

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀTI MĀKINO ON SPECIFIED ISSUES

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 2 April 2011 between Ngāti Mākino 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 the Ministry for Culture and Heritage (the "**Chief Executive**") will interact with the trustees of Ngāti Mākino Iwi Authority 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 Mākino Ngā Taonga Tūturu held by Te Papa Tongarewa – Part 7
 - 1.1.7 Effects on Ngāti Mākino's interest in the Protocol Area – Part 8
 - 1.1.8 Registration as a collector of Ngā Taonga Tūturu – 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 Mākino – Part 12
 - 1.1.12 Cultural and/or Spiritual Practices and Professional Services – Part 13
 - 1.1.13 Consultation – Part 14
 - 1.1.14 Changes to legislation affecting this Protocol – Part 15
 - 1.1.15 Definitions – Part 16
- 1.2 For the purposes of this Protocol the trustees are the body representative of the whanau, hapū, and iwi of Ngāti Mākino who have an interest in the matters covered under this Protocol. This derives from the status of the trustees as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.3 The Ministry and the trustees 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 provides 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 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.

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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 trustees with the opportunity for input, into matters set out in Clause 1.1.

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 This Protocol is issued pursuant to section 18 of the Ngāti Mākino Claims Settlement Act 2012 ("the Settlement Legislation") that implements the Ngāti Mākino Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will maintain effective communication with the trustees by:
- 4.1.1 maintaining information provided by the trustees on the office holders of the trustees and their addresses and contact details;
 - 4.1.2 discussing with the trustees 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 provide 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 within the limits of the Act. From the date this Protocol is issued the Chief Executive will:

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- 5.1.1 notify the trustees in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Mākinō 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 Ngāti Mākinō origin found anywhere else in New Zealand;
- 5.1.3 notify the trustees 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 Ngāti Mākinō origin found anywhere else in New Zealand;
- 5.1.4 notify the trustees 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 Ngāti Mākinō 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 the trustees 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 Ngāti Mākinō origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

Applications for Ownership

- 5.2. If the trustees lodge 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 Ngāti Mākinō 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 the trustees' claim of ownership, 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 Tūturu.
- 5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Mākinō origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the trustees may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

Applications for Custody

- 5.5 If no ownership application is made to the Māori Land Court for any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Mākinō origin found elsewhere in New Zealand by the trustees or any other person, the Chief Executive will:
 - 5.5.1 consult the trustees where there is any request from any other person for the custody of the Taonga Tūturu;
 - 5.5.2 consult the trustees before a decision is made on who may have custody of the Taonga Tūturu; and

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- 5.5.3 notify the trustees 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 the trustees on any export applications to remove any Taonga Tūturu of Ngāti Mākinō origin from New Zealand, the Chief Executive will register the trustees 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 Ngāti Mākinō origin from New Zealand, the Chief Executive will consult the trustees 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 within the limits of the Act. In circumstances where the Chief Executive originally consulted the trustees 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 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 the trustees in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the trustees were consulted as an Expert Examiner.

7 NGĀTI MĀKINO 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, for the purposes of Te Papa Tongarewa compiling a full inventory of Taonga Tūturu held by Te Papa Tongarewa, which are of cultural, spiritual and historical importance to Ngāti Mākinō; and
- 7.2 associated costs and/or additional resources required to complete the obligations under paragraph 7.1 will be funded by Te Papa Tongarewa, as resources allow.

8 EFFECTS ON NGĀTI MĀKINO'S INTERESTS IN THE PROTOCOL AREA

- 8.1 The Chief Executive and trustees shall discuss any policy and legislative development, which specifically affects Ngāti Mākinō interests in the Protocol Area.
- 8.2 The Chief Executive and trustees shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Mākinō interests in the Protocol Area.
- 8.3 Notwithstanding paragraphs 8.1 and 8.2 above the Chief Executive and trustees shall meet to discuss Ngāti Mākinō interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

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9 REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

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

10 BOARD APPOINTMENTS

10.1 The Chief Executive shall:

10.1.1 notify the trustees of any vacancies on Boards administered by the Ministry;

10.1.2 include trustees' nominees in the Ministry for Culture and Heritage's Nomination Register, for consideration during the process of making Board appointments; and

10.1.3 notify the trustees of any appointments to any Boards administered by the Ministry, 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 on any national monument, war grave, historical grave or urupā, managed or administered by the Ministry, which specifically relates to Ngāti Māhino's interests.

12 HISTORY PUBLICATIONS RELATING TO NGĀTI MĀHINO

12.1 The Chief Executive shall:

12.1.1 provide the trustees with a list of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāti Māhino, and will supply these on request; and

12.1.2 discuss with the trustees any work the Ministry undertakes that deals specifically or substantially with Ngāti Māhino.

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 Māhino 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 as a provider of professional services.

13.3 The procurement by the Chief Executive of any such services set out in Clauses 14.1 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 in each case are:

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- 14.1.1 ensuring that the trustees 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 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 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 with an open mind, and will genuinely consider the submissions of the trustees in relation to any of the matters that are the subject of the consultation; and
- 14.1.5 report back to the trustees, 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 proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
 - 15.1.2 make available to the trustees 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 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 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

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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 in section 2 of the Act and means two or more Taonga Tūturu

Ngāti Mākino has the meaning set out in clauses 9.5 and 9.6 of the Deed of Settlement.

Protocol means a statement in writing, issued by the Crown through the Minister to the trustees 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

trustees has the same meaning as in the deed of settlement being the trustees for the time being of the Ngāti Mākino Iwi Authority

ISSUED on 24/08/12

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



WITNESS

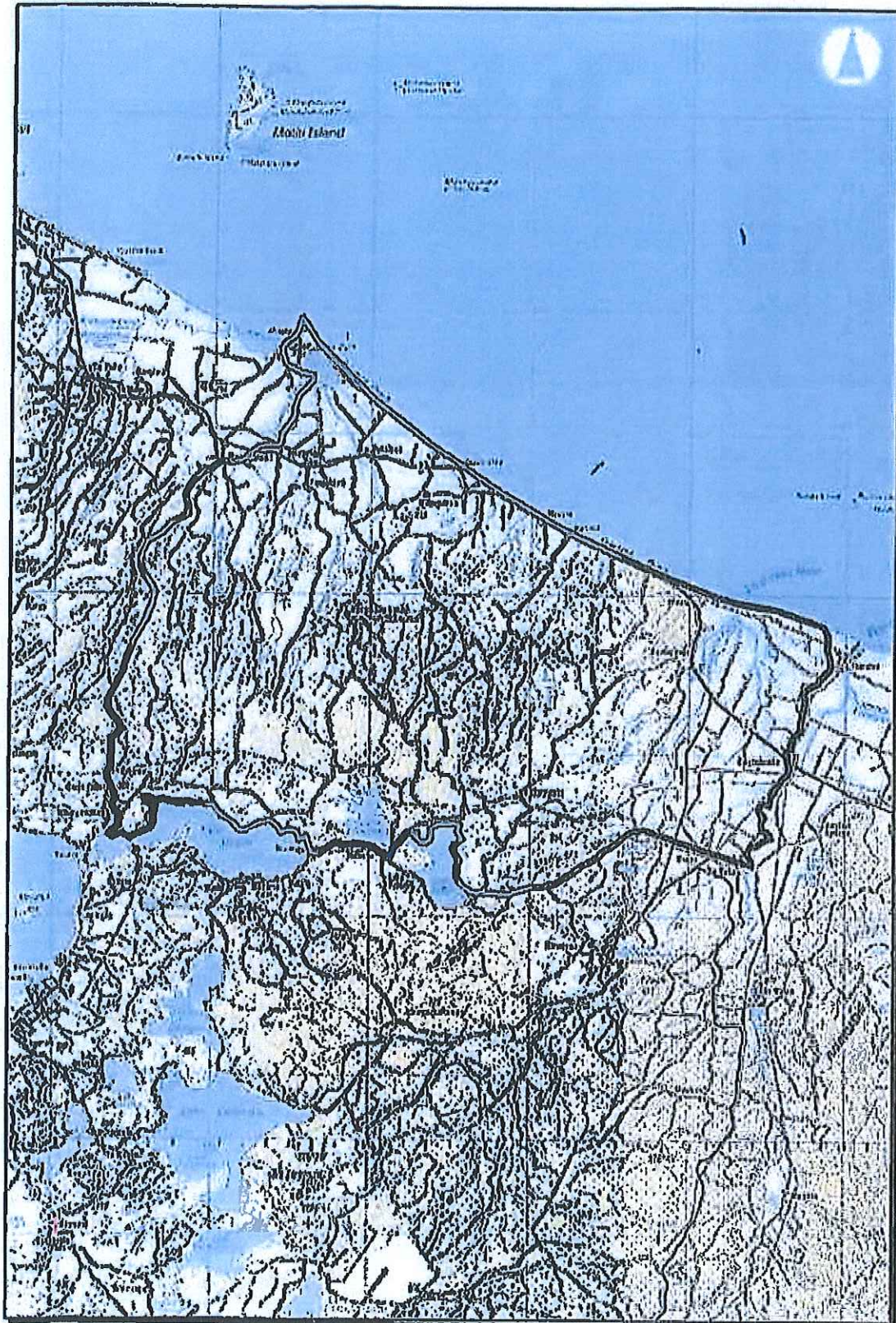
[Redacted signature area]

Name: James Chiswick

Occupation: Advisor

Address: Wellington.

ATTACHMENT A
NGĀTI MĀKINO TAONGA TŪTURU PROTOCOL AREA



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ATTACHMENT B

TERMS OF ISSUE

This Protocol is issued subject to the provisions of the deed of settlement and the settlement legislation. These provisions are set out below.

1 Provisions of the deed of settlement relating to this Protocol

1.1 The deed of settlement provides that:

1.1.1 a failure by the Crown to comply with a protocol is not a breach of the deed of settlement (5.11 of the provisions schedule); and

1.1.2 this protocol does not override or limit:

- (a) legislative rights, powers, or obligations; or
- (b) the functions, duties, and powers of Ministers, officials and others under legislation; or
- (c) the ability of the Crown to interact or consult with persons other than Ngāti Māhino or the trustees.

2 Authority to issue, amend or cancel protocols

2.1 Part 2, Subpart 1 of the settlement legislation provides that:

- (1) each responsible Minister may –
 - (a) issue a protocol to the trustees in the form set out in part x of the documents schedule to the deed of settlement; and
 - (b) amend or cancel that protocol.
- (2) a protocol may be amended or cancelled under subsection (1) at the initiative of either –
 - (a) the trustees; or
 - (b) the responsible Minister.
- (3) the responsible Minister may amend or cancel a protocol only after consulting with, and having particular regard to the views of, the trustees.

3 Protocols subject to rights, functions, and obligations

3.1 Section 19 of the settlement legislation provides that protocols do not restrict:

- (a) the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and government policy, which includes, without limitation, the ability to –

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- (i) introduce legislation and change government policy; and
 - (ii) interact or consult with a person the Crown considers appropriate, including, without limitation, any iwi, hapū, marae, whānau, or other representative of tangata whenua; or
- (b) the responsibilities of the responsible Minister or a responsible department; or
- (c) the legal rights of Ngāti Mākino or a representative entity.

4 Enforcement of a protocol

4.1 Section 20 of the settlement legislation provides that:

- (1) the Crown must comply with a protocol while it is in force.
- (2) if the Crown fails, without good cause, to comply with a protocol, the trustees may, subject to the Crown Proceedings Act 1950, enforce the protocol.
- (3) despite subsection (2), damages or any form of monetary compensation are not available as a remedy for failure by the Crown to comply with a protocol.
- (4) to avoid doubt,-
 - (a) subsections (1) and (2) do not apply to guidelines developed for the implementation of a protocol; and
 - (b) subsection (3) does not affect the ability of a court to award costs incurred in enforcing a protocol under subsection (2).

5 Limitation of rights

5.1 Section 21 of the settlement legislation provides that:

this Protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, taonga tūturu.