### A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH TUHOE ON SPECIFIED ISSUES

### **1** INTRODUCTION

- 1.1 Under the Deed of Settlement dated 4 June 2013 between the Tūhoe and Tūhoe Te Uru Taumatua Trust 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 "Protocol") setting out how the Minister and the Chief Executive for Manatū Taonga also known as the Ministry for Culture and Heritage (the "Chief Executive") will interact with Tūhoe Te Uru Taumatua Trust (Tūhoe) 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 Effects on Ngāi Tūhoe interests in the Protocol Area Part 7;
  - 1.1.7 Registration as a collector of Ngā Taonga Tūturu Part 8;
  - 1.1.8 Board Appointments Part 9;
  - 1.1.9 National Monuments, War Graves and Historical Graves Part 10;
  - 1.1.10 History publications relating to Tuhoe Part 11;
  - 1.1.11 Cultural and/or Spiritual Practices and professional services Part 12;
  - 1.1.12 Consultation Part 13;
  - 1.1.13 Changes to legislation affecting this Protocol -Part 14; and
  - 1.1.14 Definitions Part 15.
- 1.2 For the purposes of this Protocol, Tūhoe is the body representative of the whānau, hapū and iwi of Tūhoe who have an interest in the matters covered under this Protocol. This derives from the status of Tūhoe as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.3 Manatū Taonga also known as the Ministry (the Ministry) and Tūhoe are seeking a relationship consistent with the principles outlined in Nā Korero Ranatira ā Tūhoe me Te Karauna<sup>1</sup>.

<sup>&</sup>lt;sup>1</sup> Ngā Korero Ranatira ā Tūhoe me Te Karauna is also known as Ngā Korero Rangatira ā Tūhoe me Te Karauna and at Attachment B

- 1.4 The purpose of the Protected Objects Act 1975 ("**the Act**") is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tūturu, and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.
- 1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in Clause 1.1. In exercising such roles, the Minister and Chief Executive will provide Tuhoe with the opportunity for input, into matters set out in Clause 1.1, as set out in clauses 5 to 11 of this Protocol.

# 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**").

### 3.0 RELATIONSHIP PRINCIPLES

- 3.1 Tūhoe, the Minister, and the Chief Executive agree to abide by the following relationship principles, when implementing this Protocol and exercising their various roles and functions under this Protocol:
  - 3.1.1 working together to identify, preserve, promote and enhance protection of taonga tuturu;
  - 3.1.2 working in a spirit of co-operation;
  - 3.1.3 ensuring early engagement on matters relating to this Protocol;
  - 3.1.4 operating a 'no-surprises' approach;
  - 3.1.5 acknowledging that the relationship between the parties is evolving, not prescribed;
  - 3.1.6 respecting the independence of the parties and their respective mandates, roles, and responsibilities within the Protocol Areas;
  - 3.1.7 acknowledging that Tūhoe relationships with taonga tuturu are enhanced when the treatment of Taonga tūturu is undertaken in ways that are informed and supported by Tūhoe;
  - 3.1.8 acknowledging that the parties benefit from working together by sharing their vision, knowledge and expertise; and
  - 3.1.9 in the context of any documents or other information provided to the Ministry by Tūhoe, respecting and acknowledging the need to safeguard traditional knowledge and cultural expressions associated with nga taonga tuturu o Tūhoe.

#### 4.0 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will maintain effective communication with Tūhoe by:
  - 4.1.1 maintaining information provided by Tūhoe on the office holders of Tūhoe and their addresses and contact details;
  - 4.1.2 discussing with Tūhoe concerns and issues notified by Tūhoe about this Protocol;

- 4.1.3 as far as reasonably practicable, providing opportunities for Tūhoe to meet with relevant Ministry managers and staff;
- 4.1.4 meeting with Tūhoe 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 and of the obligations of the Chief Executive under it;
- 4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
- 4.1.7 including a copy of the Protocol with Tūhoe on the Ministry's website.

### 5.0 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

#### 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 Tūhoe within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
  - 5.1.1 notify Tūhoe in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngai Tūhoe origin found anywhere else in New Zealand;
  - 5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngai Tūhoe origin found anywhere else in New Zealand;
  - 5.1.3 notify Tūhoe in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngai Tūhoe origin found anywhere else in New Zealand;
  - 5.1.4 notify Tūhoe in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngai Tūhoe origin found anywhere else in New Zealand, or for any right, title, estate or interest in any such Taonga Tūturu; and
  - 5.1.5 notify Tūhoe 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 Tūturu found within the Protocol Area or identified as being of Ngai Tūhoe origin found anywhere else in New Zealand, or for any right, title, estate or interest in any such Taonga Tūturu.

# Ownership of Taonga Tūturu found in Protocol Area or identified as being of Tūhoe origin found elsewhere in New Zealand

5.2. If Tūhoe lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Ngai Tūhoe 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 Tūturu.



- 5.3 If there is a competing claim or claims lodged in conjunction with Tūhoe's claim of ownership, the Chief Executive will consult with Tūhoe 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 Tūturu.
- 5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Tūhoe origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of Tūhoe may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

# Custody of Taonga Tūturu found in Protocol Area or identified as being of Tūhoe origin found elsewhere in New Zealand

- 5.5 If Tūhoe does not lodge a claim of ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngai Tūhoe origin found elsewhere in New Zealand with the Chief Executive, and where there is an application for custody from any other person, the Chief Executive will:
  - 5.5.1 consult Tūhoe before a decision is made on who may have custody of the Taonga Tūturu; and
  - 5.5.2 notify Tūhoe in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

#### **Export Applications**

- 5.6 For the purpose of seeking an expert opinion from Tūhoe on any export applications to remove any Taonga Tūturu of Ngai Tūhoe origin from New Zealand, the Chief Executive will register Tūhoe 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 Tūturu of Ngāi Tūhoe origin from New Zealand, the Chief Executive will consult Tūhoe as an Expert Examiner on that application, and notify Tūhoe in writing of the Chief Executive's 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 Tūhoe within the limits of the Act. In circumstances where the Chief Executive originally consulted Tūhoe as an Expert Examiner, the Minister may consult with Tūhoe where a person appeals the decision of the Chief Executive to:
  - 6.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or
  - 6.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand;
- 6.2 The Ministry will notify Tūhoe in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where Tūhoe was consulted as an Expert Examiner.



# 7. EFFECTS ON TŪHOE INTERESTS IN THE PROTOCOL AREA

- 7.1 The Chief Executive and Tūhoe shall discuss any policy and legislative development, which specifically affects Tūhoe interests in the Protocol Area.
- 7.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Tūhoe interests in the Protocol Area.
- 7.3 Notwithstanding paragraphs 7.1 and 7.2 above the Chief Executive and governance entity shall meet to discuss Tūhoe interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

# 8. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

8.1 The Chief Executive will register Tūhoe as a Registered Collector of Taonga Tūturu.

# 9. BOARD APPOINTMENTS

- 9.1 The Chief Executive shall:
  - 9.1.1 notify Tūhoe of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
  - 9.1.2 add Tūhoe nominees onto Manatū Taonga/Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and
  - 9.1.3 notify Tūhoe of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

# 10. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

- 10.1 The Chief Executive shall seek and consider the views of Tūhoe on any proposed major works or changes to any national monument, war grave or historic grave, managed or administered by the Ministry, which specifically relates to Tūhoe interests in the Protocol Area. For the avoidance of any doubt, this does not include normal maintenance or cleaning. A list of national monuments, war graves and historic graves managed or administered by the Ministry in the Protocol Area is attached as Attachment C to the Protocol.
- 10.2 Subject to government funding and government policy, the Chief Executive will provide for the marking and maintenance of any historic war grave identified by Tūhoe, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

# 11. HISTORY PUBLICATIONS RELATING TO TUHOE

- 11.1 The Chief Executive shall:
  - 11.1.1 on commencement of this protocol, provide Tūhoe Tūhoe with a list and copies of all history publications commissioned or undertaken by the Ministry that relate substantially to Tūhoe; and

- 11.1.2 where reasonably practicable, consult with Tūhoe on any work the Ministry undertakes that relates substantially to Tūhoe:
  - (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.
- 11.2 Tūhoe accepts that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by Tūhoe, is entitled to make the final decision on the material of the historical publication.

# 12. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

- 12.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Tūhoe within the Protocol Area, the Chief Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.
- 12.2 Where appropriate, the Chief Executive will consider engaging Tūhoe as a provider of professional services relating to cultural advice, historical and commemorative services sought by the Chief Executive.
- 12.3 The procurement by the Chief Executive of any such services set out in clauses 12.1 and 12.2 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.

# 13. CONSULTATION

- 13.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with Tūhoe in each case are:
  - 13.1.1 ensuring that Tūhoe is 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;
  - 13.1.2 providing Tūhoe with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
  - 13.1.3 ensuring that sufficient time is given for the participation of Tūhoe in the decision making process including the preparation of submissions by Tūhoe in relation to any of the matters that are the subject of the consultation;
  - 13.1.4 ensuring that the Chief Executive will approach the consultation with Tūhoe with an open mind, and will genuinely consider the submissions of Tūhoe in relation to any of the matters that are the subject of the consultation; and
  - 13.1.5 report back to Tūhoe, either in writing or in person, in regard to any decisions made that relate to that consultation.



### 14 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 14.1 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:
  - 14.1.1 notify Tūhoe of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
  - 14.1.2 make available to Tūhoe the information provided to Māori as part of the consultation process referred to in this clause; and
  - 14.1.3 report back to Tūhoe on the outcome of any such consultation.

#### 15 TERMS OF ISSUE

- 15.1 This Protocol is issued pursuant to section [xx] of the [Te Urewera Tūhoe Claims Settlement Act] ("the Settlement Legislation") that implements the Tūhoe and Tūhoe Trust - Te Uru Taumatua and The Crown Deed of Settlement of Historical Claims, and is subject to the Settlement Legislation and the Deed of Settlement.
- 15.2 This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

### 16 AMENDMENT AND CANCELLATION

16.1 The Minister may amend or cancel this Protocol, but only after consulting with Tūhoe and having particular regard to its views (section []).

#### 17 LIMITS

- 17.1 This Protocol does not 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, hapu, marae, whānau, or representative of tangata whenua (section41(a)(2)); or
  - (d) restrict the responsibilities of the Minister or the Ministry or the legal rights of Tuhoe or a representative entity (section 41(b) and (c)); or
  - (e) grant, create or provide evidence of an estate or interest in, or rights relating to, taonga tuturu.

#### 18 BREACH

- 18.1 Subject to the Crown Proceedings Act 1950, Tūhoe may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 42(3)).
- 18.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 4.333).



### 19. DEFINITIONS

19.1 In this Protocol:

**Chief Executive** means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as 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 Tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tūturu and which suggest that the Taonga Tūturu 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 Taonga Tūturu** has the same meaning as "nga taonga tuturu" in section 2 of the Act and means two or more Taonga Tūturu;

**Protocol** means a statement in writing, issued by the Crown through the Minister to Tūhoe under the Settlement Legislation and the Deed of Settlement and includes this Protocol;

**Taonga Tūturu has** the same meaning as "taonga tūturu" in section 2 of the Act and means 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; and

**Tūhoe** means the Tūhoe Te Uru Taumatua Trust, which has the the meaning given to it in paragraph [8.7] of the general matters schedule to the deed of settlement.

**ISSUED** on the

10t day of December 2014

SIGNED for and on behalf of THE CROWN by the Minister for Arts, Culture and Heritage in the presence of: Signature of Witness Sally Guiness Witness Name Denicr Private Secretary Occupation

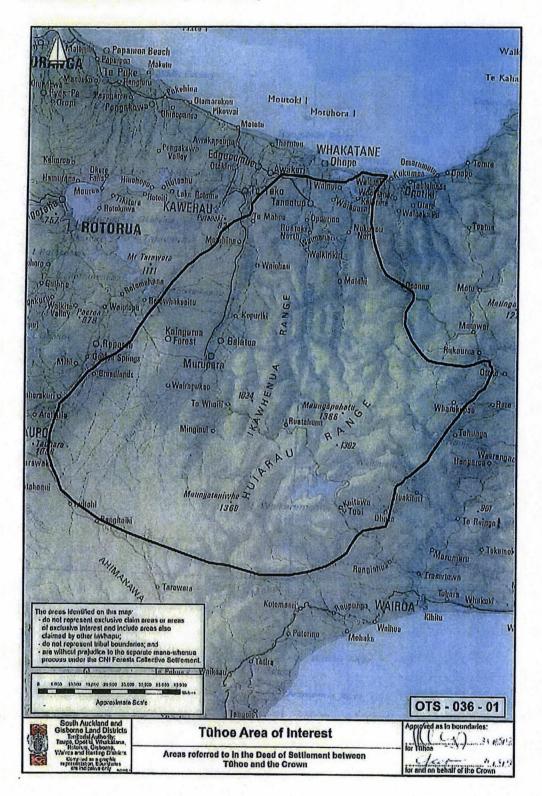
# ATTACHMENT A

The Ministry for Culture and Heritage Protocol Area



1: AREA OF INTEREST

### TŪHOE AREA OF INTEREST (OTS-036-01)



Whārani 3

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# ATTACHMENT C

# War graves, historic graves and monuments responsibilities administered in the Protocol Area

#### War graves of the First and Second World Wars

#### **RUATOKI NORTH MAORI (OLD) CEMETERY - Whakatane District**

**UATUKU**, Lieutenant, TE IRITIMA, 20701. N.Z. Maori (Pioneer) Battalion. Died of phthisis 31<sup>st</sup> August 1917. Son of Hokopata Te Uatuku, of Ruatoki. Plot 1, South end.

#### **RUATOKI (NGAHINA) MAORI CEMETERY - Whakatane District**

**KINGI**, Leading Aircraftman, DICK WAHAPANGO, 4311477. Royal New Zealand Air Force. 15<sup>th</sup> September 1945. Son of Wahapango Kingi and Arishia Toki, of Ruatoki.

# MURUPARA (TE PAPA MARAE) MAORI CEMETERY - Whakatane District

**HOHEPA**, Private, PUEHU, 19786. N.Z. Maori (Pioneer) Battalion. 30<sup>th</sup> December 1917. Son of the late Hohepa Poia, of Murupara.

#### War graves of the NZ Wars, historic graves and monuments

Pouawha Meihana Memorial, Pukeko Marae, Poroporo, Whakatane.

Life size statue of Chief Pouawha Meihana on a 2 metre high pedestal.

Kainaha Cemetery, Mataatua Road, Ruatahuna.

Two mass graves of NZ Wars:

- 1. Memorial to Native Auxiliaries of H.M. Forces who died on 7.5.1869 and 8.5.1869.
- 2. Memorial to Armed Constabulary killed at Orangikawa Pa.

Onepoto grave of Tpr Michael Noonan, beside Lake Kiriopukae, Lake Waikaremoana; Trooper Michael Noonan was a despatch rider killed in the execution of his duty during the NZ Wars.

Ruakituri Cemetery Reserve, Papuni Road, Ruakituri Valley near Wairoa.

Three NZ Wars memorials:

- 1. Metal plaque mounted on a rock cairn in memory of Davis Canning.
- 2. Grave of Captain Oswald Carr, Royal Artillery.
- 3. Stone cairn commemorating Constables Coates, Condon, Byrne and Private Rihara.