

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

1. INTRODUCTION

- 1.1 Under the Deed of Settlement dated 9 August 2014 between Te Ātiawa 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 Manatu 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:
- 1.1.1 Relationship Principles - Part 2;
 - 1.1.2 Protocol Area - Part 3;
 - 1.1.3 Terms of issue - 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 Implementation and Communication - Part 7;
 - 1.1.7 Registration as a collector of Ngā Taonga Tūturu - Part 8;
 - 1.1.8 Access to taonga - Part 9;
 - 1.1.9 Provision of Advice - Part 10;
 - 1.1.10 Board Appointments - Part 11;
 - 1.1.11 National Monuments, War Graves and Historical Graves - Part 12;
 - 1.1.12 History publications relating to Te Ātiawa - Part 13;
 - 1.1.13 Information exchange - Part 14;
 - 1.1.14 Cultural and/or Spiritual Practices and Professional Services - Part 15;
 - 1.1.15 Consultation - Part 16;
 - 1.1.16 Review and amendment - Part 17;
 - 1.1.17 Dispute resolution - Part 18;
 - 1.1.18 Changes to policy and legislation affecting this Protocol - Part 19;
 - 1.1.19 Definitions - Part 20.
- 1.2 For the purposes of this Protocol the governance entity is the body representative of the whanau, hapu, and iwi of Te Ātiawa who have an interest in the matters covered under this Protocol.

- 1.3 The Chief Executive recognises that Te Ātiawa have a significant interest in relation to the preservation, protection and management of Taonga Tūturu through their tino rangatiratanga and kaitiakitanga. This derives from the status of Te Ātiawa as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The Chief Executive and the governance entity 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.
- 1.5 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.
- 1.6 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 12 of this Protocol.

2 RELATIONSHIP PRINCIPLES

- 2.1 Te Ātiawa, 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:
 - working together to preserve, promote, protect and enhance Taonga Tūturu;
 - acknowledging the need to safeguard traditional knowledge and cultural expressions associated with Te Ātiawa;
 - working in a spirit of co-operation;
 - ensuring early engagement on matters relating to this Protocol;
 - operating a 'no-surprises' approach;
 - acknowledging that the relationship is evolving, not prescribed;
 - respecting the independence of the parties and their individual mandates, roles and responsibilities within the Protocol Area; and
 - acknowledging that the parties benefit from working together by sharing their vision, knowledge and expertise.

3 PROTOCOL AREA

- 3.1 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**").

4 TERMS OF ISSUE

- 4.1 This Protocol is issued pursuant to section 23 of the Te Ātiawa Claims Settlement Act 2016 (the "**Settlement Legislation**") that implements the Te Ātiawa 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 terms of issue set out in Attachment B.

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 governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
- 5.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Te Ātiawa 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 Te Ātiawa origin found anywhere else in New Zealand;
 - 5.1.3 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 Te Ātiawa origin found anywhere else in New Zealand;
 - 5.1.4 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 Te Ātiawa 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 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 Te Ātiawa 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 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 Te Ātiawa 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 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.

- 5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Te Ātiawa 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.

Applications for Custody

- 5.5 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 Te Ātiawa 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 the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and
- 5.5.2 notify the governance entity 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 governance entity on any export applications to remove any Taonga Tūturu of Te Ātiawa origin from New Zealand, the Chief Executive will register the governance entity 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 Te Ātiawa 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.

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 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:
- 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 Nga Taonga Tūturu, from New Zealand.
- 6.2 The Chief Executive 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.

7 IMPLEMENTATION AND COMMUNICATION

7.1 The Chief Executive will meet with the governance entity to develop and agree a strategy to implement this Protocol as soon as practicable after this Protocol is issued. This strategy will be an operational document:

7.1.1 outlining specific actions and milestones the Chief Executive and governance entity may carry out pursuant to the Protocol;

7.1.2 reporting processes in relation to the specific actions and milestones.

7.2 The implementation strategy described in clause 7.1 of this Protocol will have effect from the date agreed by both parties and specified in the strategy.

7.3 The Chief Executive will also:

7.3.1 discuss with the governance entity any policy and legislative development which specifically affects Te Ātiawa interests in the Protocol Area;

7.3.2 discuss with the governance entity any of the Ministry's operational activities, which specifically affect Te Ātiawa interests in the Protocol Area;

7.3.3 meet with the governance entity to review the implementation of this Protocol as per clause 17.2 if requested by either party;

7.3.4 as far as reasonably practicable train 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 Minister and Chief Executive under it;

7.3.5 maintain information provided by the governance entity on the office holders of the governance entity, their addresses, and contact details;

7.3.6 as far as reasonably practicable, provide opportunities for the governance entity to meet with relevant Ministry managers and staff;

7.3.7 as far as reasonably practicable, inform other organisations with whom it works, central government agencies, and stakeholders about this Protocol and provide ongoing information;

7.3.8 as soon as reasonably practical notify the governance entity of any Te Ātiawa Taonga Tūturu held overseas, either in private or public collections, should the Chief Executive become aware of such collections; and

7.3.9 include a copy of the Protocol on the Ministry's website.

8 REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

8.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tūturu.

9 ACCESS TO TAONGA

9.1 The Chief Executive will write to organisations relevant to this protocol (the list to be mutually agreed by both parties no later than 12 months following deed of settlement)

inviting them to establish a relationship with Te Ātiawa for the purposes of achieving their taonga objectives.

10 PROVISION OF ADVICE

- 10.1 The governance entity may, from time-to-time, seek practical advice from the Chief Executive on Te Ātiawa historical or commemorative initiatives where the Ministry may have some expertise. The Chief Executive will provide such general practical advice, not involving any financial commitment, where possible.

11 BOARD APPOINTMENTS

- 11.1 The Chief Executive shall:

11.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

11.1.2 add the governance entity's nominees onto the Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and

11.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

12 NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

- 12.1 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 Te Ātiawa's interests in the Protocol Area. For the avoidance of doubt this does not include normal maintenance or cleaning.

- 12.2 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).

13 HISTORY PUBLICATIONS RELATING TO TE ĀTIAWA

- 13.1 The Chief Executive shall:

13.1.1 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 relate substantially to Te Ātiawa; and

13.1.2 make reasonable efforts to consult with the governance entity on any work the Ministry undertakes that relates substantially to Te Ātiawa:

- (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.

- 13.2 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.

14 INFORMATION EXCHANGE

- 14.1 Te Ātiawa and the Ministry recognise the benefit of mutual information exchange. To this end, the Ministry and Te Ātiawa will as far as possible exchange any information that is relevant to Te Ātiawa Taonga Tūturu when either party requests such information.
- 14.2 The obligations in clause 14.1 and 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.

15 PROVISION OF CULTURAL AND / OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

- 15.1 Where the Chief Executive requests cultural and/or spiritual practices to be undertaken by Te Ātiawa within the Protocol Area, the Chief Executive will make a contribution subject to prior mutual agreement, to the costs of undertaking such practices.
- 15.2 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.
- 15.3 The procurement by the Chief Executive of any such services set out in clauses 15.1 and 15.2 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.

16 CONSULTATION

- 16.1 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:
- 16.1.1 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;
 - 16.1.2 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;
 - 16.1.3 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;
 - 16.1.4 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

16.1.5 reporting back to the governance entity in writing, in person, or both, in regard to any decisions made that relate to that consultation.

17 REVIEW AND AMENDMENT

17.1 The Minister and the Chief Executive and Te Ātiawa agree that this Protocol is a living document which should be updated and adapted to take account of future developments.

17.2 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 sooner if both parties agree.

17.3 Where the parties cannot reach agreement on any review or amendment proposal they will use the dispute resolution processes contained in clause 18 of the Protocol.

18 DISPUTE RESOLUTION

18.1 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:

18.1.1 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.

18.1.2 If the dispute has not been resolved within 20 working days of receipt of the notice referred to in 15.1(a), the Chief Executive and Governance Entity will meet to work in good faith to resolve the issue.

18.1.3 If the dispute has not been resolved within 30 working days of receipt of the notice referred to in clause 18.1 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 or his delegate 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.

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:

19.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

19.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and

19.1.3 report back to the governance entity on the outcome of any such consultation.

20 DEFINITIONS

20.1 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 a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meanings.

governance entity means Te Kotahitanga o Te Ātiawa Trust.

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.

Te Ātiawa has the meaning set out in clause 8.6 of the Deed of Settlement.

ISSUED on

20/2/17

SIGNED for and on behalf of)
THE SOVEREIGN in right of New Zealand)
by the Chief Executive of the Ministry for Culture)
and Heritage)
in the presence of:)

Paul Jones

Signature of Witness

L M Seale

Witness Name

Sensia Oahvisar Wānāi

Occupation

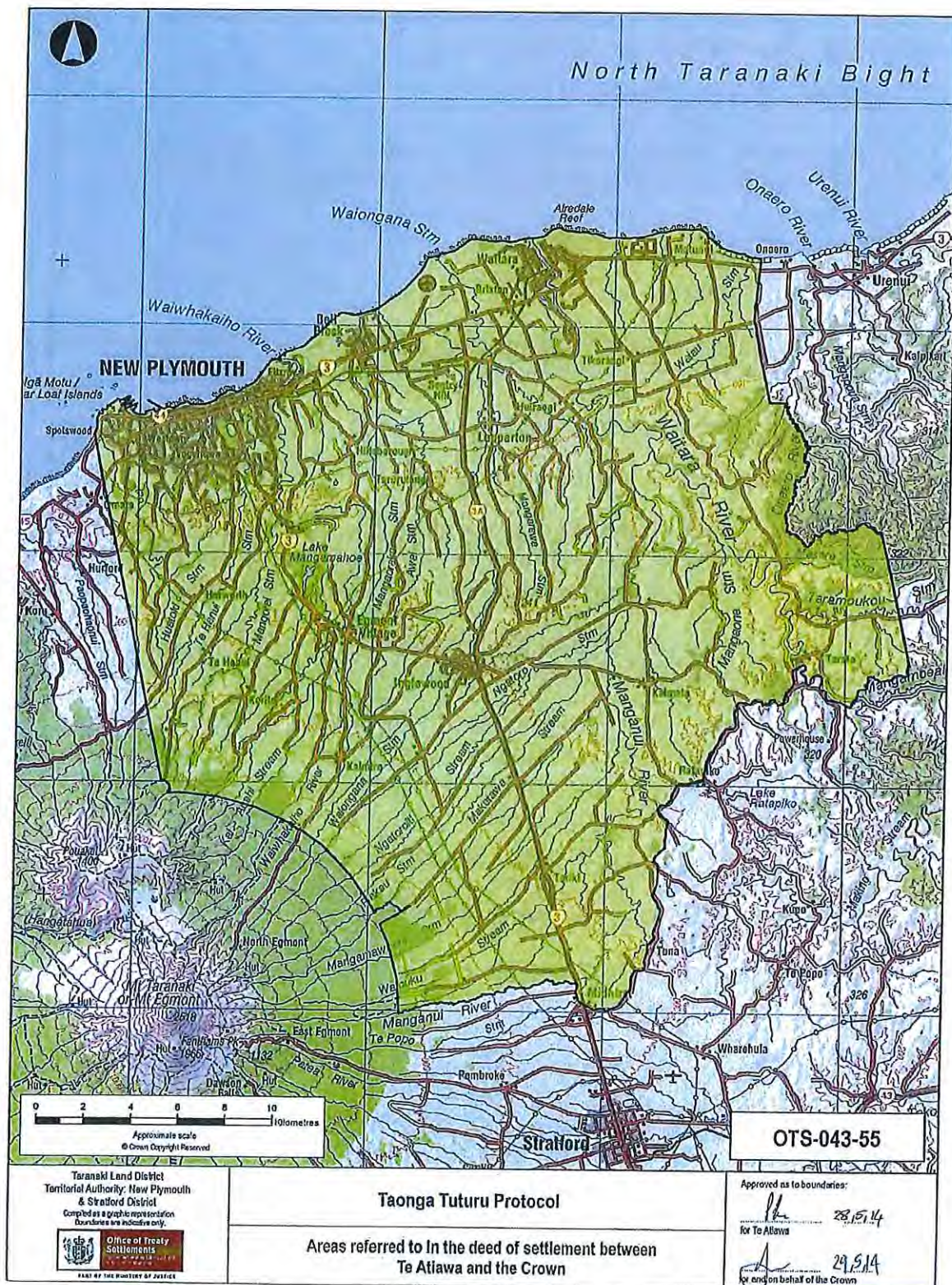
Ministry of Culture and Heritage

Address

Level 1, 181 Lambton Quay,
Wellington 6011

ATTACHMENT A

TAONGA TŪTURU PROTOCOL AREA



<p style="text-align: center;">ATTACHMENT B</p> <p style="text-align: center;">SUMMARY OF THE TERMS OF ISSUE</p>
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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 23(2)).

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 tangata whenua (section 24(a)); or

- 2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Te Ātiawa (section 24(b) and (c)); or

- 2.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to, Taonga Tūturu.

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 25).

- 3.2 A breach of this Protocol is not a breach of the Deed of Settlement.