

ANTIQUITIES PROTOCOL

(Clause 9.13)

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NGAA RAURU KIITAHİ DEED OF SETTLEMENT: RELATIONSHIPS SCHEDULE

PART 2: PROTOCOLS: ANTIQUITIES PROTOCOL

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGAA RAURU KIITAHİ ON ANTIQUITIES MATTERS

1. INTRODUCTION

- 1.1 Under the Deed of Settlement dated [] between Ngaa Rauru Kiitahi 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 "Antiquities Protocol") setting out how the Minister and the Ministry for Culture and Heritage (the "Ministry") will interact with the Ngaa Rauru Kiitahi Governance Entity (the "Governance Entity") on matters specified in the Antiquities Protocol. These matters are:
- 1.1.1 newly found Artifacts;
 - 1.1.2 the export of Artifacts; and
 - 1.1.3 the Antiquities Act 1975 as amended or substituted (the "Act").
- 1.2 The Minister and Chief Executive of the Ministry (the "Chief Executive"), or other such persons acting in those capacities and Ngaa Rauru Kiitahi are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles which enhances the ability of Ngaa Rauru Kiitahi to exercise Ngaa Raurutanga. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to this Antiquities Protocol, as set out in this Antiquities Protocol.
- 1.3 Ngaa Raurutanga is the term used by Ngaa Rauru Kiitahi to describe the values, rights and responsibilities that Ngaa Rauru Kiitahi holds according to custom, including those values, rights and responsibilities recognised by Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.4 Ngaa Rauru Kiitahi has an interest in relation to the preservation, protection and management of its Artifacts through Ngaa Raurutanga and kaitiakitanga. This derives from the status of Ngaa Rauru Kiitahi as tangata whenua in the Antiquities Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.5 Ngaa Rauru Kiitahi describes its association with the land as inclusive of Mana Atua (its spiritual and cultural connections to the land), Mana Whenua (its land as an economic base) and Mana Tangata (its social organisation on the land). Those concepts are reinforced for Ngaa Rauru Kiitahi in its whakapapa which has origins in Io Matua Kore (Mana Atua), Kahui Rere/Kahui Maunga, and Aotea Waka (Mana Tangata).

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

2. PROTOCOL AREA

2.1 This Antiquities Protocol applies across the 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 [] of the [*insert the name of the Settlement Legislation*] and clause 9.13 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. THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL

4.1 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. The Chief Executive will:

4.1.1 provide the Governance Entity on request with information (including information on any Artifact identified as being of Ngaa Rauru Kiiitahi origin, including items found within the Antiquities Protocol Area or found anywhere else in New Zealand) in accordance with the Official Information Act 1982;

4.1.2 notify the Governance Entity in writing of any registered Artifact found within the Antiquities Protocol Area and of any registered Artifacts identified as being of Ngaa Rauru Kiiitahi origin found anywhere else in New Zealand from the date of signing this Protocol;

4.1.3 notify the Governance Entity of its right to apply to the Maori 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 Antiquities Protocol Area or identified as being of Ngaa Rauru Kiiitahi origin found anywhere else in New Zealand;

4.1.4 notify the Governance Entity of any application to the Maori Land Court from other persons or entities 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 Antiquities Protocol Area or identified as being of Ngaa Rauru Kiiitahi origin found anywhere else in New Zealand;

4.1.5 if no application is made to the Maori Land Court by the Governance Entity or any other persons:

(a) consult the Governance Entity before a decision is made on who may have custody of an Artifact found within the Antiquities Protocol Area

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or identified as being of Ngaa Rauru Kiitahi origin found anywhere else in New Zealand;

- (b) 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; and
- (c) consult the Governance Entity where there are requests from persons for the custody of Artifacts found within the Antiquities Protocol Area or identified as being of Ngaa Rauru Kiitahi origin found anywhere else in New Zealand;

4.1.6 seek from the Governance Entity an expert opinion on any Artifacts of Ngaa Rauru Kiitahi origin for which a person has applied to the Chief Executive for permission to export from New Zealand; and

4.1.7 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.

4.2 The Chief Executive will also:

4.2.1 discuss with the Governance Entity concerns and issues notified by the Governance Entity about the Antiquities Legislation;

4.2.3 review the implementation of this Protocol biennially unless otherwise mutually agreed in writing by the Chief Executive and the Governance Entity; and

4.2.3 as far as reasonably practicable ensure relevant employees within the Ministry are aware of the purpose, content and implications of this Protocol and of information provided by the Governance Entity concerning the values and practice of Ngaa Raurutanga.

5. THE ROLE OF THE MINISTER UNDER THIS PROTOCOL

5.1 The Minister has functions, powers and duties under the Act and will 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:

5.1.1 refuse permission to remove any Artifact, or Artifacts, from New Zealand; or

5.1.2 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.

5.2 The Ministry will notify the Governance Entity in writing of the Minister's decision on an appeal in relation to an application to export an Artifact where an expert opinion was sought from the Governance Entity.

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6. CONSULTATION

- 6.1 Where the Ministry is required to consult under clauses 4.1.5 and 5.1 of this Protocol, the basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
- 6.1.1 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;
 - 6.1.2 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;
 - 6.1.3 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; and
 - 6.1.4 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.

7. CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 7.1 If the Ministry consults with Maori generally on policy development or any proposed legislative amendment to the Antiquities Legislation that impacts upon this Protocol, the Ministry shall:
- 7.1.1 notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which Maori generally will be consulted;
 - 7.1.2 make available to the Governance Entity the information provided to Maori as part of the consultation process referred to in this clause; and
 - 7.1.3 report back to the Governance Entity on the outcome of any such consultation.

8. DEFINITIONS

- 8.1 In this Protocol:

Antiquities Legislation means the Antiquities Act 1975 and any amendment or substitution thereof;

Crown means Her Majesty the Queen 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;

Governance Entity means *[Insert name and description]*;

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Ngaa Rauru Kiitahi has the meaning set out in clause 1.5 of the Deed of Settlement;
and

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 Antiquities Protocol.

8.2 Other terms used in this Protocol are defined in Attachment C.

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ISSUED on []

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

WITNESS

Name:

Occupation:

Address:

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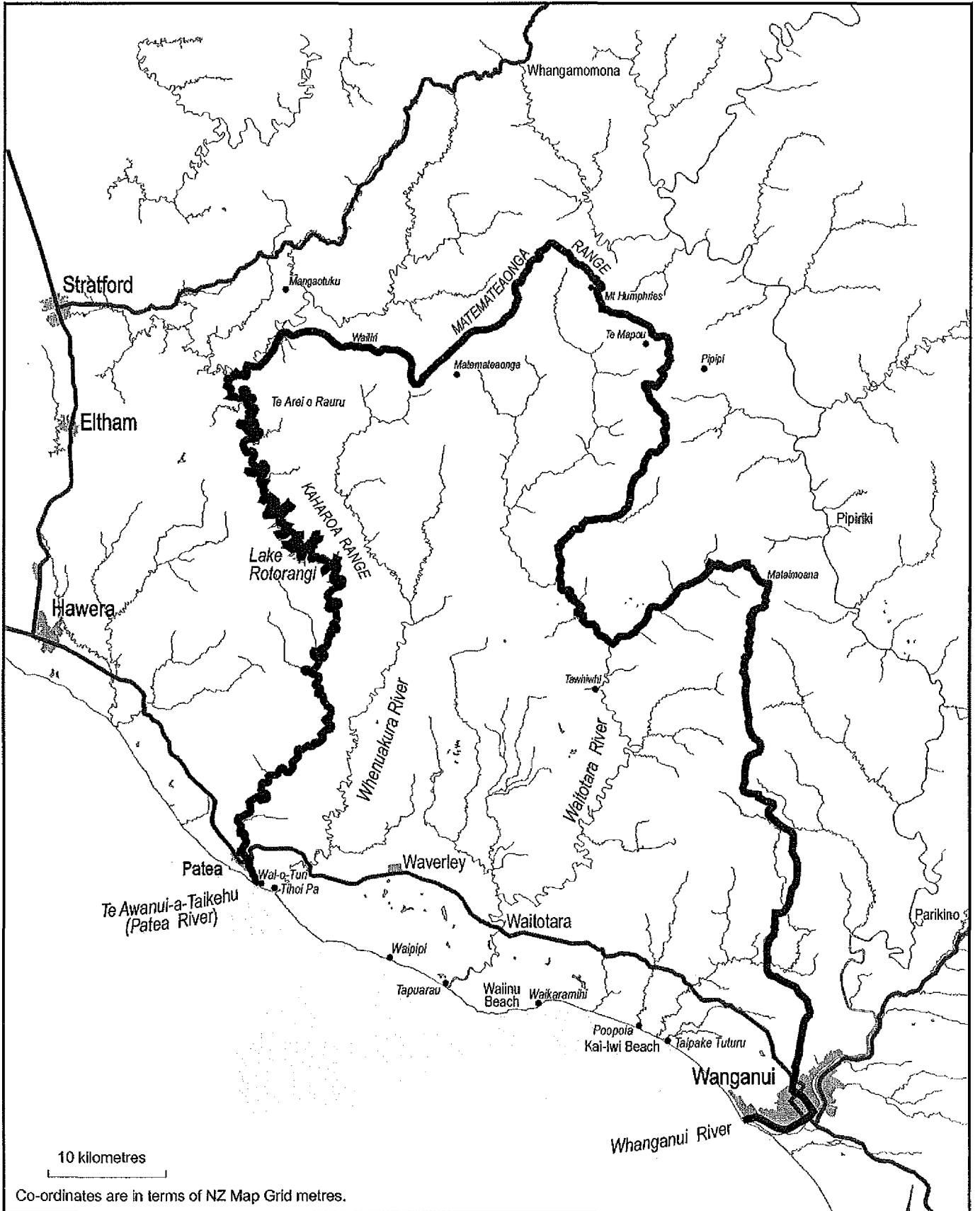
ATTACHMENT A

ANTIQUITIES PROTOCOL AREA

(The map follows this page.)



ANTIQUITIES PROTOCOL AREA FOR NGA A RAURU KIITAHĪ



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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 (clause 9.17); and

1.1.2 this Protocol does not restrict the ability of the Crown to interact or consult with any person the Crown considers appropriate including any iwi, hapuu, marae, whanau, or other representative of tangata whenua (clause 9.18); and

1.1.3 this Protocol does not override or diminish:

(a) the requirements of the Antiquities Act 1975;

(b) the functions and powers of the Minister for Arts, Culture and Heritage, or the Ministry for Culture and Heritage, under that Act; or

(c) the rights of Ngaa Rauru Kiitahi, or a Representative Entity, under that Act (clause 9.15).

1.2 Representative Entity has the same meaning in clause 1.1.3 of these terms of issue as it has in clause 1.10 of the Deed of Settlement.

2 Authority to issue, amend or cancel Protocols

2.1 Section [] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clauses 9.16.1 to 9.16.3 of the Deed of Settlement.]

3 Protocols subject to rights and obligations

3.1 Section [] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clause 9.16.4 of the Deed of Settlement.]

4 Enforcement of Protocol

4.1 Section [] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clauses 9.16.5 to 9.6.7 of the Deed of Settlement.]

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5 Limitation of rights

5.1 Section [] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clause 9.14 of the Deed of Settlement.]



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ATTACHMENT C

OTHER DEFINITIONS

In this Protocol:

Antiquity has the same meaning as in section 2 of the Antiquities Act 1975, being:

- (a) Any chattel of any kind whatsoever, not being a chattel to which any of paragraphs (b) to (h) of this definition applies which:
 - (i) is of national, historical, scientific, or artistic importance; and
 - (ii) relate to the European discovery, settlement, or development of New Zealand; and
 - (iii) is, or appears to be, more than 60 years old.
- (b) Any artifact;
- (c) Any book, diary, letter, document, paper, record, or other written matter (whether in manuscript or printed form), photographic negative or print, film, printed reproduction of any picture, or sound recording:
 - (i) which relates to New Zealand and is of national, historical, scientific, artistic, or literary importance; and
 - (ii) which is more than 60 years old; and
 - (iii) of which, in the case of a book first printed and published in New Zealand, no copy is in the custody of the National Library of New Zealand;
- (d) Any work of art which relates to New Zealand, is more than 60 years old, and is of national, historical, or artistic value or importance;
- (e) Any type specimen of any animal, plant, or mineral existing or formerly existing in New Zealand;
- (f) Any meteorite or part of a meteorite recovered in New Zealand;
- (g) Any bones, feathers, or other parts or the eggs of the Moa or other species of animals, birds, reptiles, or amphibians native to New Zealand which are generally believed to be extinct; and
- (h) Any ship, boat, or aircraft, or any part of any ship, boat or aircraft, equipment, cargo, or article belonging to any ship, boat, or aircraft in any case where that ship, boat, or aircraft has been, or appears to have been, a wreck in New Zealand, or within the territorial waters of New Zealand, for more than 60 years and that ship, boat, aircraft, equipment, cargo, or article, as the case may be, is of national, historical, scientific, or artistic value or importance.

Artifact has the same meaning as in section 2 of the Antiquities Act 1975, being:

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Any chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Maori or other pre-European inhabitants of New Zealand and which was or appears to have been manufactured or modified in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor by any such inhabitant, or used by any such inhabitant, prior to 1902.

