to an application to export the artefact.

# 3.4 Ngā hapū o Ngāti Porou artefacts held by Te Papa Tongarewa:

- a. The chief executive will invite Te Papa Tongarewa to enter into a relationship with ngā hapū o Ngāti Porou for the purpose of Te Papa Tongarewa compiling a full inventory of artefacts held by Te Papa Tongarewa, which are of cultural, spiritual and historical importance to ngā hapū o Ngāti Porou.
- b. The associated costs and/or the additional resources required to comply with the obligation under clause 3.4a will be funded by Te Papa Tongarewa, as resources allow.

3.5 **National monuments, war graves and historic graves**: The chief executive will seek and consider the views of ngā hapū o Ngāti Porou on any national monument, war grave, historical grave or urupa managed or administered by the Ministry that directly relates to ngā hapū o Ngāti Porou interests.

# 3.6 Changes to legislation:

- a. The chief executive will discuss with ngā hapū o Ngāti Porou any concern and issue raised by ngā hapū o Ngāti Porou about the Protected Objects Act 1975.
- b. Where the Ministry or the chief executive is reviewing, or proposes to make an amendment to, any legislation under which the chief executive, the Ministry or the Minister has responsibilities, and that review or proposal will, or may, impact directly on ngā rohe moana o ngā hapū o Ngāti Porou, the recognition legislation or this artefact relationship instrument, the chief executive will engage with ngā hapū o Ngāti Porou on that review or proposal as soon as practicable by:
  - i. notifying ngā hapū o Ngāti Porou in writing of any proposed legislative amendments upon which iwi generally will be consulted; and
  - ii. making available to ngā hapū o Ngāti Porou the information provided to iwi as part of the consultation process described in clause 3.6b.i above; and
  - iii. seeking and considering the views of ngā hapū o Ngāti Porou on the potential impact of the review or proposal on ngā rohe moana o ngā hapū o Ngāti Porou, the recognition legislation and this artefact relationship instrument; and
  - iv. reporting back to ngā hapū o Ngāti Porou in writing on the outcome of any such consultation.
- 3.7 **Policy:** The chief executive will seek and consider the views of ngā hapū o Ngāti Porou when the Minister develops or reviews any policy that directly affects ngā hapū o Ngāti Porou interests in ngā rohe moana o ngā hapū o Ngāti Porou.
- 3.8 Operational activities of the Ministry: The chief executive will seek and consider the views of ngā hapū o Ngāti Porou on any of the Ministry's operational activities that directly affect ngā hapū o Ngāti Porou interests in ngā rohe moana o ngā hapū o Ngāti Porou.
- 3.9 Board appointments: The chief executive will:
  - a. notify ngā hapū o Ngāti Porou of any vacancies on boards to which the Minister appoints; and
  - b. include individuals nominated by ngā hapū o Ngāti Porou in the Ministry's nomination register, for consideration during the process of making board appointments to boards to which the Minister appoints; and

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- c. notify ngā hapū o Ngāti Porou of any appointment to a board to which the Minister appoints, where those appointments are publicly notified.
- 3.10 Historical publications relating to ngā hapū o Ngāti Porou: The chief executive will:
  - provide ngā hapū o Ngāti Porou with a list and copies of all historical publications commissioned or undertaken by the Ministry that relate substantially to ngā hapū o Ngāti Porou; and
  - b. seek and consider the views of ngā hapū o Ngāti Porou in relation to any new historical publication that:
    - i. the Ministry proposes to commission or undertake; and
    - ii. relates substantially to ngā hapū o Ngāti Porou.
- 3.11 **Registration as a collector of artefacts:** The chief executive will register ngā hapū o Ngāti Porou on the Ministry's register of collectors of ngā taonga tūturu.
- 3.12 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 ngā hapū o Ngāti Porou within ngā rohe moana o ngā hapū o Ngāti Porou, the chief executive will make a contribution to the costs of undertaking such practices. The amount of this contribution will be agreed between the parties in advance.
  - b. Where the chief executive considers it appropriate, he or she will consider using ngā hapū o Ngāti Porou as a provider of professional services.
  - c. The procurement by the chief executive of any practice or service set out in clauses 3.12a and 3.12b 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.

# 4 IMPLEMENTATION OF THIS ARTEFACT RELATIONSHIP INSTRUMENT

- 4.1 The chief executive will establish processes, in consultation with ngā hapū o Ngāti Porou, to ensure that this artefact relationship instrument works effectively and efficiently. These processes may include:
  - a. the parties discussing any concern or issue notified by either party to the other about this artefact relationship instrument:
  - b. as far as reasonably practicable, the Ministry informing other organisations with whom it works, central government agencies and stakeholders about this artefact relationship instrument and providing ongoing information:

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c. providing access to a copy of this artefact relationship instrument on the Ministry's website.

# 5 COMMUNICATION BETWEEN THE PARTIES

- 5.1 The chief executive and ngā hapū o Ngāti Porou will establish and maintain effective and efficient communication with each other on a continuing basis, by:
  - ngā hapū o Ngāti Porou providing, and the chief executive maintaining, information on the management arrangements office holders, and their addresses and contact details; and
  - b. the chief executive providing, and ngā hapū o Ngāti Porou maintaining, information on a primary contact within the Ministry; and
  - c. providing reasonable opportunities for ngā hapū o Ngāti Porou and Ministry staff to meet with each other, including arranging an annual meeting to discuss and (if possible) resolve any issue that has arisen in the past 12 months, if requested by either party; and
  - d. as far as is reasonably practical, the chief executive identifying staff positions that will be working closely with ngā hapū o Ngāti Porou and informing those staff of the purpose, content and implications of this artefact relationship instrument

#### 6 DISPUTE RESOLUTION

6.1 The dispute resolution process set out in paragraph 3 of schedule 9 to the deed applies to this artefact relationship instrument.

### 7 AMENDMENT AND CANCELLATION

7.1 The Minister and ngā hapū o Ngāti Porou may amend or cancel this artefact relationship instrument by agreement in writing, such agreement not to be unreasonably withheld.

### 8 GENERAL

- 8.1 To avoid doubt, this artefact relationship instrument does not limit those matters set out in paragraphs 18.4 and 18.5 of schedule 2 to the deed and paragraphs 2.1d and 2.1e of schedule 5 to the deed.
- 8.2 This artefact relationship instrument does not restrict the ability of the Crown to interact or consult with any person that the Crown considers appropriate including any iwi, hapū, marae, whānau or other representative of tangata whenua.
- 8.3 This artefact relationship instrument does not override or diminish:
  - a. the requirements of the Protected Objects Act 1975; or
  - the functions and powers of the Minister or the chief executive under the Protected
     Objects Act 1975; or
  - c. the rights of ngā hapū o Ngāti Porou under the Protected Objects Act 1975.

#### 9 DEFINITIONS AND INTERPRETATION

- 9.1 Clause 1.2 of this artefact relationship instrument states that any issue of interpretation in relation to how the deed contributes to the legal expression, protection and recognition of the mana of ngā hapū o Ngāti Porou shall be resolved after taking into account the principles in clause 1.1. This principle of interpretation also applies to this artefact relationship instrument.
- 9.2 In this artefact relationship instrument, unless the context requires otherwise:
  - a. terms defined in the deed have the same meaning; and
  - b. each term listed below has the meaning given to it:

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Term	Meaning
artefact	has the same meaning given to "taonga tūturu" in section 2(1) of the Protected Objects Act 1975.
expert examiner	has the meaning given to it in section 2(1) of the Protected Objects Act 1975.
found	has the meaning given to it in section 2(1) of the Protected Objects Act 1975, and <b>finding</b> and <b>finds</b> have corresponding meanings.
ngā rohe moana o ngā hapū o Ngāti Porou	the common marine and coastal area within the rohe of Ngāti Porou, as further identified on the attached map, which extends from Pōtikirua in the north to Te Toka a Taiau in the south, and:
	a. includes customary marine title areas; but
	<ul> <li>excludes for the purposes of the deed, the rohe     of the hapū described in paragraph b of the     definition of "ngā hapū o Ngāti Porou".</li> </ul>
register of expert examiners	the register of expert examiners established and maintained by the chief executive pursuant to section 7B(2) of the Protected Objects Act 1975.

- 9.3 In this artefact relationship instrument, where the chief executive is required to seek and consider the views of ngā hapū o Ngāti Porou, he or she will:
  - ensure that the views of ngā hapū o Ngāti Porou are sought and considered as soon as reasonably practicable following the identification and determination by the chief executive of any proposal or issue; and
  - b. provide ngā hapū o Ngāti Porou with sufficient information to make informed decisions and provide submissions in relation to any proposal or issue; and
  - c. ensure that ngā hapū o Ngāti Porou are given a reasonable period of time to allow them to participate in the decision-making process and to consider the submissions of the chief executive in relation to any proposal or issue; and
  - approach his or her obligation to seek and consider the views of ngā hapū o Ngāti
    Porou with an open mind, and genuinely consider the submissions of ngā hapū o
    Ngāti Porou in relation to any proposal or issue; and
  - e. provide a written report to ngā hapū o Ngāti Porou setting out the final decisions made in relation to the proposal or issue.

- 9.4 Where the chief executive is required, under this artefact relationship instrument, to engage, or otherwise interact, with ngā hapū o Ngāti Porou (including making available information, seeking and considering views, informing the hapū of certain matters, seeking advice, providing notice or assistance, or meeting with the hapū), the chief executive will satisfy that obligation by engaging, or otherwise interacting, with the management arrangements (as those arrangements are described in schedule 7 to the deed).
- 9.5 The rules of interpretation in paragraph 4 of schedule 10 to the deed apply to the interpretation of this artefact relationship instrument.

**SIGNED** on the  $22\sim J$  day of  $M\sim 1$  2019

SIGNED by the Honourable Carmel Sepuloni, the Associate Minister for Arts, Culture and Heritage

Honourable Carmel Sepuloni,

in the presence of:

s 9(2)(a)

Signature of Witness

Name: Occupation: Address: s 9(2)(a)

SIGNED on behalf of NGĀ HAPŪ O NGĀTI POROU

SIGNED by Rei Mokena Kohere and Pierre Renaud Henare as duly authorised representatives from Potikirua ki Whangaokena Takutai Kaitiaki Trust

Pierre Renaud Henare
in the presence of:
s 9(2)(a)

Rei Mokena Kohere
in the presence of:
s 9(2)(a)

Signature of Witness
Name:
S 9(2)(a)

Occupa
Addres

SIGNED by Nehe Mau Teki Turei and Dean Ngaiwi Moana as duly authorised representatives from Whangaokena ki Onepoto Takutai					
Kaitiaki Trust	s 9(2)(a)				
s 9(2)(a)					
Nehe Mau Teki Turei	Dean Ngaiwi Moana				
in the presence of: s 9(2)(a)	in the presence of:				
Signature of Witness Name: S 9(2)(a) Occupation Address:					
SIGNED by Marijke Adriana Warmenhor as duly authorised representative from Te te Ngaere Takutai Kaitiaki Trust	ven Papatipu o Uepohatu me te Papatipu o				
s 9(2)(a)					
Marijke Adriana Warmenhoven					
in the presence of: s 9(2)(a)					
Signature of Witness Name: N s 9(2)(a)					
Occupation Address:					
SIGNED by Agnes Lyn Walker and Selw	yn Tanetoa Parata				
as duly authorised representatives from Whanau Hapu of Te Aitanga a Mate Te Aowera and Te Whanau a Hinekehu Takutai Kaitiaki Trust					
s 9(2)(a)	s 9(2)(a)				
Agnes Lyn Walker	Selwyn Tanetoa Parata				
in the presence of: s 9(2)(a)	in the presence of:				
Signature of Witness					
Name: Marks 9(2)(a) Occupation: Address:					

SIGNED by Wikitoria Gilvray and Sharon Mary Harrison as duly authorised representatives from Nga Hapu o Waipiro Takutai Kaitiaki Trust

s 9(2)(a)	s 9(2)(a)					
Wikitoria Gilvray	Sharon Mary Harrison					
in the presence of: s 9(2)(a)	in the presence of:					
Signature of Witness Name: (\scale=\scale \square \) Occupation Address:						
SIGNED by Nicola Searancke and Tiaki Matenga Rangi Papuni as duly authorised representatives from Ngati Wakarara - Ngati Hau Takutai Kaitiaki Trust						
	s 9(2)(a)					
s 9(2)(a)						
Nicola Searancke	Tiaki Matenga Rangi Papuni					
in the presence of:	in the presence of:					
s 9(2)(a)	s 9(2)(a)					
Signature of Witness Name: +s 9(2)(a) Occupation Address:						

# Attachment Ngā Rohe Moana o Ngā Hapū o Ngāti Porou

