

CROWN MINERALS PROTOCOL

PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING CONSULTATION WITH WAITAHA 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 20 September between Waitaha and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister of Energy and Resources (the "**Minister**") would issue a Protocol (the "**Crown Minerals Protocol**") setting out how the Ministry of Business, Innovation and Employment (the "**Ministry**") will consult with the Te Kapu O Waitaha (the "**Governance Entity**") on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Waitaha 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 restate and reform the law relating to the management of Crown owned minerals. 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 Crown Minerals Protocol will affect the Ministry's administration of Crown owned minerals under the Act in the Crown Minerals Protocol Area.

2 PURPOSE OF THIS PROTOCOL

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

3 PROTOCOL AREA

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

4 TERMS OF ISSUE

- 4.1 This Crown Minerals Protocol is issued pursuant to section 23 of Waitaha Claims Settlement Act 2013 (the "**Settlement Legislation**") that implements clause 5.13.3 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

- 4.2 This Crown Minerals Protocol must be read subject to the terms of issue set out in Attachment B.

5 CONSULTATION

- 5.1 The Minister will ensure that the Governance Entity is consulted by the Ministry:

New minerals programmes

- 5.1.1 on the preparation of new minerals programmes which relate, whether wholly or in part, to the Crown Minerals Protocol Area;

Petroleum exploration permit block offers

- 5.1.2 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 Crown Minerals Protocol Area;

Other petroleum exploration permit applications

- 5.1.3 when any application for a petroleum exploration permit is received, which relates, whether wholly or in part, to the Crown Minerals Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 5.1.2;

Amendments to petroleum exploration permits

- 5.1.4 when any application to amend a petroleum exploration permit, by extending the land to which the permit relates, is received where the application relates, wholly or in part, to the Crown Minerals Protocol Area;

Permit block offers for Crown owned minerals other than petroleum

- 5.1.5 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 Crown Minerals Protocol Area;

Other permit applications for Crown owned minerals other than petroleum

- 5.1.6 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 Crown Minerals Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 5.1.5 or where the application relates to newly available acreage;

Newly available acreage

- 5.1.7 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 Crown Minerals Protocol Area; and

Amendments to permits for Crown owned minerals other than petroleum

- 5.1.8 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 Crown Minerals Protocol Area.

- 5.2 Each decision on a proposal referred to in clause 5.1 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.

6 IMPLEMENTATION AND COMMUNICATION

- 6.1 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 5.1 of this Crown Minerals Protocol. The Ministry will consult with the Governance Entity in accordance with this Crown Minerals Protocol and in accordance with the relevant minerals programme if matters described in clause 5.1 of this Crown Minerals Protocol Area may affect the interests of Waitaha.
- 6.2 The basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
- 6.2.1 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 in relation to any matters under clause 5 of this Crown Minerals Protocol;
 - 6.2.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 5 of this Crown Minerals Protocol;
 - 6.2.3 ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the consideration by the Governance Entity of its submissions in relation to any of the matters described in clause 5 of this Crown Minerals Protocol; and
 - 6.2.4 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 in relation to any of the matters described in clause 5 of this Crown Minerals Protocol.
- 6.3 Where the Ministry is required to consult the Governance Entity as specified in clause 6.1, the Ministry will report back in writing to the Governance Entity on the decision made as a result of such consultation.
- 6.4 The Ministry will seek to fulfil its obligations under this Crown Minerals Protocol by:
- 6.4.1 maintaining information on the Governance Entity's address and contact details as provided from time to time by the Governance Entity;
 - 6.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Crown Minerals Protocol;
 - 6.4.3 nominating relevant employees to act as contacts with the Governance Entity in relation to issues concerning this Crown Minerals Protocol; and
 - 6.4.4 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 Crown Minerals Protocol;



7 DEFINITIONS

7.1 In this Crown Minerals 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 20 September 2011 between the Crown and Waitaha;

Governance Entity means Te Kapu O Waitaha;

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;

Waitaha has the meaning set out in clause 8.8 of the Deed of Settlement;

Newly available acreage has the meaning provided in clause 3.5 of the Minerals Programme for Minerals (Excluding Petroleum) 2008;

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;

Protocol means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Crown Minerals Protocol; and

Secretary means the chief executive of the Ministry of Business, Innovation and Employment.



ISSUED ON

- 3 JUL 2013

SIGNED for and on behalf of
HER MAJESTY THE QUEEN
in right of New Zealand by
the Minister of Energy and Resources.



WITNESS



Name

Jamie GRAY

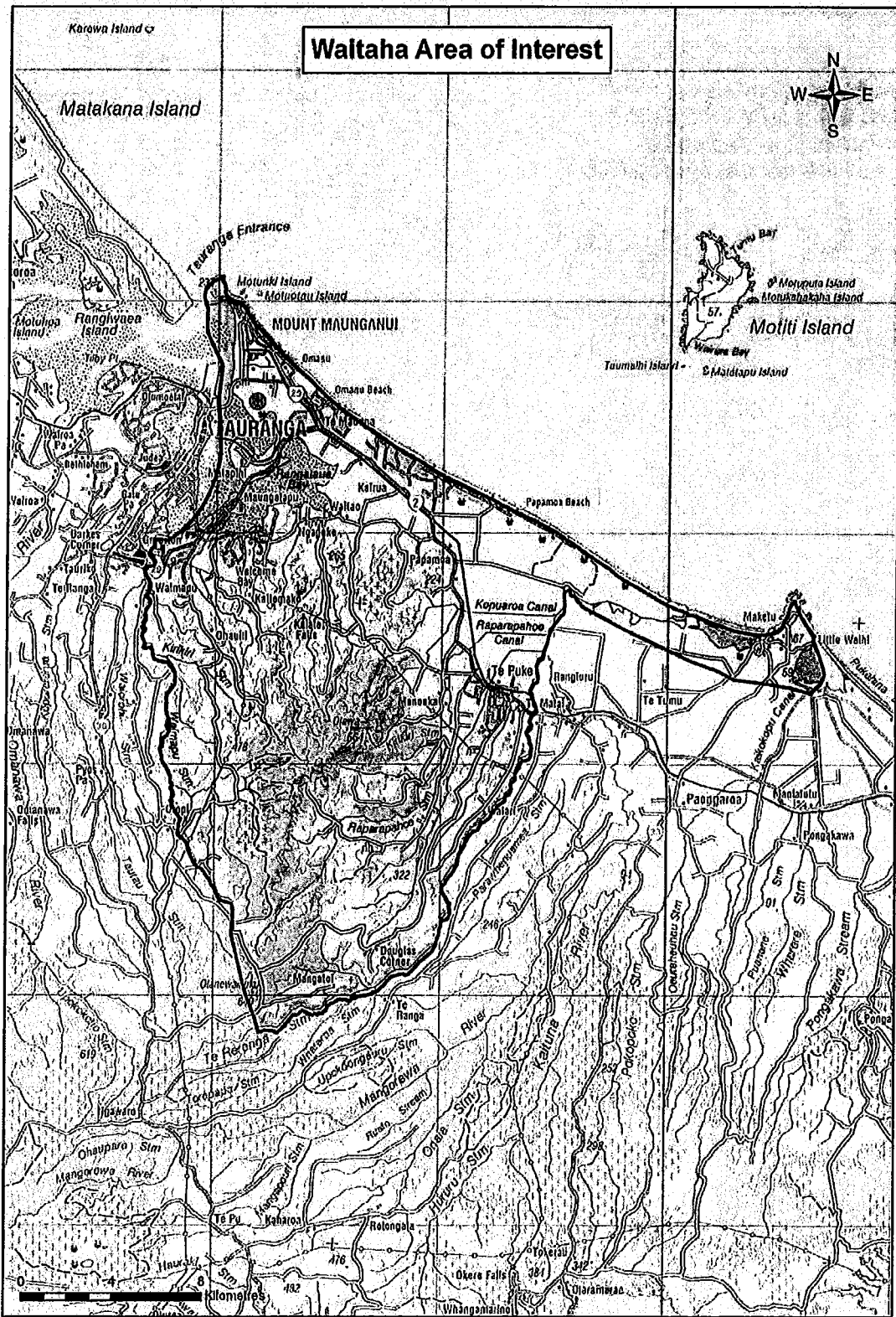
Occupation

Private Secretary, Office of Hon Simon Bridges

Address

Wellington

ATTACHMENT A
CROWN MINERALS PROTOCOL AREA



Handwritten signature or initials

ATTACHMENT B

TERMS OF ISSUE

This Crown Minerals 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 the Deed of Settlement relating to this Protocol

1.1 The Deed of Settlement 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 5.16); and

1.1.2 this Crown Minerals Protocol does not restrict the ability of the Crown to interact or consult with any person including any iwi, hapū, marae, whānau, or other representative of tangata whenua (clause 20); and

1.1.3 this Crown Minerals Protocol:

(a) is consistent with section 4 of the Crown Minerals Act 1991;

(b) does not override or diminish:

(i) the requirements of that Act;

(ii) the functions and powers of the Minister of Energy, or the Ministry of Business, Innovation and Employment, under that Act; or

(iii) the rights of Waitaha, or a Representative Entity, under that Act (clause 20).

1.2 Representative Entity has the same meaning in **clause 1.1.3** of these terms of issue as it has in clause 8.8 of the Deed of Settlement.

2 Authority to issue, amend or cancel Protocols

2.1 Section 19 of the Settlement Legislation provides that:

A responsible Minister may—

(a) issue a protocol to the trustees in the form set out in part 6 of the documents schedule; and

(b) amend or cancel the protocol.

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

(a) the trustees; or

(b) the responsible Minister.

2.1.2 The responsible Minister may amend or cancel a protocol only after consulting, and having particular regard to the views of, the trustees.

3 Protocols subject to rights and obligations

3.1 Section 20 of the Settlement Legislation provides that:

A protocol does not restrict—

- (a) the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and government policy, which includes the ability to—
 - (i) introduce legislation and change government policy; and
 - (ii) interact with or consult a person the Crown considers appropriate, including any iwi, hapū, marae, whānau, or other representative of tangata whenua; or
- (b) the responsibilities of the responsible Minister or responsible department; or
- (c) the legal rights of Waitaha or a representative entity.

4 Noting of Protocol

4.1 Section 23 of the Settlement Legislation provides that:

A summary of the terms of the Crown minerals protocol must be noted in—

- (a) a register of protocols maintained by the chief executive of the Ministry of Business, Innovation and Employment; and
- (b) the minerals programmes affecting the Crown minerals protocol area when those programmes are replaced.

4.1.2 The noting of the summary is—

- (a) for the purpose of public notice only; and
- (b) not an amendment to the minerals programme for the purposes of the Crown Minerals Act 1991.

4.1.3 The Crown minerals protocol does not have the effect of granting, creating, or providing evidence of an estate in, or rights relating to, any Crown owned mineral.

4.1.4 In this section, *Crown owned mineral* and *minerals programme* have the meanings given to them in section 2(1) of the Crown Minerals Act 1991.

5 Enforcement of Protocol

5.1 Section 21 of the Settlement Legislation provides that:

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

5.1.2 If the Crown fails, without good cause, to comply with a protocol, the trustees may, subject to the Crown Proceedings Act 1950, enforce the protocol.

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

5.1.4 To avoid doubt,—

- (a) subsections (1) and (2) do not apply to guidelines developed for the implementation of a protocol; and
- (b) subsection (3) does not affect the ability of a court to award costs incurred by the trustees in enforcing a protocol under subsection (2).

6 Limitation of rights

6.1 Section 39 of the Settlement Legislation provides that:

Except as expressly provided in this subpart, the statutory acknowledgement and the deed of recognition do not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, a statutory area.

