
CROWN MINERALS PROTOCOL

**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND
RESOURCES REGARDING CONSULTATION WITH NGĀTI KAHUNGUNU KI WAIRARAPA
TĀMAKI NUI-A-RUA 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 29 October 2021 between the trustees of the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Settlement Trust (the “**governance entity**”) and the Crown (the “**Deed of Settlement**”), the Crown agreed that the Minister of Energy and Resources (the “**Minister**”) would issue a Protocol (the “**Protocol**”) setting out how the Ministry of Business, Innovation and Employment (the “**Ministry**”) will consult with the governance entity on matters specified in the Protocol.
- 1.2 Both the Ministry and Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua are seeking a constructive relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.3 Section 4 of the Crown Minerals Act 1991 (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. The minerals programmes set out how this requirement will be given effect to.
- 1.4 The Minister and the Ministry recognise that the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Settlement Trust is the governance entity of Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua and represents Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua.
- 1.5 Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua are tāngata whenua and kaitiaki of the Protocol Area and have significant interests and responsibilities in relation to the preservation, protection and management of natural resources within the Protocol Area.

2 PURPOSE OF THIS PROTOCOL

- 2.1 With the intent of creating a constructive relationship between Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua and the Ministry in relation to minerals 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 Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua 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 Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua:
 - (a) assert that they maintain in accordance with tikanga, an unbroken, inalienable and enduring relationship with, and mana in relation to, the minerals in their rohe; and

- (b) record that they consider their ownership, management and control of such minerals has been expropriated by the Crown and that this is a serious Treaty breach.

- 3.2 The Crown asserts ownership of minerals under the Act and considers that the nationalisation of minerals is not a breach of the Treaty. Section 10 of the Act 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 Act 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 minerals in the Protocol Area is prescribed under the Act.

4 PROTOCOL AREA

- 4.1 This Protocol applies to the area shown on the map in Appendix A and does not go beyond the sovereign territory of New Zealand.

5 TERMS OF ISSUE

- 5.1 This Protocol is issued pursuant to section 22 of the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Act 2022 (the “**Settlement Legislation**”) that implements clause 5.84 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 terms of issue set out in Attachment B.

6 CONSULTATION

- 6.1 The Minister will ensure that the governance entity is consulted by the Ministry:

New minerals programmes

- (a) on the preparation of a draft minerals programme, or a proposed change to a minerals programme (unless the change is one to which section 16(3) of the Act applies), which relate, whether wholly or in part, to the Protocol Area;

Petroleum exploration permit block offers

- (b) 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. This will include outlining the proposals for holding the block offer, and consulting with] the governance entity on these proposals over the consultation period set out in the relevant minerals programme;

Other petroleum permit applications

- (c) when any application for a petroleum permit is received, 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(b);

Amendments to petroleum permits

- (d) when any application to amend a petroleum permit, by extending the land to which the permit relates, is received where the application relates, wholly or in part, to the Protocol Area;

Permit block offers for Crown owned minerals other than petroleum

- (e) 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

- (f) when any application for a permit in respect of Crown owned minerals other than petroleum is received, 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(e) or where the application relates to newly available acreage;

Newly available acreage

- (g) when the Chief Executive 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;

Amendments to permits for Crown owned minerals other than petroleum

- (h) 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 received, where the application relates, wholly or in part, to the Protocol Area; and

Gold fossicking areas

- (i) when any request is received or proposal is made to designate lands as a gold fossicking area, which relates, whether 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 the governance entity and having regard to the principles of Te Tiriti o Waitangi/ the Treaty of Waitangi.

7 IMPLEMENTATION AND COMMUNICATION

- 7.1 The Crown has an obligation under the Act to consult with parties whose interests may be affected by matters described in clause 6.1. The Ministry will consult with the governance entity in accordance with this Protocol if matters described in clause 6.1 of this Protocol may affect the interests of Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua.
- 7.2 For the purposes of clause 6.1, the basic principles that will be followed by the Ministry in consulting with the governance entity in each case are:

- (a) ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues;
- (b) providing the governance entity with sufficient information to make informed decisions and submissions;
- (c) ensuring that sufficient time is given for the participation of the governance entity in the decision making process and to enable it to prepare its submissions; and
- (d) ensuring that the Ministry will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity.

7.3 Where the governance entity has requested that land be excluded from a permit, or that activities within certain areas be subject to additional requirements, the Minister will consider and make a decision on the request. The governance entity must be informed in writing of the Minister's decision.

7.4 Face to face meetings will be held if mutually agreed by the parties such agreement not to be unreasonably withheld. The parties will jointly confirm the meetings and their agenda and location.

7.5 The Ministry will seek to fulfil its obligations under this Protocol by:

- (a) maintaining information on the governance entity's address and contact details as provided from time to time by the governance entity;
- (b) as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Protocol;
- (c) nominating relevant employees to act as contacts with the governance entity in relation to issues concerning this Protocol;
- (d) providing the governance entity with the names of the relevant employees who will act as contacts with the governance entity in relation to issues concerning this Protocol;
- (e) discussing with the governance entity concerns and issues identified by the governance entity about this Protocol;
- (f) as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry managers and staff;
- (g) where relevant and reasonably practicable, providing opportunities for the governance entity to meet with the Minister and Chief Executive;
- (h) where relevant and reasonably practicable, informing other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
- (i) including the summary of the terms of issue relating to this Protocol in the relevant minerals programmes when these are changed.

8 MINIMUM IMPACT ACTIVITIES

- 8.1 No person may, for the purpose of carrying out a minimum impact activity, enter onto any Maori land within the Protocol Area that is:
- (a) regarded as a waahi tapu site by the trustees; and is
 - (b) vested or transferred to the governance entity through the settlement legislation, without the consent of the trustees.

9 EXCLUSION OF AREAS OF PARTICULAR IMPORTANCE TO NGĀTI KAHUNGUNU KI WAIRARAPA TĀMAKI NUI-A-RUA

- 9.1 The Crown has responsibilities in relation to active protection. As a result of the consultation specified in clause 6, Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua may request that defined areas of land of particular importance to them are excluded from the operation of a minerals programme or shall not be included in any block offer or permit.

10 EFFECTS ON NGĀTI KAHUNGUNU KI WAIRARAPA TĀMAKI NUI-A-RUA'S INTERESTS IN RELATION TO CROWN OWNED MINERALS

- 10.1 The Minister and Chief Executive will consult with the governance entity on any policy or legislative development or review in relation to the administration of minerals which may affect the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua's interests in relation to Crown owned minerals in the Protocol Area or this Protocol.
- 10.2 Notwithstanding clauses 10.1 above, the Minister and Chief Executive and the governance entity may meet to discuss the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua's interests in relation to Crown owned minerals in the Protocol Area as part of the meetings specified in clause 7.4.

11 INFORMATION EXCHANGE

- 11.1 The Ministry will make available to the governance entity all existing information held by the Ministry where that information is requested by the governance entity for the purposes of assisting them to exercise their rights under this Protocol.
- 11.2 The obligation in clause 11.1 does not apply to information that the Ministry is legally prevented from providing (for example, information that is the subject of an obligation of confidentiality or non-disclosure) or to information that the Ministry may withhold under the grounds set out under the Official Information Act 1982 or Privacy Act 1993.
- 11.3 The Minister and Chief Executive will make available to the governance entity the names and contact details of all relevant permit holders.

12 REVIEW AND AMENDMENT

- 12.1 The Minister, Chief Executive and the governance entity agree that this Protocol is a living document which should be updated and adapted to take account of future developments.
- 12.2 A review of this Protocol may take place at the request of either party.
- 12.3 See the Terms of Issue in Attachment B for the provisions related to cancellation and amendment.

13 DISPUTE RESOLUTION

13.1 If one party considers that there has been a breach of this Protocol then that party may give written notice to the other party that they are in dispute. The following process shall be undertaken once notice is received by the other party to this Protocol:

- (a) within 15 working days of being given written notice, the relevant contact person from the Ministry and the governance entity will meet to work in good faith to resolve the issue;
- (b) if the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 13.1(a), the Chief Executive and the nominated representative of the governance entity will meet to work in good faith to resolve the issue;
- (c) if the dispute has not been resolved within 30 working days of receipt of the notice referred to in clause 13.1(a) and where the matter is of such significance and the dispute remains outstanding despite the above process having been followed, provided it is not inconsistent with statutory obligations and the parties agree, the Minister and the governance entity will meet to work in good faith to resolve this issue. The parties recognise that this clause is subject to this Protocol's Terms of Issue.

14 DEFINITIONS

14.1 In this Protocol:

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

Chief Executive means the Chief Executive of the Ministry of Business, Innovation and Employment;

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;

Crown owned minerals means any mineral that is the property of the Crown;

Deed of Settlement means the Deed of Settlement dated 29 October 2021 between the Crown and Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua;

Hapū means those hapū set out in clause 9.6.2 of the Deed of Settlement;

Maori land has the same meaning as in Te Ture Whenua Maori Act 1993; and includes Maori reserves within the meaning of that Act;

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, precious stones, industrial rocks and building stones, 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;

Newly available acreage is a method for allocating permits for minerals (excluding petroleum) as set out in the Minerals Programme for Minerals (Excluding Petroleum) 2013;

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 1 or more hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and 1 or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide—

and, except in sections 10 and 11, 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; and

Protocol means a statement in writing, issued by the Crown through the Minister to Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

ISSUED ON [6/03/23]

SIGNED for and on behalf of
THE SOVEREIGN
in right of New Zealand by
the Minister of Energy and Resources



WITNESS



Name Marissa Quinn

Occupation Private Secretary

Address 1 Museum Street

ATTACHMENT A
MAP OF PROTOCOL AREA



<p style="text-align: center;">ATTACHMENT B SUMMARY OF THE TERMS OF ISSUE</p>

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 or the governance entity may cancel this Protocol.
- 1.2 The Protocol can only be amended by agreement in writing between the Minister and the the governance entity.

2. Noting

- 2.1 A summary of the terms of this 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 Protocol Area when those programmes are changed,but the addition:
 - 2.1.3 is for the purpose of public notice only; and
 - 2.1.4 does not change the minerals programmes for the purposes of the Crown Minerals Act 1991 (section 25).

3. Limits

- 3.1 This 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 tāngata whenua; or
 - 3.1.2 restrict the responsibilities of the Minister or the Ministry under the Crown Minerals Act 1991 or the legal rights of the governance entity or a representative entity (section 23); or
 - 3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown minerals; or

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 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 24).

4.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 5.84).