

**A PROTOCOL ISSUED BY THE CROWN THROUGH
THE MINISTER FOR ARTS, CULTURE AND HERITAGE
REGARDING INTERACTION WITH NGĀTI TAMA KI TE TAU IHU
ON SPECIFIED ISSUES**

1. INTRODUCTION

1.1 This Taonga Tūturu Protocol covers the following matters:

- (a) newly found taonga tūturu;
- (b) the export of taonga tūturu; and
- (c) the Protected Objects Act 1975 and any amendment or substitution thereof.

1.2 Under the Deed of Settlement 20 April 2013 between Ngāti Tama ki Te Tau Ihu, the Ngāti Tama ki Te Waipounamu Trust 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 Ngāti Tama ki Te Waipounamu trustees on matters specified in the Protocol. These matters are:

- (a) Protocol Area - Part 2;
- (b) Terms of issue - Part 3
- (c) Implementation and communication - Part 4
- (d) The role of the Chief Executive under the Protected Objects Act 1975 - Part 5
- (e) The role of the Minister under the Protected Objects Act 1975 - Part 6
- (f) Ngāti Tama ki Te Tau Ihu Ngā Taonga Tūturu held by Te Papa Tongarewa - Part 7
- (g) Effects on Ngāti Tama ki Te Tau Ihu interest in the Protocol Area - Part 8
- (h) Registration as a collector of Ngā Taonga Tūturu - Part 9
- (i) Board Appointments - Part 10
- (j) National Monuments, War Graves and Historical Graves - Part 11
- (k) History publications relating to Ngāti Tama ki Te Tau Ihu - Part 12
- (l) Cultural and/or Spiritual Practices and Tendering - Part 13
- (m) Consultation - Part 14
- (n) Changes to legislation affecting this Protocol - Part 15
- (o) Definitions - Part 16

- 1.3 For the purposes of this Protocol the Ngāti Tama ki Te Waipounamu trustees are the representatives of the whānau and iwi of Ngāti Tama ki Te Tau Ihu who have an interest in the matters covered under this Protocol. This derives from the status of the Ngāti Tama ki Te Tau Ihu as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The Ministry and the Ngāti Tama ki Te Waipounamu 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.
- 1.5 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.
- 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 Ngāti Tama ki Te Waipounamu trustees with the opportunity for input, into matters set out in Clause 1.1 and 1.2.

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. SUMMARY OF THE TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section 33(1)(a) of the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (the "Settlement Legislation") that implements the Ngāti Tama ki Te Tau Ihu 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 summary of the terms of issue set out in Attachment B.

4. IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will maintain effective communication with the Ngāti Tama ki Te Waipounamu trustees by:
 - 4.1.1 maintaining information provided by the Ngāti Tama ki Te Waipounamu trustees on the office holders of the Ngāti Tama ki Te Waipounamu Trust and their addresses and contact details;
 - 4.1.2 discussing with the Ngāti Tama ki Te Waipounamu trustees concerns and issues notified by the Ngāti Tama ki Te Waipounamu trustees about this Protocol;
 - 4.1.3 as far as reasonably practicable, providing opportunities for the Ngāti Tama ki Te Waipounamu trustees to meet with relevant Ministry Managers and staff;
 - 4.1.4 meeting with the Ngāti Tama ki Te Waipounamu 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, inform 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 the Protocol with the Ngāti Tama ki Te Waipounamu trustees 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 Ngāti Tama ki Te Waipounamu trustees within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
 - 5.1.1 notify the Ngāti Tama ki Te Waipounamu trustees in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Tama ki Te Tau Ihu 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 Tama ki Te Tau Ihu origin found anywhere else in New Zealand;
 - 5.1.3 notify the Ngāti Tama ki Te Waipounamu trustees in writing of their 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 Tama ki Te Tau Ihu origin found anywhere else in New Zealand;
 - 5.1.4 notify the Ngāti Tama ki Te Waipounamu trustees in writing of their 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 Tama ki Te Tau Ihu 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 Ngāti Tama ki Te Waipounamu 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 Tama ki Te Tau Ihu 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 Ngāti Tama ki Te Waipounamu 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 Tama ki Te Tau Ihu 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 claim of ownership of the Ngāti Tama ki Te Waipounamu trustees, the Chief Executive will consult with the Ngāti Tama ki Te Waipounamu 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 Tama ki Te Tau Ihu origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the Ngāti Tama ki Te Waipounamu 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 Tama ki Te Tau Ihu origin found elsewhere in New Zealand by the Ngāti Tama ki Te Waipounamu trustees or any other person, the Chief Executive will:
 - 5.5.1 consult the Ngāti Tama ki Te Waipounamu trustees where there is any request from any other person for the custody of the Taonga Tūturu;
 - 5.5.2 consult the Ngāti Tama ki Te Waipounamu trustees before a decision is made on who may have custody of the Taonga Tūturu; and
 - 5.5.3 notify the Ngāti Tama ki Te Waipounamu 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 Ngāti Tama ki Te Waipounamu trustees on any export applications to remove any Taonga Tūturu of Ngāti Tama ki Te Tau Ihu origin from New Zealand, the Chief Executive will register the Ngāti Tama ki Te Waipounamu 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 Tama ki Te Tau Ihu origin from New Zealand, the Chief Executive will consult the Ngāti Tama ki Te Waipounamu trustees as an Expert Examiner on that application, and notify the Ngāti Tama ki Te Waipounamu 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 Ngāti Tama ki Te Waipounamu trustees within the limits of the Act. In circumstances where the Chief Executive originally consulted the Ngāti Tama ki Te Waipounamu trustees as an Expert Examiner, the Minister may consult

with the Ngāti Tama ki Te Waipounamu 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 Ngāti Tama ki Te Waipounamu trustees in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the Ngāti Tama ki Te Waipounamu trustees was consulted as an Expert Examiner.

7. NGĀTI TAMA KI TE TAU IHU - NGA TAONGA TŪTURU HELD BY TE PAPA TONGAREWA

7.1 The Chief Executive will invite Te Papa Tongarewa to enter into a relationship with the Ngāti Tama ki Te Waipounamu 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 Tama; 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 TAMA KI TE TAU IHU INTERESTS IN THE PROTOCOL AREA

8.1 The Chief Executive and Ngāti Tama ki Te Waipounamu trustees shall discuss any policy and legislative development, which specifically affects Ngāti Tama ki Te Tau Ihu interests in the Protocol Area.

8.2 The Chief Executive and Ngāti Tama ki Te Waipounamu trustees shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Tama ki Te Tau Ihu interests in the Protocol Area.

8.3 Notwithstanding paragraphs 8.1 and 8.2 above the Chief Executive and Ngāti Tama ki Te Waipounamu trustees shall meet to discuss Ngāti Tama ki Te Tau Ihu interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

9. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

9.1 The Chief Executive will register the Ngāti Tama ki Te Waipounamu trustees as a Registered Collector of Taonga Tūturu.

10. BOARD APPOINTMENTS

10.1 The Chief Executive shall:

10.1.1 notify the Ngāti Tama ki Te Waipounamu trustees of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

10.1.2 add the Ngāti Tama ki Te Waipounamu trustees nominees onto the Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and

- 10.1.3 notify the Ngāti Tama ki Te Waipounamu trustees of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, 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 Ngāti Tama ki Te Waipounamu trustees on any national monument, war grave or historical grave, managed or administered by the Ministry, which specifically relates to Ngāti Tama ki Te Tau Ihu interests.
- 11.2 The Chief Executive will provide for the marking and maintenance of any historic war grave identified by the Ngāti Tama ki Te Waipounamu Trustees, 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).

12. HISTORICAL PUBLICATIONS RELATING TO NGĀTI TAMA KI TE TAU IHU

- 12.1 The Chief Executive shall:

12.1.1 provide the Ngāti Tama ki Te Waipounamu trustees with a list of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāti Tama ki Te Tau Ihu and will supply these on request; and

12.1.2 discuss with the Ngāti Tama ki Te Waipounamu trustees any work the Ministry undertakes that deals specifically or substantially with Ngāti Tama ki Te Tau Ihu.

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 Tama ki Te Tau Ihu 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 Ngāti Tama ki Te Waipounamu trustees as a provider of professional services.
- 13.3 The procurement by the Chief Executive of any such services set out in Clauses 13.1 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 Ngāti Tama ki Te Waipounamu trustees in each case are:

14.1.1 ensuring that the Ngāti Tama ki Te Waipounamu 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 Ngāti Tama ki Te Waipounamu 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 Ngāti Tama ki Te Waipounamu trustees in the decision making process including the preparation of submissions by the Ngāti Tama ki Te Waipounamu 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 Ngāti Tama ki Te Waipounamu trustees with an open mind, and will genuinely consider the submissions of the Ngāti Tama ki Te Waipounamu trustees in relation to any of the matters that are the subject of the consultation; and

14.1.5 report back to the Ngāti Tama ki Te Waipounamu 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 Ngāti Tama ki Te Waipounamu trustees of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

15.1.2 make available to the Ngāti Tama ki Te Waipounamu 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 Ngāti Tama ki Te Waipounamu 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, 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

Ngā Taonga Tūturu has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu

Ngāti Tama ki Te Tau Ihu has the meaning set out in clause 8.8 of the Deed of Settlement

Ngāti Tama ki Te Waipounamu Trust has the meaning set out in paragraph 5.1 of the general matters schedule of the Deed of Settlement

Ngāti Tama ki Te Waipounamu trustees has the meaning set out in paragraph 5.1 of the general matters schedule of the Deed of Settlement

Protocol means a statement in writing, issued by the Crown through the Minister to the Ngāti Tama ki Te Waipounamu trustees under the Settlement Legislation and the Deed of Settlement and includes this Protocol

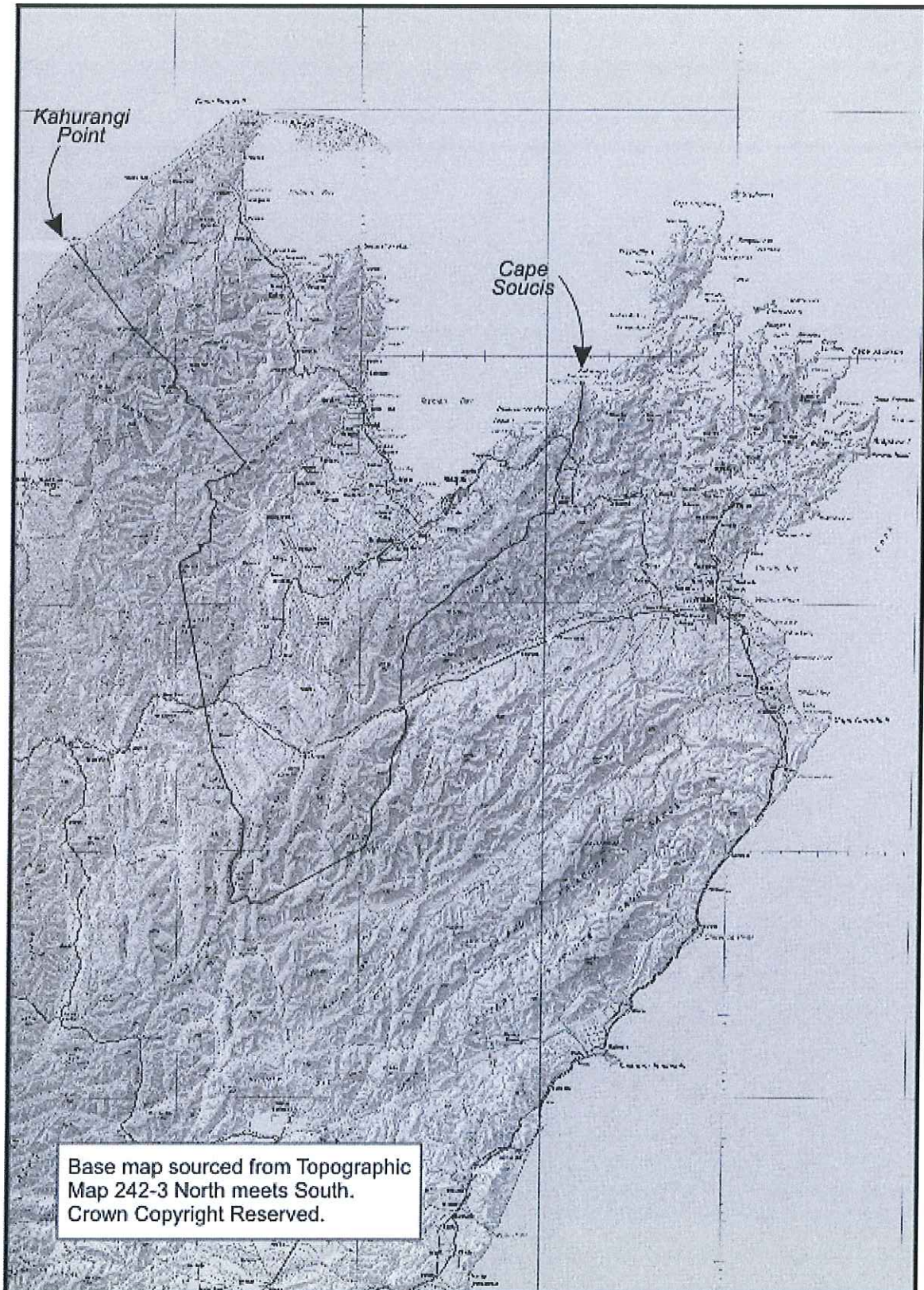
Taonga Tūturu has the same meaning as in section 2 of the Act and means an object that:

- (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.

ISSUED ON []

SIGNED for and on behalf of THE)
SOVEREIGN)
by the Minister for)
Arts, Culture and Heritage) _

ATTACHMENT A
THE MINISTRY FOR CULTURE AND HERITAGE PROTOCOL AREA



ATTACHMENT B

SUMMARY OF THE 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 Ngāti Tama ki Te Waipounamu trustees and having particular regard to their views (*section 33(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 34(a) and (b)*); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Tama ki Te Tau Ihu (*section 34(c)*); or

2.1.3 grant, create, or evidence an estate or interest in, or rights relating to, taonga tūturu.

3. **Breach**

- 3.1 Subject to the Crown Proceedings Act 1950, the Ngāti Tama ki Te Waipounamu trustees may enforce this protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section 35(2) and (3)*).

- 3.2 A breach of this protocol is not a breach of the deed of settlement (clause 5.20).