

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS,
CULTURE AND HERITAGE REGARDING INTERACTION WITH THE TRUSTEES OF TE
KŌPERE O TE IWĪ O HINEURU ON SPECIFIED ISSUES**

1 INTRODUCTION

1.1 Under the Deed of Settlement dated 2 April 2015 between Hineuru, the trustees of Te Kōpere o te iwi o Hineuru (the **Governance Entity**) 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 the Governance Entity on matters specified in the Protocol. These matters are:

- (a) relationship principles;
- (b) Protocol Area;
- (c) terms of issue;
- (d) implementation and communication;
- (e) the role of the Chief Executive under the Protected Objects Act 1975;
- (f) the role of the Minister under the Protected Objects Act 1975;
- (g) effects on Hineuru interests in the Protocol Area;
- (h) registration as a collector of Ngā Taonga Tūturu;
- (i) board appointments;
- (j) national monuments, war graves and historical graves;
- (k) history publications relating to Hineuru;
- (l) cultural and/or spiritual practices and professional services;
- (m) provision of advice;
- (n) relationships;
- (o) information exchange;
- (p) consultation;

- (q) changes to policy and legislation affecting this protocol;
 - (r) review and amendment;
 - (s) dispute resolution; and
 - (t) definitions.
- 1.2 For the purposes of this Protocol, the Governance Entity is the body representative of Hineuru who have an interest in the matters covered under this Protocol. This interest derives from the status of Hineuru as tāngata 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 for Arts, Culture and Heritage, the “**Ministry**”) and Te Kōpere o te iwi o Hineuru are seeking a relationship consistent with Te Tiriti o Waitangi / the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi / the Treaty of Waitangi provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.
- 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 the Governance Entity with the opportunity for input, into matters set out in clause 1.1, as set out in clauses 5 to 21 of this Protocol.

2 RELATIONSHIP PRINCIPLES

- 2.1 The Governance Entity, 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:
- (a) working together to preserve, promote, protect and enhance Taonga Tūturu;
 - (b) working in a spirit of co-operation;
 - (c) ensuring early engagement on matters relating to this Protocol;
 - (d) operating a ‘no-surprises’ approach;
 - (e) acknowledging that the relationship is evolving, not prescribed;

- (f) respecting the independence of the parties and their individual mandates, roles and responsibilities within the Protocol Area;
- (g) acknowledging that the parties benefit from working together by sharing their vision, knowledge and expertise; and
- (h) in the context of any documents or other information provided to the Ministry by Hineuru, respecting and acknowledging the need to safeguard traditional knowledge and cultural expressions associated with Taonga Tūturu of Hineuru.

3 PROTOCOL AREA

- 3.1 This Protocol applies across the Protocol Area which means the area identified in the map included in Attachment A of this Protocol, together with the adjacent waters (the “**Protocol Area**”).

4 TERMS OF ISSUE

- 4.1 This Protocol is issued pursuant to section 29 of the Hineuru Settlement Act 2016 (the “**Settlement Legislation**”) that implements the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 This Protocol must be read subject to the summary of the terms of issue set out in Attachment B.

5 IMPLEMENTATION AND COMMUNICATION

- 5.1 The Chief Executive will maintain effective communication with the Governance Entity by:
 - (a) maintaining information provided by the Governance Entity on the office holders of the Governance Entity and their addresses and contact details;
 - (b) discussing with the Governance Entity concerns and issues notified by the Governance Entity about this Protocol;
 - (c) as far as reasonably practicable, providing opportunities for the Governance Entity to meet with relevant Ministry managers and staff;
 - (d) meeting with the Governance Entity to review the implementation of this Protocol at least once a year, if requested by either party;
 - (e) 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;

- (f) as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information;
- (g) as soon as reasonably practicable, upon the Ministry becoming aware of such collections, notifying the Governance Entity of any Taonga Tūturu held overseas, either in private or public collections, where such Taonga Tūturu relates to Hineuru or was sourced from the Protocol Area; and
- (h) including a copy of the Protocol with the Governance Entity on the Ministry's website.

5.2 In addition, the Chief Executive will meet with the Governance Entity to develop and agree a strategy to implement this Protocol as soon as possible after this Protocol is signed. This strategy will be an operational document and may include but is not limited to:

- (a) outlining specific actions and milestones the Chief Executive and the Governance Entity may carry out pursuant to the Protocol;
- (b) reporting processes in relation to the specific actions and milestones; and
- (c) developing a communications protocol relating to how the Ministry and the Governance Entity will communicate.

5.3 The implementation strategy described in clause 5.2 will have effect from the date agreed by both parties and specified in the strategy.

6 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

GENERAL

6.1 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. From the date this Protocol is issued the Chief Executive will:

- (a) notify the Governance Entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Hineuru origin found anywhere else in New Zealand;
- (b) provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Hineuru origin found anywhere else in New Zealand;
- (c) notify the Governance Entity 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 Hineuru origin found anywhere else in New Zealand;

- (d) notify the Governance Entity 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 Hineuru origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
- (e) notify the Governance Entity 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 Hineuru 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 HINEURU ORIGIN FOUND ELSEWHERE IN NEW ZEALAND

- 6.2 If the Governance Entity 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 Hineuru 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.
- 6.3 If there is a competing claim or claims lodged in conjunction with the Governance Entity's claim of ownership, the Chief Executive will consult with the Governance Entity 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.
- 6.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Hineuru origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the Governance Entity 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 HINEURU ORIGIN FOUND ELSEWHERE IN NEW ZEALAND

- 6.5 If the Governance Entity does not lodge a claim of ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Hineuru 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:
 - (a) notify the Governance Entity as soon as practicable after such an application is received;
 - (b) consult the Governance Entity before a decision is made on who may have custody of the Taonga Tūturu; and

- (c) notify the Governance Entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

EXPORT APPLICATIONS

- 6.6 For the purpose of seeking an expert opinion from the Governance Entity on any export applications to remove any Taonga Tūturu of Hineuru origin from New Zealand, the Chief Executive will register the Governance Entity on the Ministry's Register of Expert Examiners.
- 6.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Hineuru origin from New Zealand, the Chief Executive will consult the Governance Entity as an Expert Examiner on that application, and notify the Governance Entity in writing of the Chief Executive's decision.

7 THE ROLE OF THE MINISTER UNDER THE ACT

- 7.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the Governance Entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the Governance Entity as an Expert Examiner, the Minister may consult with the Governance Entity where a person appeals the decision of the Chief Executive to:
 - (a) refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or
 - (b) impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand.
- 7.2 The Ministry will notify the Governance Entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the Governance Entity was consulted as an Expert Examiner.

8 EFFECTS ON HINEURU INTERESTS IN THE PROTOCOL AREA

- 8.1 The Chief Executive and the Governance Entity shall discuss any policy or legislative development, which specifically affects the interests of Hineuru in the Protocol Area.
- 8.2 The Chief Executive and the Governance Entity shall discuss any of the Ministry's operational activities, which specifically affect the interests of Hineuru in the Protocol Area.
- 8.3 Notwithstanding clauses 8.1 and 8.2 above the Chief Executive and the Governance Entity shall meet to discuss the interests of Hineuru in the Protocol Area as part of the meeting specified in clause 5.1(d).

9 REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

9.1 The Chief Executive will register the Governance Entity as a Registered Collector of Taonga Tūturu.

10 BOARD APPOINTMENTS

10.1 The Chief Executive shall:

- (a) notify the Governance Entity of any upcoming ministerial appointments on Boards which the Minister appoints to;
- (b) add the Governance Entity's nominees onto the Ministry's Nomination Register for Boards, which the Minister appoints to; and
- (c) notify the Governance Entity of any ministerial appointments to Boards which the Minister 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 Governance Entity 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 the interests of Hineuru in the Protocol Area. For the avoidance of doubt, this does not include normal maintenance or cleaning.

11.2 Subject to government funding and government policy, the Chief Executive will provide for the marking and maintenance of any historic war grave identified by the Governance Entity, 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).

11.3 Specifically, the Chief Executive will work with the Governance Entity to develop and implement a plan within 12 months of the issue of the Protocol or as soon as practical thereafter to ensure:

- a that the graves of Hineuru casualties of the New Zealand Wars, buried on the Chatham Islands, are marked and a whakawatea process performed to bless the area; and
- b that those casualties are returned to Hineuru whether physically or spiritually; and
- c that a memorial is erected at Wharekauri

11.4 It is acknowledged that other iwi whose tipuna were also detained on Wharekauri will be involved in the discussions.

12 HISTORY PUBLICATIONS RELATING TO HINEURU

12.1 The Chief Executive shall:

- (a) upon commencement of this Protocol provide the Governance Entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Hineuru and will supply these on request; and
- (b) consult with the Governance Entity on any work the Ministry undertakes that relates substantially to Hineuru:
 - (i) from an early stage;
 - (ii) throughout the process of undertaking the work; and
 - (iii) before making the final decision on the material of a publication; and
- (c) work with the Governance Entity to agree guidelines for the application of clauses 12.1(a) and 12.1(b) within six months of signing the Protocol.

12.2 Where the Ministry makes reasonable efforts to contact the Governance Entity for the purposes of the consultation in accordance with clause 12.1, and no response is received within a reasonable timeframe, the Ministry shall not be in breach of clause 12.1.

12.3 The Governance Entity accepts that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the Governance Entity, 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 Hineuru within the Protocol Area, the Chief Executive will invite the Governance Entity to provide such services. Where the Chief Executive has invited the Governance Entity to provide such services, the Chief Executive will make a contribution, which the Chief Executive considers is reasonable in the circumstances, the amount of which will be discussed with the Governance Entity at the time of the invitation.

13.2 Where appropriate, the Chief Executive will consider using the Governance Entity as a provider of professional services relating to cultural advice, historical and commemorative services sought by the Chief Executive.

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 PROVISION OF ADVICE

14.1 The Governance Entity may, from time-to-time, seek practical advice from the Chief Executive on historical or commemorative initiatives of Hineuru where the Ministry may have some expertise. The Chief Executive will provide such general practical advice, not involving any financial commitment, where possible.

14.2 In addition to clause 14.1, the Chief Executive will make best endeavours to notify the Governance Entity of any awards and funds, to which applications can be made which are administered by the Chief Executive, and provide details of the application process and deadlines.

15 RELATIONSHIPS

15.1 Hineuru have a strategic vision for their cultural identity that includes the preservation, development and transmission of their cultural heritage, traditions and arts. The Governance Entity wishes to explore the mutual benefits of a relationship with:

- (a) Arts Council of New Zealand Toi Aotearoa (Creative New Zealand);
- (b) Heritage New Zealand Pouhere Taonga; and
- (c) New Zealand Film Archive.

15.2 The Chief Executive will invite the above organisations to initiate discussions with the Governance Entity.

16 ACCESS AND REPATRIATION

16.1 The Chief Executive will by or on settlement date invite organisations relevant to this Protocol identified by the Governance Entity, which may include regional and international museums, to establish a relationship with the Governance Entity for the purposes of:

- (a) advising Hineuru about how they can have access to their Taonga Tūturu;
- (b) providing information to the Governance Entity about the Taonga Tūturu; and
- (c) any other matters of importance to Hineuru.

17 INFORMATION EXCHANGE

- 17.1 The Governance Entity and the Ministry recognise the benefit of mutual information exchange. To this end the Ministry and the Governance Entity will as far as possible exchange any information that is relevant to Hineuru Taonga Tūturu and any intellectual property associated with Hineuru Taonga Tūturu that the Ministry may hold.
- 17.2 The Ministry will make available to the Governance Entity all existing information held by, or reasonably accessible to, the Ministry where that information is requested by the Governance Entity for the purposes of assisting them to exercise their rights under this Protocol.
- 17.3 The obligations in clauses 17.1 and 17.2 do not apply to information that the Minister 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 Minister or Chief Executive may withhold under the Official Information Act 1982.

18 CONSULTATION

- 18.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed 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 Chief Executive 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 including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;
 - (d) ensuring that the Chief Executive 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; and
 - (e) report back to the Governance Entity, either in writing or in person, as soon as possible following any decisions being made that relate to that consultation.

19 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 19.1 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:
- (a) notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
 - (b) make available to the Governance Entity the information provided to Māori as part of the consultation process referred to in this clause; and
 - (c) report back to the Governance Entity on the outcome of any such consultation.

20 REVIEW AND AMENDMENT

- 20.1 The Minister and the Chief Executive and the Governance Entity agree that this Protocol is a living document which should be updated and adapted to take account of future developments.
- 20.2 A review of this Protocol may take place, at the request of either party, at five-yearly intervals from the commencement date of this Protocol or the date of completion of the previous review, unless either party advises that it wishes to review the Protocol three years from the commencement date or three years of the date of completion of the previous review.
- 20.3 Where the parties cannot reach agreement on any review or amendment proposal they will use the dispute resolution processes contained in clause 21 of this Protocol.

21 DISPUTE RESOLUTION

- 21.1 If one party considers that there has been a breach of this Protocol then that party may give written notice to the other party that they are in dispute. The following process shall be undertaken once notice is received by the other party to this Protocol:
- (a) within 15 working days of being given written notice, the relevant contact person from the Ministry and the Governance Entity will meet to work in good faith to resolve the issue;
 - (b) if the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 21.1(a), the Chief Executive and the Governance Entity will meet to work in good faith to resolve the issue;
 - (c) if the dispute has not been resolved within 30 working days of receipt of the notice referred to in clause 21.1(a) and where the matter is of such significance and the dispute remains outstanding despite the above process having been

followed, provided it is not inconsistent with statutory obligations and the parties agree, the Minister and the Governance Entity will meet to work in good faith to resolve this issue. The parties recognise that this clause is subject to this Protocol's Terms of Issue.

22 DEFINITIONS

22.1 In this Protocol:

Chief Executive means the Chief Executive of the Ministry and includes any authorised employee of the Ministry 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, 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;

Hineuru has the meaning set out in clause 8.5 of the Deed of Settlement;

Ngā Taonga Tūturu has the same meaning as 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 the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol;

Taonga Tūturu has the same meaning as 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.

ISSUED on

SIGNED for and on behalf of **THE**

SOVEREIGN in right of

New Zealand by the Chief Executive of the Ministry for Culture and Heritage:

WITNESS

Name:

Occupation:

Address:

ATTACHMENT A: PROTOCOL AREA MAP



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 Governance Entity and having particular regard to its views (section 28(3)).

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 tāngata whenua (section 29(a)); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Hineuru or a representative entity (section 29(b) and (c)); or

2.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to, taonga tuturu (section 32(1)).

2.2 In this summary of the Terms of Issue, “representative entity” has the same meaning as in the Deed of Settlement.

3. Breach

3.1 Subject to the Crown Proceedings Act 1950, the Governance Entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 30(3)).

3.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 5.17).