

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

## **1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated 5 March 2011 between Ngai Tāmanuhiri, 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 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 Ngai Tāmanuhiri tikanga and objectives;
  - 1.1.2 Protocol Area – Part 3
  - 1.1.3 Terms of issue – Part 4
  - 1.1.4 Implementation and communication – Part 5
  - 1.1.5 The role of the Chief Executive under the Protected Objects Act 1975 – Part 6
  - 1.1.6 The role of the Minister under the Protected Objects Act 1975 – Part 7
  - 1.1.7 Ngai Tāmanuhiri Ngā Taonga Tūturu held by Te Papa Tongarewa – Part 8
  - 1.1.8 Effects on Ngai Tāmanuhiri interests in the Protocol Area – Part 9
  - 1.1.9 Registration as a collector of Ngā Taonga Tūturu – Part 10
  - 1.1.10 Relationship with Creative New Zealand – Part 11
  - 1.1.11 Relationship with Historic Places Trust – Part 12
  - 1.1.12 Board Appointments – Part 13
  - 1.1.13 National Monuments, War Graves and Historical Graves – Part 14
  - 1.1.14 History publications relating to Ngai Tāmanuhiri – Part 15
  - 1.1.15 Cultural and/or Spiritual Practices and Professional Services – Part 16
  - 1.1.16 Consultation – Part 17
  - 1.1.17 Changes to legislation affecting this Protocol – Part 18
  - 1.1.18 Definitions – Part 19
- 1.2 For the purposes of this Protocol the governance entity is the body representative of the iwi of Ngai Tāmanuhiri who have an interest in the matters covered under this Protocol. This derives from the status of the governance entity as representative of the 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 governance entity is 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. Ngai Tāmanuhiri considers that this Protocol provides a process or opportunity by which the Crown seeks to restore its reputation as a Treaty partner.

- 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.

## **2 NGAI TĀMANUHIRI TIKANGA AND OBJECTIVES**

- 2.1 To Ngai Tāmanuhiri, tikanga underpins the ongoing relationship between Ngai Tāmanuhiri and the Ministry and guides their objectives for this Protocol which include:
  - 2.1.1 Mana Tangata - to achieve improved culture and heritage outcomes for Ngai Tāmanuhiri, through actions that include implementing effective planning, management and monitoring systems;
  - 2.1.2 Mana Whenua - to increase the return to, and minimise the loss of, taonga tūturu from Ngai Tāmanuhiri through actions that include the development and implementation of effective strategies and systems;
  - 2.1.3 Mana Rangatira - to achieve improved input by Ngai Tāmanuhiri at the highest level through actions, that include engaging in developing and implementing Ministry national policies, strategies and programmes ; and
  - 2.1.4 Mana Tipuna - to enable the beginning of closure of past grievances through actions that include planning and managing the return of, and memorial for, Tūranga tipuna from Wharekauri.
- 2.2 The Minister and Chief Executive acknowledge the importance of Ngai Tāmanuhiri tikanga to the governance entity. The Crown and the governance entity agree that the Ngai Tāmanuhiri tikanga and objectives set out in clause 2.1 do not:
  - 2.2.1 affect how the Minister, Chief Executive and the Ministry will exercise their statutory powers, functions and duties in relation to the matters specified in this Protocol; and
  - 2.2.2 prevent the Minister, Chief Executive and the Ministry from interacting with other iwi or hapu with interests in the Protocol Area;

## **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 21 of the Ngai Tāmanuhiri Claims Settlement Act 2012 ("the Settlement Legislation") that implements the Ngai Tāmanuhiri 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 IMPLEMENTATION AND COMMUNICATION**

- 5.1 The Chief Executive will maintain effective communication with the governance entity by:
- 5.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;
  - 5.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;
  - 5.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry Managers and staff;
  - 5.1.4 meeting with the governance entity to review the implementation of this Protocol at least once a year, if requested by either party;
  - 5.1.5 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;
  - 5.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
  - 5.1.7 including a copy of the Protocol with the governance entity on the Ministry's website.

## **6 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE PROTECTED OBJECTS ACT 1975**

### **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:
- 6.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngai Tāmanuhiri origin found anywhere else in New Zealand;
  - 6.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngai Tāmanuhiri origin found anywhere else in New Zealand;
  - 6.1.3 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 Ngai Tāmanuhiri origin found anywhere else in New Zealand;
  - 6.1.4 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 Ngai Tāmanuhiri, origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
  - 6.1.5 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 Ngai Tāmanuhiri origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

### **Applications for Ownership**

- 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 Ngai Tāmanuhiri 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 Ngai Tāmanuhiri 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**

- 6.5. 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 Ngai Tāmanuhiri origin found elsewhere in New Zealand by the governance entity or any other person, the Chief Executive will:
  - 6.5.1. consult the governance entity where there is any request from any other person for the custody of the Taonga Tūturu;
  - 6.5.2. consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and
  - 6.5.3. 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 Ngai Tāmanuhiri origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 6.7. Where the Chief Executive receives an export application to remove any Taonga Tūturu of Ngai Tāmanuhiri 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 his or her decision.

## **7. THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975**

- 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:
  - 7.1.1. refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or

7.1.2 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. NGAI TĀMANUHIRI NGĀ TAONGA TŪTURU HELD BY TE PAPA TONGAREWA**

8.1 The Chief Executive will invite Te Papa Tongarewa to enter into a relationship with the governance entity, 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 Ngai Tāmanuhiri; and

8.2 Associated costs and/or additional resources required to complete the obligations under clause 8.1 will be funded by Te Papa Tongarewa, as resources allow.

## **9 EFFECTS ON NGAI TĀMANUHIRI INTERESTS IN THE PROTOCOL AREA**

9.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects Ngai Tāmanuhiri interests in the Protocol Area.

9.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Ngai Tāmanuhiri interests in the Protocol Area.

9.3 Notwithstanding clauses 9.1 and 9.2 above the Chief Executive and governance entity shall meet to discuss Ngai Tāmanuhiri interests in the Protocol Area as part of the meeting specified in clause 5.1.4.

## **10. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU**

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

## **11. RELATIONSHIP WITH CREATIVE NEW ZEALAND**

11.1 Ngai Tāmanuhiri has a strategic vision for its cultural identity that includes the preservation, development and transmission of its cultural heritage, traditions and arts. The governance entity wishes to explore the mutual benefits of a relationship with Arts Council of New Zealand Toi Aotearoa (Creative New Zealand). The Chief Executive will invite Creative New Zealand to initiate discussions with the governance entity.

## **12. RELATIONSHIP WITH HISTORIC PLACES TRUST**

12.1 Ngai Tāmanuhiri has a strategic vision for its cultural identity that includes the preservation, development and transmission of its cultural heritage, traditions and arts. The governance entity wishes to explore the mutual benefits of a relationship with the New Zealand Historic Places Trust. The Chief Executive will invite the New Zealand Historic Places Trust to initiate discussions with the governance entity.

## **13. BOARD APPOINTMENTS**

13.1 The Chief Executive shall as soon as reasonably practical:

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

13.1.2 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

13.1.3 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.

#### **14. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES**

14.1 The Chief Executive shall seek and consider the views of the governance entity on any national monument, war grave, historical grave or urupā, managed or administered by the Ministry, which specifically relates to Ngai Tāmanuhiri interests.

14.2 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 Heritage Management Guidelines 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).

14.3 Specifically, the Chief Executive will work with Ngai Tāmanuhiri to develop and implement a plan within 12 months of the issue of the Protocol to ensure:

14.3.1 that the graves of Ngai Tāmanuhiri casualties of the New Zealand Wars, buried on the Chatham Islands, are marked and a whakawatea process performed to bless the area; and

14.3.2 that those casualties are returned to Ngai Tāmanuhiri whether physically or spiritually; and

14.3.3 that a memorial is erected at Wharekauri.

#### **15. HISTORY PUBLICATIONS RELATING TO NGAI TĀMANUHIRI**

15.1 The Chief Executive shall:

15.1.1 provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngai Tāmanuhiri and will supply these on request; and

15.1.2 where reasonably practicable, consult with the governance entity on any work the Ministry undertakes that deals substantially with Ngai Tāmanuhiri:

(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.

15.2 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.

#### **16. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES**

16.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngai Tāmanuhiri within the Protocol Area, the Chief Executive will make a payment, subject

to prior mutual agreement, on a fair and reasonable basis to the costs of undertaking such practices.

- 16.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services.
- 16.3 The procurement by the Chief Executive of any such services set out in clauses 16.1 and 16.2 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.

## **17. CONSULTATION**

- 17.1 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:
- 17.1.1 ensuring that the governance entity is consulted as soon as reasonably practicable once the issue or proposal for consultation has been identified by the Chief Executive;
- 17.1.2 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;
- 17.1.3 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;
- 17.1.4 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
- 17.1.5 report back to the governance entity, either in writing or in person, in regard to any decisions made that relate to that consultation.

## **18 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL**

- 18.1 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:
- 18.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
- 18.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and
- 18.1.3 report back to the governance entity on the outcome of any such consultation.

## **19. DEFINITIONS**

- 19.1 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** has the meaning given to it in the Deed of Settlement;

**Ngai Tāmanuhiri** 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; and

**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 24/08/12

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



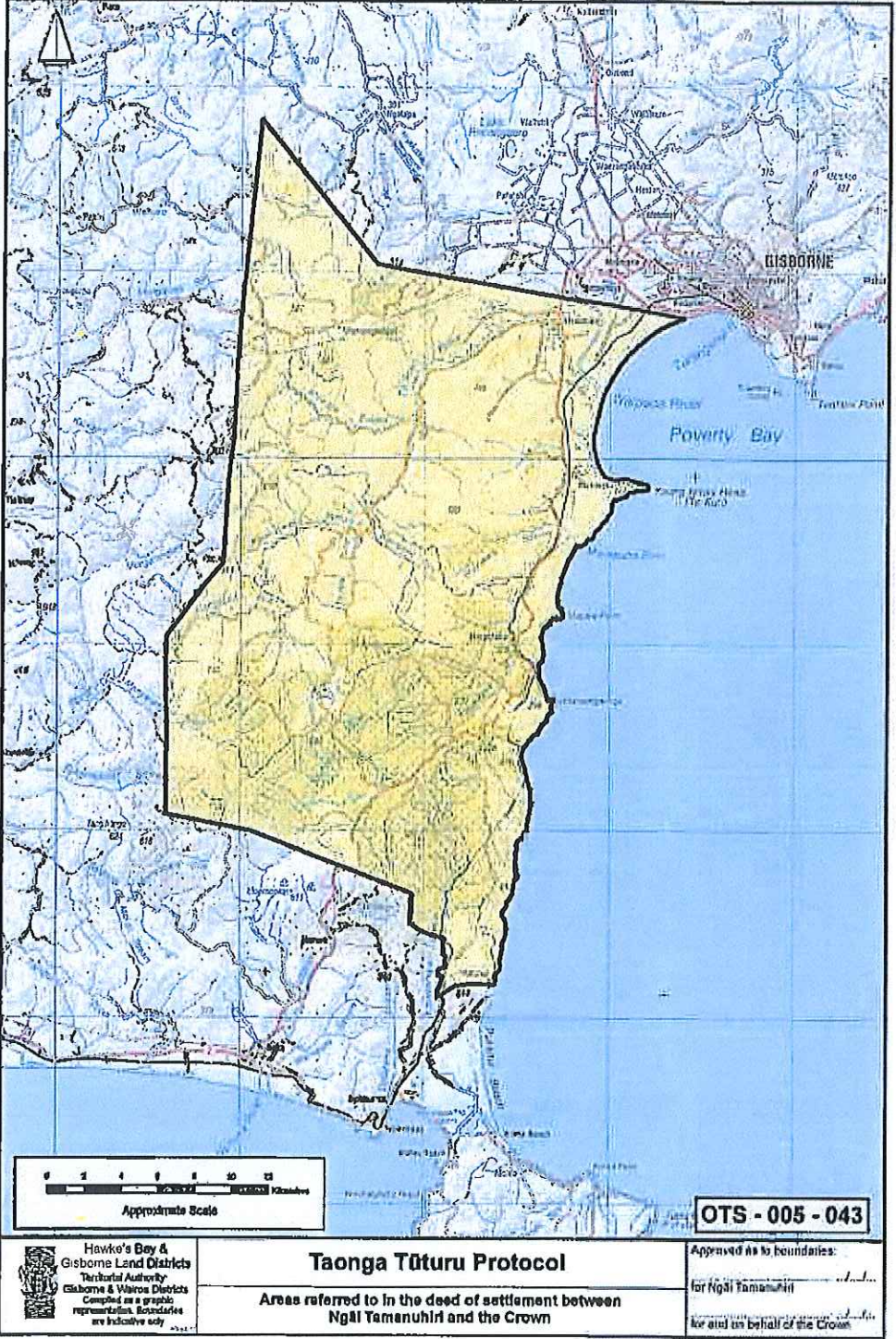
WITNESS




Name: James Christman  
Occupation: Advisor  
Address: Wellington.



**ATTACHMENT A – TAONGA TŪTURU PROTOCOL AREA**




**Hawke's Bay & Gisborne Land Districts Territorial Authority**  
 Completed as a graphic representation. Boundaries are indicative only.

**Taonga Tūturu Protocol**  
 Areas referred to in the deed of settlement between Ngāi Tamamuhiri and the Crown

Approved as to boundaries:  
 for Ngāi Tamamuhiri  
 for and on behalf of the Crown

## ATTACHMENT B - 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 21).

### 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 22); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngai Tāmanuhiri (section 22); or

2.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to, taonga tūturu (section 27).

### 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 23).

- 3.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 5.14).