
PROTOCOL WITH THE MINISTER OF ENERGY AND RESOURCES

**A PROTOCOL ISSUED BY THE CROWN
THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING
CONSULTATION WITH NGĀITAKOTO BY THE MINISTRY OF BUSINESS, INNOVATION
AND EMPLOYMENT ON THE ADMINISTRATION OF CROWN OWNED MINERALS**

1. INTRODUCTION

- 1.1 Under the Deed of Settlement dated 27 October 2012 between NgāiTakoto and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister of Energy and Resources (the "**Minister**") would issue a Protocol setting out how the Ministry of Business, Innovation and Employment (the "**Ministry**") will consult with the NgāiTakoto Governance Entity (the "**Governance Entity**") on matters specified in the Protocol.
- 1.2 Both the Ministry and NgāiTakoto are seeking a healthy and constructive relationship based on the principles of Te Tiriti o Waitangi / the Treaty of Waitangi.
- 1.3 The purpose of the Crown Minerals Act 1991 (the "**Act**") is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand. Section 4 of the Act requires all persons exercising functions and powers under the Act to have regard to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi.
- 1.4 The Minister is responsible under the Act for the preparation of mineral programmes, the grant of minerals permits, and monitoring the effect and implementation of minerals programmes and minerals permits. The Ministry administers the Act on behalf of the Minister.
- 1.5 This Protocol will affect the Ministry's administration of Crown owned minerals under the Act in the Protocol Area.

2. PURPOSE OF THIS PROTOCOL

- 2.1 With the intent of creating a constructive relationship between NgāiTakoto and the Ministry in relation to mineral resources administered in accordance with the Act in the Protocol Area, this Protocol sets out how the Ministry will exercise its functions, powers, and duties in relation to the matters set out in this Protocol.
- 2.2 Te Rūnanga o NgāiTakoto trustees will have the opportunity for input into the policy, planning, and decision-making processes relating to the matters set out in this Protocol in accordance with the Act and the relevant minerals programmes issued under the Act.

3. OWNERSHIP OF MINERALS

- 3.1 NgāiTakoto asserts that traditionally, NgāiTakoto owned and used the mineral resources and taonga in their rohe.
- 3.2 In reaching this Protocol with the Minister, NgāiTakoto records that the expropriation of their ownership of mineral resources by the Crown is a serious Treaty breach with implications that are still being felt.
- 3.3 The Minister acknowledges that NgāiTakoto asserts that it maintains, in accordance with tikanga, an unbroken, inalienable and enduring relationship with, and mana in

relation to, the mineral resources within the Protocol Area. NgāiTakoto's mana remains intact, in spite of any legislative expropriation.

3.4 The Minister further acknowledges that NgāiTakoto asserts that despite the expropriation of its ownership it has a right to make decisions regarding mining in the Protocol Area.

3.5 The Crown asserts ownership of minerals under the Crown Minerals Act 1991 and considers that the nationalisation of minerals is not a breach of the Treaty. Section 10 of the Crown Minerals Act 1991 provides that all gold, silver, uranium and petroleum existing in its natural condition in land shall be the property of the Crown. Section 11 of the Crown Minerals Act 1991 reserves all minerals to the Crown in any future alienation of Crown land and upholds all reservations of minerals made in earlier enactments. Decision-making regarding prospecting, exploration and mining of petroleum and minerals other than petroleum in the Protocol Area is prescribed under the Crown Minerals Act 1991.

4. PROTOCOL AREA

4.1 This Protocol applies across the Protocol Area which means the area identified in the map included in Attachment A of this Protocol together with the adjacent waters.

5. SUMMARY OF THE TERMS OF ISSUE

5.1 This Protocol is issued pursuant to section 126 of NgāiTakoto Claims Settlement Act 2015 (the "**Settlement Legislation**") that implements clause 8.10.2 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

5.2 This Protocol must be read subject to the summary of the terms of issue set out in Attachment B.

6. CONSULTATION

6.1 The Minister will ensure that Te Rūnanga o NgāiTakoto trustees is consulted by the Ministry:

New minerals programmes

6.1.1 on the preparation of new minerals programmes which relate, whether wholly or in part, to the Protocol Area;

Petroleum exploration permit block offers

6.1.2 on the planning of a competitive tender allocation of a permit block for Petroleum exploration (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and the relevant minerals programme), which relates, whether wholly or in part, to the Protocol Area;

Other petroleum exploration permit applications

6.1.3 when any application for a petroleum exploration permit is considered, which relates, whether wholly or in part, to the Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 6.1.2;

Amendments to petroleum exploration permits

- 6.1.4 when any application to amend a petroleum exploration permit, by extending the land or minerals to which the permit relates, is considered, where the application relates, wholly or in part, to the Protocol Area;

Permit block offers for Crown owned minerals other than petroleum

- 6.1.6 on the planning of a competitive tender allocation of a permit block for Crown owned minerals other than Petroleum (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and any relevant minerals programme) which relates, whether wholly or in part, to the Protocol Area;

Other permit applications for Crown owned minerals other than petroleum

- 6.1.7 when any application for a permit in respect of Crown owned minerals other than petroleum is considered, which relates, whether wholly or in part, to the Protocol Area, except where the application relates to a competitive tender allocation of a permit block offer over which consultation has already taken place under clause 6.1.2;

Newly available acreage

- 6.1.8 when the Secretary proposes to recommend that the Minister grant an application for a permit for newly available acreage in respect of minerals other than petroleum, which relates, whether wholly or in part, to the Protocol Area; and

Amendments to permits for Crown owned minerals other than petroleum

- 6.1.9 when any application to amend a permit in respect of Crown owned minerals other than petroleum, by extending the land or minerals covered by an existing permit is considered; and

- 6.1.10 where the application relates, wholly or in part, to the Protocol Area.

- 6.2 Each decision on a proposal referred to in clause 6.1 will be made having regard to any matters raised as a result of consultation with Te Rūnanga o Ngāi Takoto trustees, and having regard to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi, particularly as those principles are set out in the relevant minerals programme from time to time, and taking into account the circumstances of each case.

7. IMPLEMENTATION AND COMMUNICATION

- 7.1 The Crown has an obligation under the Act (as provided for in minerals programmes) to consult with parties whose interests may be affected by matters described in clause 6.1 of this Protocol. The Ministry will consult with Te Rūnanga o Ngāi Takoto trustees in accordance with this Protocol and in accordance with the relevant minerals programme if matters described in clause 6.1 of this Protocol Area may affect the interests of Ngāi Takoto.

- 7.2 The basic principles that will be followed by the Ministry in consulting with Te Rūnanga o NgāiTakoto trustees in each case are:
- 7.2.1 ensuring that Te Rūnanga o NgāiTakoto trustees is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues in relation to any matters under clause 6 of this Protocol;
 - 7.2.2 providing Te Rūnanga o NgāiTakoto trustees with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 6 of this Protocol;
 - 7.2.3 ensuring that sufficient time is given for the participation of Te Rūnanga o NgāiTakoto trustees in the decision making process and the consideration by Te Rūnanga o NgāiTakoto trustees of its submissions in relation to any of the matters described in clause 6 of this; and
 - 7.2.4 ensuring that the Ministry will approach the consultation with Te Rūnanga o NgāiTakoto trustees with an open mind, and will genuinely consider the submissions of Te Rūnanga o NgāiTakoto trustees in relation to any of the matters described in clause 6 of this Protocol.
- 7.3 Where the Ministry is required to consult Te Rūnanga o NgāiTakoto trustees as specified in clause 6.2, the Ministry will report back in writing to Te Rūnanga o NgāiTakoto trustees on the decision made as a result of such consultation.
- 7.4 The Ministry will seek to fulfil its obligations under this Protocol by:
- 7.4.1 maintaining information on Te Rūnanga o NgāiTakoto trustees' address and contact details as provided from time to time by Te Rūnanga o NgāiTakoto trustees;
 - 7.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Protocol;
 - 7.4.3 nominating relevant employees to act as contacts with Te Rūnanga o NgāiTakoto trustees in relation to issues concerning this Protocol; and
 - 7.4.4 providing Te Rūnanga o NgāiTakoto trustees with the names of the relevant employees who will act as contacts with Te Rūnanga o NgāiTakoto trustees in relation to issues concerning this Protocol.

8. DEFINITIONS

- 8.1 In this Protocol:

Act means the Crown Minerals Act 1991 as amended, consolidated or substituted;

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;

Crown owned minerals means any mineral (as defined below) that is the property of the Crown in accordance with sections 10 and 11 of the Act or over which the Crown has jurisdiction in accordance with the Continental Shelf Act 1964;

Deed of Settlement means the Deed of Settlement dated 27 October 2012 between the Crown and NgāiTakoto;

Governance Entity means **Te Rūnanga o NgāiTakoto**, the trust known by that name and established by a trust deed dated 28 November 2012.

Mineral means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water, and includes all metallic minerals, non-metallic minerals, fuel minerals (including coal and Petroleum), precious stones, industrial rocks and building stones within the meaning of the Act and a prescribed substance within the meaning of the Atomic Energy Act 1945;

Minister means the Minister of Energy and Resources;

Ministry means the Ministry of Business, Innovation and Employment;

NgāiTakoto has the meaning set out in clause 11.9 of the Deed of Settlement;

Petroleum means:

- (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and one or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide;

and, except in sections 10 and 11 of the Act, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered, but which has been returned to a natural reservoir for storage purposes in the same or an adjacent area; and

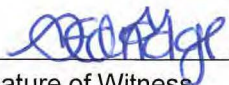
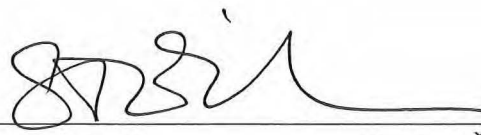
Protocol means a statement in writing, issued by the Crown through the Minister to Te Rūnanga o NgāiTakoto trustees under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

PROTOCOL WITH THE MINISTER OF ENERGY AND RESOURCES – Ngāi Takoto

ISSUED on 5 November 2015

SIGNED for and on behalf of
THE CROWN by the Minister of Energy
and Resources in the presence of:

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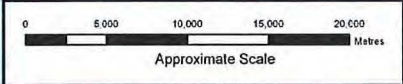
Signature of Witness

Witness Name: Stephanie fern Edridge


Occupation: Senior Private Secretary

Address: 51R, Executive Wing, Parliament Buildings, Wellington

ATTACHMENT A PROTOCOL AREA



OTS - 073 - 10


 North Auckland
 Land District
 Territorial Authority:
 Far North District
 Compiled as a graphic
 representation. Boundaries
 are indicative only.

Protocol with the Minister of Energy and Resources

**Areas referred to in the Deed of Settlement between
Ngāi Takoto and the Crown**

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

ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE

This Minerals 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 Minerals Protocol, but only after consulting with Te Rūnanga o Ngāi Takoto trustees and having particular regard to their views (section 121(2) and (3)).

2. **Noting**

- 2.1 A summary of the terms of this Minerals Protocol must be added:

2.1.1 in a register of protocols maintained by the chief executive; and

2.1.2 in the minerals programme affecting the Minerals Protocol Area when those programmes are replaced;

but the addition;

2.1.3 is for the purpose of public notice only; and

2.1.4 does not amend the minerals programmes for the purposes of the Crown Minerals Act 1991 (section 126(1) and (2)).

3. **Limits**

- 3.1 This Minerals Protocol does not:

3.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law (including the Crown Minerals Act 1991) 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 122(a)); or

3.1.2 restrict the responsibilities of the Minister or the Ministry under the Crown Minerals Act 1991 or the legal rights of Ngāi Takoto or a representative entity (section 122(b) and (c)); or

3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown owned minerals (section 126(3)).

- 3.2 In this Summary of the Terms of Issue, “representative entity” has the same meaning as it has in the Deed of Settlement.

4. **Breach**

4.1 Subject to the Crown Proceedings Act 1950, Te Rūnanga o Ngāi Takoto trustees may enforce this Minerals Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 123(2) and (3)).

4.2 A breach of this Minerals Protocol is not a breach of the Deed of Settlement (clause 8.11).