
CULTURE AND HERITAGE PROTOCOL

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

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 28 January 2012 between Te Aupōuri 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 Manatū Taonga also known as the Ministry for Culture and Heritage (the "**Chief Executive**") will interact with Te Rūnanga Nui trustees on matters specified in the Protocol. These matters are:
- 1.1.1 Protocol Area - Part 2
 - 1.1.2 Summary of the Terms of Issue - Part 3
 - 1.1.3 Implementation and communication - Part 4
 - 1.1.4 The role of the Chief Executive under the Act - Part 5
 - 1.1.5 The role of the Minister under the Act - Part 6
 - 1.1.6 Effects on Te Aupōuri's interest in the Protocol Area - Part 7
 - 1.1.7 Registration as a collector of Ngā Taonga Tūturu - Part 8
 - 1.1.8 Board Appointments - Part 9
 - 1.1.9 National Monuments, War Graves and Historical Graves - Part 10
 - 1.1.10 History publications relating to Te Aupōuri - Part 11
 - 1.1.11 Provision of Cultural and/or Spiritual Practices and Professional Services - Part 12
 - 1.1.12 Consultation - Part 13
 - 1.1.13 Changes to policy and legislation affecting this Protocol - Part 14
 - 1.1.14 Definitions - Part 15.
- 1.2 For the purposes of this Protocol Te Rūnanga Nui trustees are representative of the whānau, hapū, and iwi of Te Aupōuri who have an interest in the matters covered under this Protocol. This derives from the status of Te Aupōuri as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.3 Manatū Taonga also known as the Ministry (the "**Ministry**") and Te Rūnanga Nui 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 provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.

- 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 Te Rūnanga Nui trustees with the opportunity for input, into matters set out in Clause 1.1.
- 1.6 In respect of Taonga Tūturu of Te Aupōuri found prior to 1 April 1976, the Minister and the Chief Executive recognise the importance of such Taonga Tūturu to Te Aupōuri and acknowledge the efforts of Te Aupōuri to protect and repatriate those Taonga Tūturu.

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 125 of the Te Aupōuri Claims Settlement Act 2015 ("**the Settlement Legislation**") that implements the Te Aupōuri 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 Te Rūnanga Nui trustees by:
 - 4.1.1 maintaining information provided by Te Rūnanga Nui trustees on the office holders of Te Rūnanga Nui trustees and their addresses and contact details;
 - 4.1.2 discussing with Te Rūnanga Nui trustees concerns and issues notified by Te Rūnanga Nui trustees about this Protocol;
 - 4.1.3 as far as reasonably practicable, providing opportunities for Te Rūnanga Nui trustees to meet with relevant Ministry managers and staff;
 - 4.1.4 meeting with Te Rūnanga Nui 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 Te Rūnanga Nui trustees on the Ministry's website.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

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 Te Rūnanga Nui trustees within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
- 5.1.1 notify Te Rūnanga Nui trustees in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Te Aupōuri 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 Aupōuri origin found anywhere else in New Zealand;
- 5.1.3 notify Te Rūnanga Nui 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 Te Aupōuri origin found anywhere else in New Zealand;
- 5.1.4 notify Te Rūnanga Nui 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 Te Aupōuri 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 Te Rūnanga Nui 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 Te Aupōuri 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 Te Rūnanga Nui 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 Te Aupōuri 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 Te Rūnanga Nui trustees' claim of ownership, the Chief Executive will consult with Te Rūnanga Nui 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 Te Aupōuri origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of Te Rūnanga Nui 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 Te Aupōuri origin found elsewhere in New Zealand by Te Rūnanga Nui trustees or any other person, the Chief Executive will:
- 5.5.1 consult Te Rūnanga Nui trustees where there is any request from any other person for the custody of the Taonga Tūturu;
 - 5.5.2 consult Te Rūnanga Nui trustees before a decision is made on who may have custody of the Taonga Tūturu; and
 - 5.5.3 notify Te Rūnanga Nui 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 Te Rūnanga Nui trustees on any export applications to remove any Taonga Tūturu of Te Aupōuri origin from New Zealand, the Chief Executive will register Te Rūnanga Nui 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 Te Aupōuri origin from New Zealand, the Chief Executive will consult Te Rūnanga Nui trustees as an Expert Examiner on that application, and notify Te Rūnanga Nui trustees in writing of his or her decision.

6. THE ROLE OF THE MINISTER UNDER THE ACT

- 6.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to Te Rūnanga Nui trustees within the limits of the Act. In circumstances where the Chief Executive originally consulted Te Rūnanga Nui trustees as an Expert Examiner, the Minister may consult with Te Rūnanga Nui 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 Te Rūnanga Nui trustees in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where Te Rūnanga Nui trustees was consulted as an Expert Examiner.

7. EFFECTS ON TE AUPŌURI'S INTERESTS IN THE PROTOCOL AREA

- 7.1 The Chief Executive and Te Rūnanga Nui trustees shall discuss any policy and legislative development, which specifically affects Te Aupōuri interests in the Protocol Area.
- 7.2 The Chief Executive and Te Rūnanga Nui trustees shall discuss any of the Ministry's operational activities, which specifically affect Te Aupōuri interests in the Protocol Area.



7.3 Notwithstanding clauses 7.1 and 7.2 above the Chief Executive and Te Rūnanga Nui trustees shall meet to discuss Te Aupōuri interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

8. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

8.1 The Chief Executive will register Te Rūnanga Nui trustees as a Registered Collector of Taonga Tūturu.

9. BOARD APPOINTMENTS

9.1 The Chief Executive shall:

9.1.1 notify Te Rūnanga Nui trustees of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

9.1.2 add Te Rūnanga Nui trustees' nominees onto Manatū Taonga / Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and

9.1.3 notify Te Rūnanga Nui trustees of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

10. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

10.1 The Chief Executive shall seek and consider the views of Te Rūnanga Nui trustees on any national monument, war grave or historic grave managed or administered by the Ministry, which specifically relates to Te Aupōuri's interests.

11. HISTORY PUBLICATIONS RELATING TO TE AUPŌURI

11.1 The Chief Executive shall:

11.1.1 provide Te Rūnanga Nui trustees with a list and copies of all history publications commissioned or undertaken by the Ministry that relate substantially to Te Aupōuri; and

11.1.2 where reasonably practicable, consult with Te Rūnanga Nui trustees on any work the Ministry undertakes that relates substantially to Te Aupōuri:

(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.

11.2 Te Rūnanga Nui trustees accept that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by Te Rūnanga Nui trustees, is entitled to make the final decision on the material of the historical publication.

12. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

- 12.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Te Aupōuri within the Protocol Area, the Chief Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.
- 12.2 Where appropriate, the Chief Executive will consider using Te Rūnanga Nui trustees as a provider of professional services.
- 12.3 The procurement by the Chief Executive of any such services set out in Clauses 12.1 and 12.2 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.

13. CONSULTATION

- 13.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with Te Rūnanga Nui trustees in each case are:
 - 13.1.1 ensuring that Te Rūnanga Nui 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;
 - 13.1.2 providing Te Rūnanga Nui trustees with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - 13.1.3 ensuring that sufficient time is given for the participation of Te Rūnanga Nui trustees in the decision making process including the preparation of submissions by Te Rūnanga Nui trustees in relation to any of the matters that are the subject of the consultation;
 - 13.1.4 ensuring that the Chief Executive will approach the consultation with Te Rūnanga Nui trustees with an open mind, and will genuinely consider the submissions of Te Rūnanga Nui trustees in relation to any of the matters that are the subject of the consultation; and
 - 13.1.5 report back to Te Rūnanga Nui trustees, either in writing or in person, in regard to any decisions made that relate to that consultation.

14 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 14.1 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:
 - 14.1.1 notify Te Rūnanga Nui trustees of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
 - 14.1.2 make available to Te Rūnanga Nui trustees the information provided to Māori as part of the consultation process referred to in this clause; and

14.1.3 report back to Te Rūnanga Nui trustees on the outcome of any such consultation.

15. DEFINITIONS

15.1 In this Protocol:

Chief Executive means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as 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

Te Rūnanga Nui trustees means the trustees from time to time of Te Rūnanga Nui o Te Aupōuri Trust acting in their capacity as trustees of Te Rūnanga Nui o Te Aupōuri Trust

Te Rūnanga Nui o Te Aupōuri Trust means the trust known by that name and established by a trust deed dated 11 September 2005 and amended by further trust deed dated 31 January 2011;

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 Te Rūnanga Nui 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

Te Aupōuri has the meaning set out in clause 12.10 of the Deed of Settlement.

ISSUED on 10/11/2015

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

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)
)
)


[Redacted]

Signature of Witness

L. M. Seate
Witness Name

Senior Advisor, Maori
Occupation

[Redacted]

Address

[Redacted]

ATTACHMENT A PROTOCOL AREA

