

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

## **1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated 18 December 2004 between Te Arawa, the Arawa Māori Trust Board 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 Chief Executive for the Ministry for Culture and Heritage (the "Chief Executive") will interact with the Lakes Trust on matters specified in the Antiquities Protocol. These matters are:
- 1.1.1 newly found Artifacts;
  - 1.1.2 the removal of Artifacts from New Zealand; and
  - 1.1.3 the Antiquities Act 1975 and any substitution or amendment (the "Act").
- 1.2 The Minister and the Chief Executive or other such persons acting in those capacities, and Te Arawa 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 Antiquities Protocol, as set out in this Antiquities Protocol.
- 1.3 The purpose of the Act is to 'provide for the better protection of antiquities, to establish and record the ownership of Māori artifacts, and to control the sale of artifacts within New Zealand' found after the commencement of the Act, namely 1<sup>st</sup> April 1976.
- 1.4 Te Arawa has an interest in relation to the preservation, protection and management of its Artifacts through its tino rangatiratanga and kaitiakitanga. This derives from Te Arawa's status as tangata whenua in the Antiquities Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.5 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 Lakes Trust 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 to the Te Arawa Lakes as identified in Attachment A of this Protocol (the "Antiquities Protocol Area").

## **3 TERMS OF ISSUE**

- 3.1 The Antiquities Protocol is issued pursuant to section 52 of the Te Arawa Lakes Settlement Act 2006 ("the Settlement Legislation") that implements clause 9.10 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

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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 Lakes Trust within the limits of the Act. The Chief Executive will:

4.1.1 provide the Lakes Trust on request with information (including information on any Artifact identified as being of Te Arawa 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 Lakes Trust in writing of any registered Artifact found within the Antiquities Protocol Area and of any registered Artifacts identified as being of Te Arawa origin found anywhere else in New Zealand from the date of signing this Protocol;

4.1.3 notify the Lakes Trust 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 Antiquities Protocol Area or identified as being of Te Arawa origin found anywhere else in New Zealand;

4.1.4 notify the Lakes Trust of any application to the Māori 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 Te Arawa origin found anywhere else in New Zealand;

4.1.5 if no application is made to the Māori Land Court by the Lakes Trust or any other persons:

(a) consult the Lakes Trust before a decision is made on who may have custody of an Artifact found within the Antiquities Protocol Area or identified as being of Te Arawa origin found anywhere else in New Zealand;

(b) notify the Lakes Trust in writing of the decision made by the Chief Executive on the custody of an Artifact where the Lakes Trust has been consulted; and

(c) consult the Lakes Trust where there are requests from persons for the custody of Artifacts found within the Antiquities Protocol Area or identified as being of Te Arawa origin found anywhere else in New Zealand;

4.1.6 seek from the Lakes Trust an expert opinion on any Artifacts of Te Arawa origin for which a person has applied to the Chief Executive for permission to remove from New Zealand; and

4.1.7 notify the Lakes Trust in writing of the decision made by the Chief Executive on an application to remove an Artifact from New Zealand where the expert opinion was sought from the Lakes Trust.

4.2 The Chief Executive will also:

4.2.1 discuss with the Lakes Trust concerns and issues notified by the Lakes Trust about the Act;

4.2.2 review the implementation of this Protocol from time to time, or at the request of the Lakes Trust, unless otherwise agreed in writing by both the Lakes Trust and the Chief Executive; and

4.2.3 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 the Protocol.

## 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 Lakes Trust within the limits of the Act. The Minister will consult with the Lakes Trust 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 the approval to remove any Artifact, or Artifacts, from New Zealand;

in circumstances where the Lakes Trust was originally asked for an expert opinion by the Chief Executive.

5.2 The Ministry will notify the Lakes Trust 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 Lakes Trust.

## 6 CONSULTATION

6.1 Where the Chief Executive is required to consult under clause 4.1.5 of this Protocol, the basic principles that will be followed by the Chief Executive in consulting with the Lakes Trust in each case are:

6.1.1 ensuring that the Lakes Trust 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;

6.1.2 providing the Lakes Trust 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 Lakes Trust in the decision making process including the preparation of submissions by the Lakes Trust in relation to any of the matters that are the subject of the consultation;
- 6.1.4 ensuring that the Chief Executive will approach the consultation with the Lakes Trust with an open mind, and will genuinely consider the submissions of the Lakes Trust in relation to any of the matters that are the subject of the consultation; and
- 6.1.5 reporting back to the Lakes Trust, either in writing or in person, on any decisions made that relate to that consultation.

## 7 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 7.1 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:
  - 7.1.1 notify the Lakes Trust of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
  - 7.1.2 make available to the Lakes Trust the information provided to Māori as part of the consultation process referred to in this clause; and
  - 7.1.3 report back to the Lakes Trust on the outcome of any such consultation.

## 8 DEFINITIONS

In this Protocol:

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

any chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Māori 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;

**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 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;

**Found** has the same meaning as in section 2 of the Act, which is as follows:

in relation to any artifact, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the artifact and which suggest that the artifact 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 meaning.

**Lakes Trust** means Te Arawa Lakes Trust established in accordance with clause 3.4 of the Deed of Settlement;

**Protocol** means a statement in writing, issued by the Crown through the Minister to the Lakes Trust under the Settlement Legislation and the Deed of Settlement and includes this Antiquities Protocol; and

**Te Arawa has** the meaning set out in clause 1.5 of the Deed of Settlement.

ISSUED on this 16<sup>th</sup> day of October 2006

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



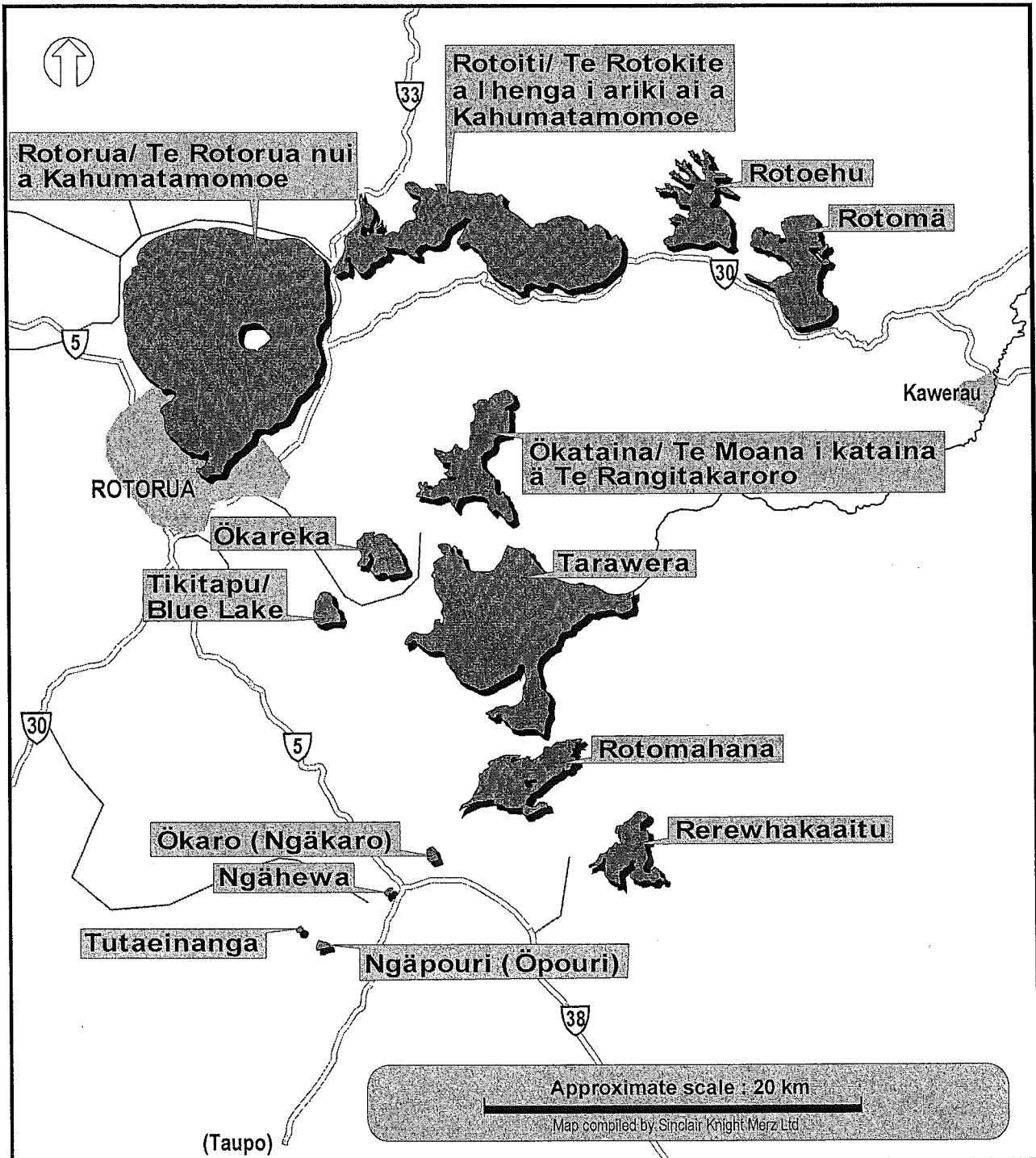
Name: A R McLean

Occupation: Private Secretary

Address: Wellington, NZ

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ATTACHMENT A: ANTIQUITIES PROTOCOL AREA



## 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 Deed of Settlement relating to Protocol

##### 1.1 The Deed 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, hapū, marae, whānau or other representative of tāngata 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 Chief Executive for the Ministry for Culture and Heritage under that Act; or
  - (c) the rights of Te Arawa, or a Representative Entity, under that Act (**clause 9.12**).

##### 1.2 **Representative Entity** has the same meaning in this Protocol as it has in **clause 1.10** of the Deed.

#### 2 Authority to issue, amend or cancel Protocols

Section 52 of the Settlement Legislation provides that:

- (1) Each responsible Minister may –
  - (a) issue a protocol to the Trustees of the Te Arawa Lakes Trust in the form set out in Part 2 of the Relationship Schedule; and
  - (b) amend or cancel that protocol, but only after consulting with, and having particular regard to the views of, the Trustees of the Te Arawa Lakes Trust.

(2) A protocol may be amended or cancelled under subsection (1) at the initiative of either –

(a) the Trustees of the Te Arawa Lakes Trust; or

(b) the Minister who issued the protocol.

### 3 Protocols subject to rights, functions and obligations

Section 53 of the Settlement Legislation provides that:

Protocols do not restrict –

(a) the legal rights of Te Arawa or a representative entity; or

(b) the ability of the Crown to perform its functions and duties and exercise its powers in accordance with the law and government policy, including the ability to introduce legislation into the House of Representatives and change government policy; or

(c) the ability of the Crown to interact or consult with a person the Crown considers appropriate, including any iwi, hapū, marae, whānau, or other representative of tāngata whenua; or

(d) the responsibility of the responsible Minister and the responsible Ministry.

### 4 Enforcement of Protocols

Section 54 of the Settlement Legislation provides that:

(1) The Crown must comply with a protocol while it is in force.

(2) If the Crown fails, without good cause, to comply with its obligations under the protocol, the Trustees of the Te Arawa Lakes Trust may, subject to the Crown Proceedings Act 1950, enforce the protocol.

(3) Despite subsection (2), damages or any form of monetary compensation from the Crown are not available as a remedy for failure to comply with a protocol.

(4) To avoid doubt-

(a) subsections (1) and (2) do not apply to guidelines developed by the Crown in relation to a protocol; and

(b) subsection (3) does not affect the ability of a court to award costs in relation to proceedings referred to in subsection (2).

