

**DOC PROTOCOL**

**DEPARTMENT OF CONSERVATION**

**TE PUMAUTANGA O TE ARAWA TRUST**

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF  
CONSERVATION REGARDING DEPARTMENT OF CONSERVATION /  
TE PAPA ATAWHAI INTERACTION WITH THE AFFILIATE TE ARAWA  
IWI/HAPU ON SPECIFIED MATTERS**

**1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated 11<sup>th</sup> June 2008 between The Affiliate Te Arawa Iwi/Hapu and The Trustees of the Pumautanga o Te Arawa Trust and the Crown (the “**Deed of Settlement**”), the Crown agreed that the Minister of Conservation (the “**Minister**”) would issue a Protocol (the “**DOC Protocol**”) setting out how the Department of Conservation (the “**Department**”) will interact with the trustees of the Te Pumautanga Trust (the “**Te Pumautanga Trustees**”) on matters specified in the DOC Protocol. These matters are:
- 1.1.1 input into business planning at the Area Office level;
  - 1.1.2 integrated management of lands;
  - 1.1.3 species management;
  - 1.1.4 pest control;
  - 1.1.5 freshwater fisheries;
  - 1.1.6 cultural materials;
  - 1.1.7 historic resources (wahi tapu and wahi taonga);
  - 1.1.8 advocacy under the Resource Management Act 1991 (the “**Resource Management Act**”);
  - 1.1.9 visitor and public information; and
  - 1.1.10 consultation.
- 1.2 For the purposes of this DOC Protocol, the Te Pumautanga Trustees are the representatives of the whanau, hapu, and iwi of the Affiliate Te Arawa Iwi/Hapu who have an interest in conservation management in the DOC Protocol Area.
- 1.3 Both the Department and Te Pumautanga Trustees are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 1.4 The Affiliate Te Arawa Iwi/Hapu have a responsibility in relation to the preservation, protection and management of natural and historic resources in the DOC Protocol Area in accordance with its kaitiakitanga. This derives from the status of the Affiliate Te Arawa Iwi/Hapu as tangata whenua in the DOC Protocol Area, is inextricably linked to whakapapa, and has important cultural and spiritual dimensions.

- 1.5 The purpose of the Conservation Act 1987 (the “Act”) is to manage natural and historic resources under that Act and the Acts in the First Schedule to the Act. The Minister, the Director-General of Conservation (the “Director-General”) and the Department are required to exercise particular functions, powers and duties under that legislation.

## **2 PURPOSE OF THE PROTOCOL**

- 2.1 The purpose of this Protocol is to assist the Department and the Te Pumautanga Trustees to exercise their respective responsibilities with the utmost co-operation to achieve over time the conservation policies, actions and outcomes sought by both.
- 2.2 This Protocol sets out a framework that enables the Department and the Te Pumautanga Trustees to establish a constructive and ongoing working relationship that is consistent with section 4 of the Act, and that respects the values of the Affiliate Te Arawa Iwi/Hapu, so long as giving effect to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi is not inconsistent with the Act. It provides for the Affiliate Te Arawa Iwi/Hapu to have input into certain policy, planning and decision-making processes, the management of public conservation land, and the fulfilment of statutory responsibilities (for both parties) within the DOC Protocol Area.

## **3 PROTOCOL AREA**

- 3.1 The DOC Protocol applies across the DOC Protocol Area which means the area identified in the map included in Attachment A of this Protocol.

## **4 TERMS OF ISSUE**

- 4.1 This Protocol is issued pursuant to section 21 of the Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (the “Settlement Legislation”) that implements clause 9.1 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

## **5 IMPLEMENTATION AND COMMUNICATION**

- 5.1 The Department will seek to establish and maintain communication with the Te Pumautanga Trustees on a continuing basis by:
- 5.1.1 providing reasonable opportunities for the Te Pumautanga Trustees to meet with Department managers and staff to discuss their respective conservation responsibilities and to review past operations;
  - 5.1.2 meeting with the Te Pumautanga Trustees (or designate) every six months at the Rotorua Lakes Area Office level to review implementation of the DOC Protocol and holding an annual hui between the Te Pumautanga Trustees and senior DOC staff including the Conservator, Area Manager and Kaupapa Atawhai Manager;
  - 5.1.3 training relevant staff on the content of the DOC Protocol and provide the Affiliate Te Arawa Iwi/Hapu, through the Te Pumautanga Trustees, with the opportunity to train relevant staff on the Affiliate Te Arawa Iwi/Hapu values and tikanga; and

5.1.4 briefing the Bay of Plenty Conservation Board members on the content of the DOC Protocol.

5.2 The Rotorua Lakes Area Manager will act as the primary contact person for the Te Pumautanga Trustees and he or she will act as a liaison person with other departmental staff.

## **6 INPUT INTO BUSINESS PLANNING AT THE AREA OFFICE LEVEL**

6.1 This Protocol provides for the ongoing implementation of a range of matters as well as special projects identified by the Te Pumautanga Trustees, with implementation taking place over time. Some of the projects identified will need specific resourcing set aside through the Department's business planning process.

6.2 The process for the involvement of the Te Pumautanga Trustees in the Department's business planning process will be as follows:

6.2.1 the Department and the Te Pumautanga Trustees will, on an annual basis, identify projects that require specific resourcing;

6.2.2 the identified projects will be taken into consideration together with other priorities under the Department's business planning process at the conservancy and regional levels;

6.2.3 the decision on whether any specific projects will be funded in any business year will be made by the Conservator and the Regional General Manager; and

6.2.4 if the Department decides to proceed with a specific project that has been identified under clause 6.2.1, the Te Pumautanga Trustees (or designate) and the Department will meet again to finalise a work plan and timetable for implementation of the specified project in that business year, in accordance with the resources which have been allocated in the business plan.

## **7 INTEGRATED MANAGEMENT FOR THE LANDS OF THE AFFILIATE TE ARAWA IWI/HAPU AND THE DEPARTMENT OF CONSERVATION**

7.1 The transfer to the Te Pumautanga Trustees of certain parcels of land as "cultural redress properties" shall, amongst other conditions, be subject to a conservation covenant to maintain conservation values currently applicable to the land title from which such parcels are severed.

7.2 The Te Pumautanga Trustees and the Department of Conservation acknowledge the cultural, natural and public values that attach to such lands, both to the severed parcel and the area remaining alike, and undertake to work together to integrate their management for the overall good of such lands and their associated values.

7.3 The Te Pumautanga Trustees and the Department of Conservation acknowledge that threats posed by fire, animal and plant pests are threats pertinent to both the cultural and the conservation values associated with such lands. It is also acknowledged that there is the potential for management issues to arise between the parties around recreational use and "interpretation". The Te Pumautanga Trustees and the Department of Conservation therefore agree:

- 7.3.1 that there are clear benefits to integrating management of such parcels of land and remaining areas, by working together and adding value to each other's efforts, one complementing the other, and
- 7.3.2 that a strong commitment to open, regular, free and frank communication will realise those benefits.
- 7.4 The Department of Conservation will endeavour to ensure that all relevant information in its possession in relation to such lands is shared with the Te Pumautanga Trustees in a proactive manner. Likewise the Te Pumautanga Trustees will endeavour to ensure they reciprocate with information in their possession or in the possession of Iwi/Hapu affiliated to the Te Pumautanga Trustees.
- 7.5 The Te Pumautanga Trustees and the Department of Conservation both agree that these principles of integrated management should provide for an operational relationship that will develop going forward, and that over time there will be further or other operational arrangements to be agreed to in respect of specific sites.

## **8 SPECIES MANAGEMENT**

- 8.1 One of the Department's primary objectives is to ensure the survival of species and their genetic diversity. An important part of this work is to prioritise recovery actions in relation to the degree of threat to a species. The Department prioritises recovery actions at both a national and local level.
- 8.2 In recognition of the cultural, spiritual, historic and/or traditional association of the Affiliate Te Arawa Iwi/Hapu with indigenous flora and fauna found within the DOC Protocol Area for which the Department has responsibility, the Department will in relation to any indigenous species that the Te Pumautanga Trustees may identify as important to them through the processes provided under clauses 5 and 6 of this Protocol:
- 8.2.1 where a national recovery programme is being implemented within the DOC Protocol Area, inform the Te Pumautanga Trustees and, where it is reasonably practicable to do so, provide opportunities for the Te Pumautanga Trustees to participate in that programme;
- 8.2.2 advise the Te Pumautanga Trustees in advance of any Conservation Management Strategy reviews or the preparation of any statutory or non-statutory plans, policies or documents that relate to the management of those species within the DOC Protocol Area;
- 8.2.3 where research and monitoring projects are being carried out by the Department within the DOC Protocol Area, and where it is reasonably practicable to do so, provide the Te Pumautanga Trustees with opportunities to participate in those projects;
- 8.2.4 advise the Te Pumautanga Trustees of the receipt of any completed research reports relating to indigenous species within the DOC Protocol Area, and provide copies or the opportunity for the Te Pumautanga Trustees to study those reports; and

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8.2.5 encourage and provide advice to the Te Pumautanga Trustees concerning the protection or management of those species on land owned or managed by the Affiliate Te Arawa Iwi/Hapu.

## **9 PEST CONTROL**

9.1 A key objective and function of the Department is to prevent, manage and control threats to natural heritage values from animal and weed pests. This needs to be done in a way that maximises the value from limited resources available to do this work.

9.2 The Department will:

9.2.1 seek and facilitate early consultation with the Te Pumautanga Trustees on pest control activities within the DOC Protocol Area, particularly in relation to the use of poisons; and

9.2.2 provide the Te Pumautanga Trustees with the Department's reports for animal pest control operations completed within the DOC Protocol Area.

## **10 FRESHWATER FISHERIES**

10.1 Freshwater fisheries are managed under two pieces of legislation: the Fisheries Act 1996 (administered by the Ministry of Fisheries) and the Act. The Act deals specifically with the conservation of non-commercial freshwater fisheries.

10.2 The Department will consult with the Te Pumautanga Trustees, and where reasonably practicable, provide for their participation in the conservation and management (including research) of customary freshwater fisheries and freshwater fish habitats.

10.3 The Department will work at the Rotorua Lakes Area Office level to:

10.3.1 seek to identify areas for co-operation in advocacy consistent with clause 13.3 of this Protocol, focusing on fish passage, minimum flows, protection and enhancement of riparian vegetation and habitats, water quality improvement and the restoration, rehabilitation or enhancement of customary freshwater fisheries and their freshwater habitats;

10.3.2 consult with the Te Pumautanga Trustees in developing or contributing to research and monitoring programmes that aim to improve the understanding of the biology of customary freshwater fisheries and their environmental and habitat requirements;

10.3.3 consider the Te Pumautanga Trustees as potential science providers or collaborators for research projects funded or promoted by the Department in the same manner as other potential providers or collaborators; and

10.3.4 process applications for the transfer and release of freshwater fish species, including eels, according to the criteria outlined in section 26ZM of the Act.

## **11 CULTURAL MATERIALS**

11.1 For the purpose of this Protocol, cultural materials are defined as:

  
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- 11.1.1 plants and plant materials; and
- 11.1.2 materials derived from animals or birds, for which the Department is responsible and which are important to the Affiliate Te Arawa Iwi/Hapu in maintaining and expressing its cultural values and practices.
- 11.2 Current legislation means that some form of concession or permit is generally required for any gathering and possession of cultural materials.
- 11.3 In relation to cultural materials, the Minister and/or Director-General will:
  - 11.3.1 consider requests from the Te Pumautanga Trustees for access to and use of cultural materials within the DOC Protocol Area when required for cultural or spiritual purposes, in accordance with the relevant legislation;
  - 11.3.2 consult with the Te Pumautanga Trustees in circumstances where there are competing requests between the Te Pumautanga Trustees and non-Affiliate Te Arawa Iwi/Hapu persons in relation to the use of cultural materials, for example, for scientific research purposes, to see if the requests can be reconciled before the Minister or Director-General makes a decision in respect of those requests;
  - 11.3.3 consider requests that the Te Pumautanga Trustees have access to cultural materials that become available as a result of departmental operations such as track maintenance or clearance, or culling of species, or accidental death;
  - 11.3.4 consider the issue of permits through the Department's permits system to the Te Pumautanga Trustees for collection of seed material on public conservation lands for plant propagation purposes, and provide advice on the Te Pumautanga Trustees' restoration programmes if requested; and
  - 11.3.5 consult with the Te Pumautanga Trustees on the development of procedures for monitoring levels of cultural materials.

## **12 HISTORIC RESOURCES – WAHI TAPU AND WAHI TAONGA**

- 12.1 Places that are sacred or significant to the Affiliate Te Arawa Iwi/Hapu include:
  - 12.1.1 rua koiwi and burial sites of the Affiliate Te Arawa Iwi/Hapu tupuna;
  - 12.1.2 tohi (baptismal) sites and sites where whenua (placenta) have been buried;
  - 12.1.3 sites (such as tuahu, battle grounds) where the Affiliate Te Arawa Iwi/Hapu has been engaged in an activity or ritual of historical significance as recorded in oral tradition, or where there is a repository of artifacts;
  - 12.1.4 old kainga, pa and other archaeological sites;
  - 12.1.5 sites of water sources for death rites;
  - 12.1.6 significant fishing, raw resource harvesting, or food gathering places;

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- 12.1.7 significant geographical locations; and
- 12.1.8 designated dwelling places of taniwha in the Affiliate Te Arawa Iwi/Hapu rivers.
- 12.2 The Department has a statutory role to conserve historic resources in protected areas and will endeavour to do this for sites of significance to the Affiliate Te Arawa Iwi/Hapu in co-operation with the Te Pumautanga Trustees.
- 12.3 The Department accepts that non-disclosure of locations of places known to the Affiliate Te Arawa Iwi/Hapu is a practice used by the Affiliate Te Arawa Iwi/Hapu to preserve the sanctity of a place. In other cases the Affiliate Te Arawa Iwi/Hapu may ask the Department to treat information it provides on wahi tapu and wahi taonga in a confidential way. Where such confidential information has been provided by the Affiliate Te Arawa Iwi/Hapu, the Department will consult the Te Pumautanga Trustees on the establishment of processes for dealing with information on wahi tapu and wahi taonga in a way that both recognises the management challenges that confidentiality can present and respects the views of the Affiliate Te Arawa Iwi/Hapu.
- 12.4 The responsibility for identifying and assessing the Affiliate Te Arawa Iwi/Hapu wahi tapu and wahi taonga largely rests with the Affiliate Te Arawa Iwi/Hapu.
- 12.5 The Department, at the Rotorua Lakes Area Office level, will:
- 12.5.1 undertake protection and conservation of the Affiliate Te Arawa Iwi/Hapu wahi tapu and wahi taonga, in accordance with priorities and/or threats, on land administered by the Department in co-operation with the Te Pumautanga Trustees;
- 12.5.2 as far as reasonably practicable, respect the Affiliate Te Arawa Iwi/Hapu values attached to identified wahi tapu and wahi taonga that are administered by the Department (e.g. by the Department giving consideration to impacts from visitor numbers, facilities and services);
- 12.5.3 manage the Affiliate Te Arawa Iwi/Hapu wahi tapu and wahi taonga according to the standards of conservation practice for the care of places of cultural heritage value, their structures, materials and cultural meaning, outlined in the ICOMOS (International Convention on Monuments and Sites) New Zealand Charter 1993;
- 12.5.4 as far as possible, when issuing concessions that give authority for other parties to carry out activities on land administered by the Department:
- (a) where the Te Pumautanga Trustees have advised the Department that land administered by the Department within the DOC Protocol Area contains wahi tapu and/or wahi taonga of the Affiliate Te Arawa Iwi/Hapu, require concessionaires to conduct any activity on the land in a manner that recognises and is respectful of the Affiliate Te Arawa Iwi/Hapu values; and
- (b) request concessionaires who intend to utilise information relating to the Affiliate Te Arawa Iwi/Hapu to consult the Te Pumautanga Trustees before utilising the information;
- 12.5.5 inform the Te Pumautanga Trustees if koiwi are found in the DOC Protocol Area; and

12.5.6 when requested by the Te Pumautanga Trustees, seek to assist in recording and protecting wahi tapu and wahi taonga on land administered by the Department and, wherever possible, ensure that they are not desecrated or damaged.

### 13 RESOURCE MANAGEMENT ACT

13.1 The Affiliate Te Arawa Iwi/Hapu and the Department both have concerns about the effects of activities controlled and managed under the Resource Management Act. Areas of common interest include:

13.1.1 protection and conservation of wetlands;

13.1.2 protection of historic resources;

13.1.3 protection of native species and their ecosystems;

13.1.4 riparian management;

13.1.5 effects on freshwater fish habitat;

13.1.6 water quality management; and

13.1.7 eradication of animal pests.

13.2 From time to time, the Te Pumautanga Trustees and the Department will seek to identify further issues of mutual interest for discussion. It is recognised that their concerns in any particular resource management issue may diverge and that each of the Department and the Te Pumautanga Trustees will continue to make separate submissions in any Resource Management Act processes.

13.3 Where issues of mutual interest are identified, the Department may consult the Te Pumautanga Trustees on the general approach to be taken by each of the Affiliate Te Arawa Iwi/Hapu and the Department in respect of advocacy under the Resource Management Act where the Department considers the Affiliate Te Arawa Iwi/Hapu may have an interest, and seek to identify their respective priorities and issues of mutual concern.

13.4 The Department may:

13.4.1 have regard to the priorities and issues of mutual concern identified in making decisions in respect of advocacy under the Resource Management Act; and

13.4.2 make non-confidential resource information available to the Te Pumautanga Trustees to assist in improving their effectiveness in Resource Management Act advocacy work.

### 14 VISITOR AND PUBLIC INFORMATION

14.1 The Department has a role in sharing knowledge about natural and historic heritage with visitors, satisfying their requirements for information, increasing their enjoyment and understanding of this heritage, and developing an awareness of the need for its conservation.

- 14.2 As set out in clause 14.3, in providing public information, interpretation services, and facilities for visitors on the land it manages, the Department acknowledges the association of the Affiliate Te Arawa Iwi/Hapu with the land the Department administers within the DOC Protocol Area.
- 14.3 The Department will work at the Rotorua Lakes Area Office level to encourage respect for the Affiliate Te Arawa Iwi/Hapu's association with land administered by the Department within the DOC Protocol Area by:
- 14.3.1 raising public awareness of any positive conservation partnerships developed between the Te Pumautanga Trustees, the Department and other stakeholders, for example, by way of publications, presentations and seminars;
  - 14.3.2 consulting the Te Pumautanga Trustees on the inclusion in Department information on new interpretation panels, signs and visitor publications within the DOC Protocol Area of acknowledgements of the Affiliate Te Arawa Iwi/Hapu perspectives, references to the significance of the sites to the Affiliate Te Arawa Iwi/Hapu, and traditional Affiliate Te Arawa Iwi/Hapu place names;
  - 14.3.3 ensuring that accurate information is provided about the Affiliate Te Arawa Iwi/Hapu in the Department's publications by obtaining, so far as possible, the permission of the Te Pumautanga Trustees prior to the publication of any information substantially concerning the Affiliate Te Arawa Iwi/Hapu that has not been obtained from the Te Pumautanga Trustees; and
  - 14.3.4 encouraging the participation of the Affiliate Te Arawa Iwi/Hapu in the Department's volunteer and conservation events and programmes by informing the Te Pumautanga Trustees of these programmes and events.

## 15 CONCESSION APPLICATIONS

- 15.1 The Department will work with the Te Pumautanga Trustees to identify categories of concessions that may impact on the cultural, spiritual or historical values of the Affiliate Te Arawa Iwi/Hapu.
- 15.2 In relation to the concession applications within the categories identified by the Department and the Te Pumautanga Trustees under clause 15.1, the Department will:
- 15.2.1 consult with the Te Pumautanga Trustees with regard to any applications or renewals of applications within the DOC Protocol Area;
  - 15.2.2 when a concession is publicly notified, at the same time provide separate written notification to the Te Pumautanga Trustees; and
  - 15.2.3 prior to issuing concessions to carry out activities on land managed by the Department within the DOC Protocol Area, and following consultation with the Te Pumautanga Trustees, ensure that the concessionaire is informed of the Affiliate Te Arawa Iwi/Hapu tikanga and values.

  
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## 16 CONSULTATION

16.1 Where the Department is required to consult under clauses 9.2, 10.2, 10.3, 11.3, 12.3, 13.3 and 14.3 of this Protocol, the basic principles that will be followed by the Department in consulting with the Te Pumautanga Trustees in each case are:

16.1.1 ensuring that the Te Pumautanga Trustees are consulted as soon as reasonably practicable following the identification and determination by the Department of the proposal or issues to be the subject of the consultation;

16.1.2 providing the Te Pumautanga Trustees with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;

16.1.3 ensuring that sufficient time is given for the participation of the Te Pumautanga Trustees to respond, including the preparation of submissions by the Te Pumautanga Trustees, in relation to any of the matters that are the subject of the consultation; and

16.1.4 ensuring that the Department will approach the consultation with the Te Pumautanga Trustees with an open mind, and will genuinely consider the submissions of the Te Pumautanga Trustees in relation to any of the matters that are the subject of the consultation.

16.2 Where the Department has consulted with the Te Pumautanga Trustees as specified in clause 16.1, the Department will report back to the Te Pumautanga Trustees on the decision made as a result of any such consultation.

## 17 DEFINITIONS

17.1 In this Protocol:

**Affiliate Te Arawa Iwi/Hapu** has the meaning set out in clause 1.5 of the Deed of Settlement;

**Conservation Management Strategy** has the same meaning as in the Conservation Act 1987;

**Conservation Legislation** means the Conservation Act 1987 and the Acts in the First Schedule of the Act;

**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;

**Protocol** means a statement in writing, issued by the Crown through the Minister of Conservation to the Te Pumautanga Trustees under the Settlement Legislation and the Deed of Settlement and includes this Protocol;

**Te Pumautanga Trust** means the Te Pumautanga o Te Arawa Trust, established by the Te Pumautanga o Te Arawa trust deed dated 1 December 2006; and

  
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**Te Pumautanga Trustees** means the trustees appointed from time to time to the Te Pumautanga Trust.

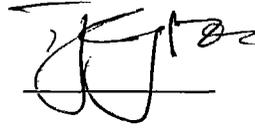
ISSUED on

16<sup>th</sup> June

2009

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

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WITNESS

*Abigail Humphries*

ABIGAIL HUMPHRIES

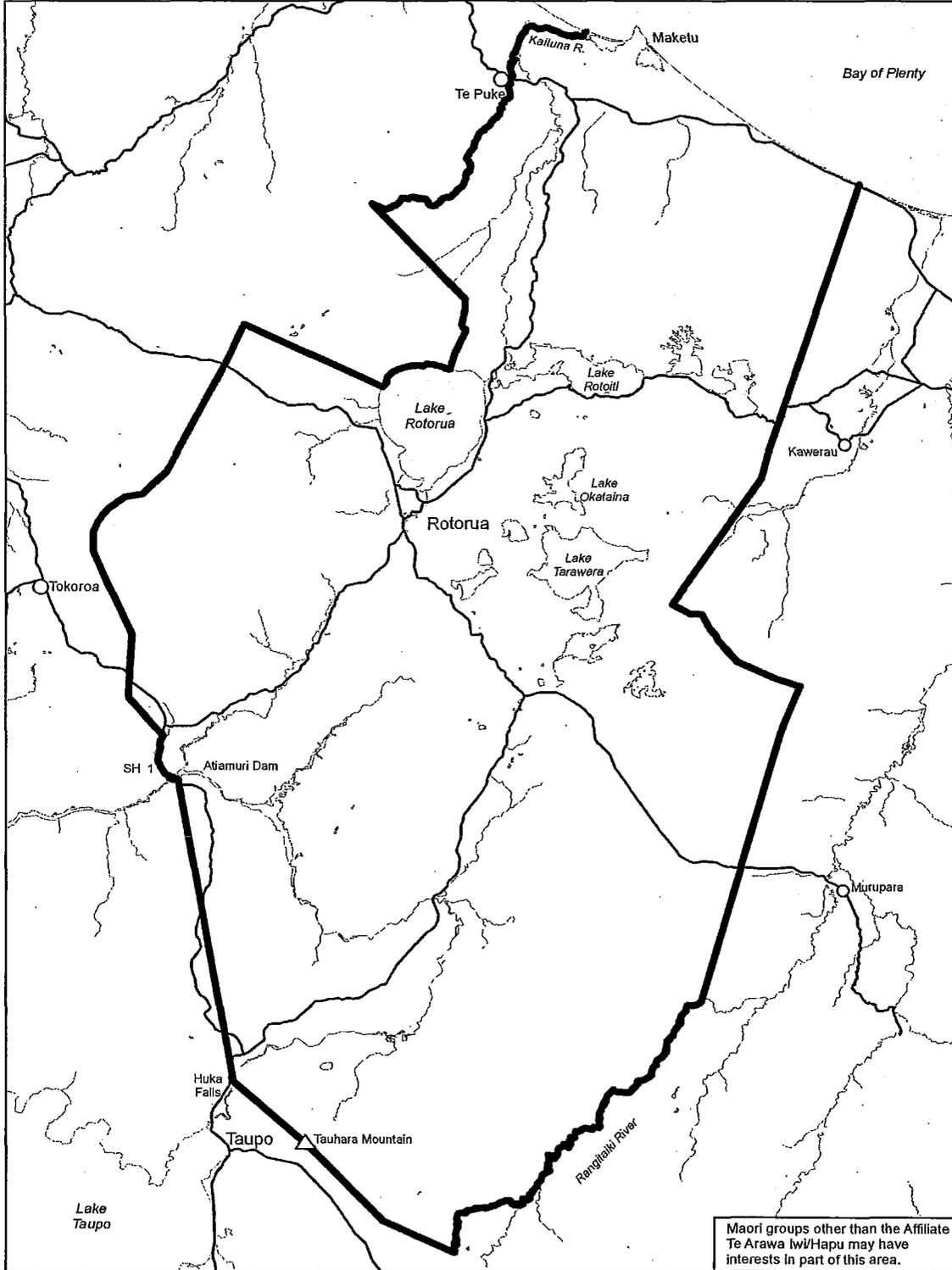
Name:

Occupation: ADVISOR

Address: OFFICE OF HON TIM GROSER



ATTACHMENT A  
DOC 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 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 9.8); and

1.1.2 this Protocol does not restrict the ability of the Crown to interact or consult with any person including any iwi, hapu, marae, whanau, or other representative of tangata whenua (clause 9.9);

1.1.3 this Protocol:

(a) is consistent with section 4 of the Conservation Act 1987;

(b) does not override or diminish:

(i) the requirements of the Conservation Legislation;

(ii) the functions and powers of the Minister of Conservation, or the Department of Conservation, under that legislation; or

(iii) the rights of the Affiliate Te Arawa Iwi/Hapu, or a Representative Entity, under that legislation (clause 9.7.4).

1.2 Representative Entity has the same meaning in clause 1.1.3(b)(iii) of these terms of issue as it has in clause 1.8 of the Deed of Settlement.

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

2.1 Section 21 of the Settlement Legislation provides that:

(1) Each responsible Minister may—

(a) issue a protocol to the trustees in the form set out in Part 1 of Schedule 1 of the deed of settlement; and

(b) amend or cancel that protocol.

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

(a) the trustees; or

- (b) the responsible Minister.
- (3) The responsible Minister may amend or cancel a protocol only after consulting with, and having particular regard to the views of, the trustees.

### **3 Protocols subject to rights and obligations**

3.1 Section 22 of the Settlement Legislation provides that:

Protocols do 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 (without limitation) the ability to—
  - (i) introduce legislation and change government policy; and
  - (ii) interact or consult with a person the Crown considers appropriate, including, without limitation, any iwi, hapu, marae, whanau, or other representative of tangata whenua; or
- (b) the responsibilities of a responsible Minister or a responsible department; or
- (c) the legal rights of the Affiliate or a representative entity.

### **4 Noting of Protocols**

4.1 Section 25 of the Settlement Legislation provides that:

- (1) A summary of the terms of the DOC protocol must be noted in the conservation documents affecting the DOC protocol area.
- (2) The noting of the DOC protocol is—
  - (a) for the purpose of public notice only; and
  - (b) not an amendment to a conservation document for the purposes of section 171 of the Conservation Act 1987 or section 46 of the National Parks Act 1980.

### **5 Enforceability of Protocols**

5.1 Section 23 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 a protocol, the trustees may, subject to the Crown Proceedings Act 1950, enforce the protocol.

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

## 6 Limitation of rights

6.1 Section 24 of the Settlement Legislation provides that:

- (1) The DOC protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, land held, managed, or administered, or flora or fauna managed or administered, under the—
  - (a) Conservation Act 1987; or
  - (b) other statutes listed in Schedule 1 of that Act.

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