

SCHEDULE 5.3
FORM OF MINISTRY FOR CULTURE AND HERITAGE PROTOCOL
(Clause 5.1.4)

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE
MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING
INTERACTION WITH NGĀTI TUWHARETOA ON ANTIQUITIES
ISSUES**

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 6 June 2003 between Ngāti Tuwharetoa (Bay of Plenty) 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 "*Ngāti Tuwharetoa Antiquities Protocol*") setting out how the Minister and the Ministry for Culture and Heritage (the "*Ministry*") will interact with the Governance Entity on matters specified in the Ngāti Tuwharetoa Antiquities Protocol. These matters are:
- (a) newly found Artifacts;
 - (b) the export of Artifacts; and
 - (c) the Antiquities Act 1975 and any amendment or substitution thereof (the "*Act*").
- 1.2 The Minister and Chief Executive of the Ministry (the "*Chief Executive*"), or other such persons acting in those capacities, and the Governance Entity are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Ngāti Tuwharetoa Antiquities Protocol, as set out in this Protocol.
- 1.3 Ngāti Tuwharetoa has an interest in relation to the preservation, protection and management of its Artifacts through its tino rangatiratanga and kaitiakitanga. This derives from Ngāti Tuwharetoa's status as tangata whenua in the Ngāti Tuwharetoa Antiquities Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The Minister and Chief Executive have certain functions, powers and duties in terms of the Act. In exercising such functions, powers and duties, the Minister

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and Chief Executive will provide the Governance Entity with the opportunity for input, in the policy and decision making processes as set out in this Protocol.

2 PROTOCOL AREA

- 2.1 This Protocol applies across the Ngāti Tuwharetoa Antiquities Protocol Area, which means the area identified in the map included in *Attachment A* together with the adjacent waters.

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*) and *clause 5.1.1(c)* of the 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 DEFINITIONS

- 4.1 Other terms are defined in *Attachment C*.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and can consult, notify and provide information to the Governance Entity within the limits of the Act. The Chief Executive will:
- (a) provide the Governance Entity on request with information (including information on any Artifact identified as being of Ngāti Tuwharetoa origin, including items found within the Ngāti Tuwharetoa Antiquities Protocol Area or found anywhere else in New Zealand) in accordance with the Official Information Act 1982;
 - (b) notify the Governance Entity in writing of any registered Artifact found within the Ngāti Tuwharetoa Antiquities Protocol Area and of any registered Artifacts identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand from the date of signing of this Protocol;
 - (c) notify the Governance Entity of its right to apply to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Ngāti Tuwharetoa Antiquities Protocol Area or

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identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand;

- (d) notify the Governance Entity of any application to the Māori Land Court from other persons for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Ngāti Tuwharetoa Antiquities Protocol Area or identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand;
- (e) if no application is made to the Māori Land Court by the Governance Entity or any other persons:
 - (i) consult the Governance Entity before a decision is made on who may have custody of an Artifact found within the Ngāti Tuwharetoa Antiquities Protocol Area or identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand;
 - (ii) notify the Governance Entity in writing of the decision made by the Chief Executive on the custody of an Artifact where the Governance Entity has been consulted;
 - (iii) consult the Governance Entity where there are requests from persons for the custody of Artifacts found within the Ngāti Tuwharetoa Antiquities Protocol Area or identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand;
- (f) seek from the Governance Entity an expert opinion on any Artifacts of Ngāti Tuwharetoa origin for which a person has applied to the Chief Executive for permission to export from New Zealand; and
- (g) notify the Governance Entity in writing of the decision made by the Chief Executive on an application to export an Artifact where the expert opinion was sought from the Governance Entity.

5.2 The Chief Executive will also:

- (a) review the implementation of this Protocol biennially unless otherwise mutually agreed in writing by the Chief Executive and the Governance Entity; and
- (b) as far as reasonably practicable, ensure relevant employees within the Ministry are aware of the purpose, content and implications of this Protocol.

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6 THE ROLE OF THE MINISTER UNDER THIS PROTOCOL

6.1 The Minister has functions, powers and duties under the Act and can consult, notify and provide information to the Governance Entity within the limits of the Act. The Minister will consult with the Governance Entity where a person appeals the decision of the Chief Executive to:

- (a) refuse permission to remove any Artifact, or Artifacts from New Zealand; or
- (b) impose conditions on an approval to export any Artifact, or Artifacts from New Zealand;

in the circumstances where the Governance Entity was originally asked for an expert opinion by the Chief Executive.

7 CONSULTATION

7.1 Where the Ministry is required to consult under *clauses 5.1(e)(i) and (iii)* and *6.1* of this Protocol, the basic principles that will be followed by the Ministry 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 Ministry 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 and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation; and
- (d) ensuring that the Ministry 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.

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8 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

8.1 If the Ministry consults with Māori generally on policy development or any proposed legislative amendment to the Act which impacts upon this Protocol the Ministry shall:

- (a) Notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted; and
- (b) Make available to the Governance Entity the information provided to Māori as part of the consultation process referred to in this clause.

ISSUED on [insert Settlement Date]

SIGNED for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister for Arts, Culture and Heritage

WITNESS

Name:

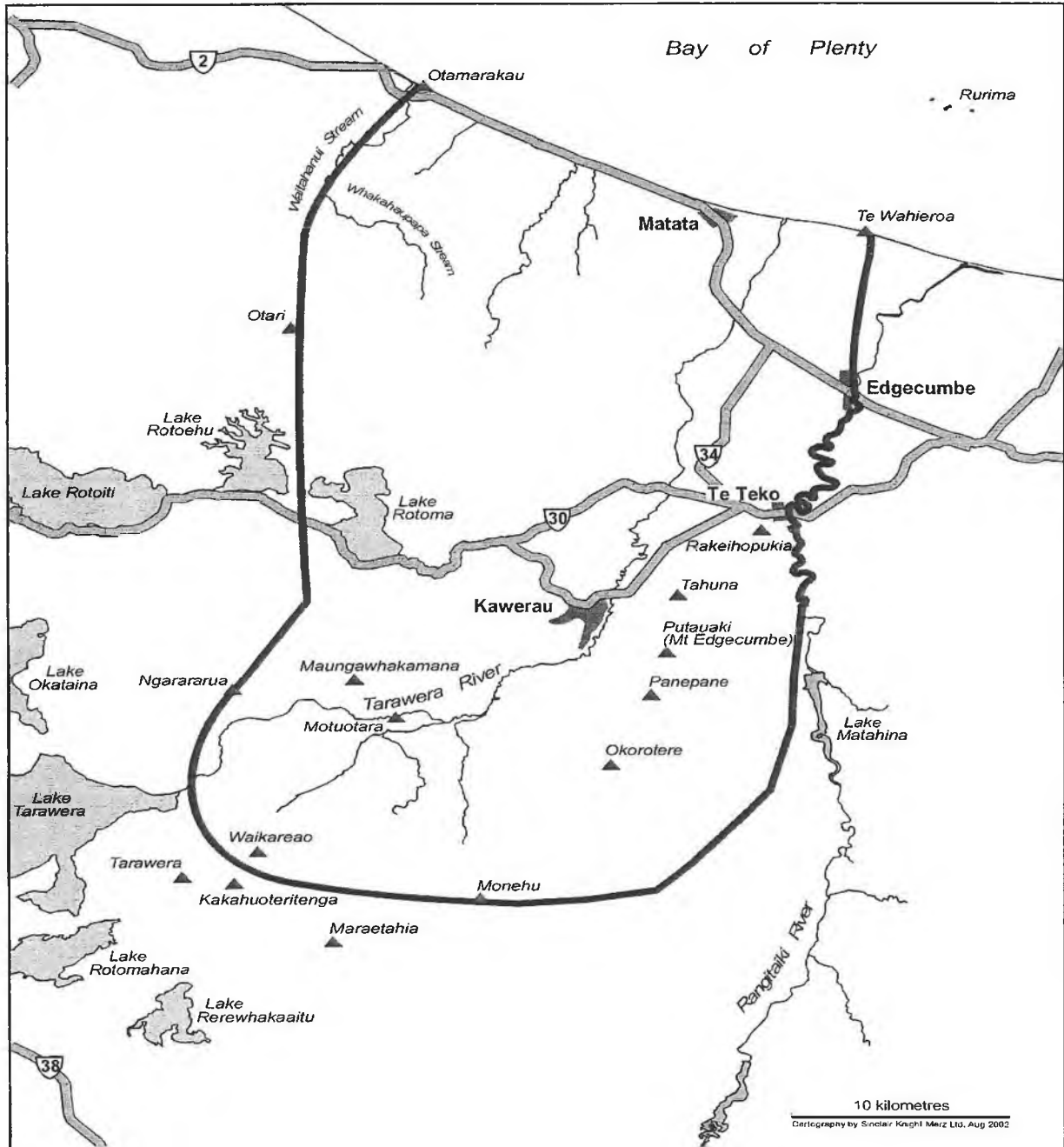
Occupation:

Address:

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[Signature]

ATTACHMENT A

NGĀTI TUWHARETOA ANTIQUITIES PROTOCOL AREA



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