

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS,  
CULTURE AND HERITAGE REGARDING INTERACTION WITH THE AFFILIATE  
TE ARAWA IWI AND HAPU ON TAONGA TUTURU ISSUES**

**1. INTRODUCTION**

- 1.1 Under the Deed of Settlement dated 11 June 2008 between the Affiliate Te Arawa Iwi and Hapu 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 "**Taonga Tuturu Protocol**") setting out how the Minister and the Chief Executive for the Ministry for Culture and Heritage (the "**Chief Executive**") will interact with the trustees of the Te Pūmāutanga Trust (the "**Te Pūmāutanga Trustees**") on matters specified in the Taonga Tuturu Protocol. These matters are:
- 1.1.1 newly found taonga tuturu;
  - 1.1.2 the export of taonga tuturu from New Zealand; and
  - 1.1.3 the Protected Objects Act 1975 and any amendment (the "**Act**").
- 1.2 The Minister and the Chief Executive or other such persons acting in those capacities, and the Affiliate Te Arawa Iwi and Hapu are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Taonga Tuturu Protocol, as set out in this Protocol.
- 1.3 The Chief Executive recognises that the Affiliate Te Arawa Iwi and Hapu have an interest in relation to the preservation, protection and management of taonga tuturu through its tino rangatiratanga and kaitiakitanga. This derives from the Affiliate Te Arawa Iwi and Hapu's status as tangata whenua in the Taonga Tuturu Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The purpose of the Act is to provide for the better protection of certain objects by, among other things, regulating the export of taonga tuturu, and by establishing and recording the ownership of nga taonga tuturu found after the commencement of the Act, namely 1 April 1976.
- 1.5 The Minister and Chief Executive have certain functions, powers and duties in terms of the Act. In exercising such functions, powers and duties, the Minister and Chief Executive will provide the Te Pūmāutanga Trustees with the opportunity for input in the policy and decision-making processes as set out in this Protocol.

**2. PROTOCOL AREA**

- 2.1 This Protocol applies across the Taonga Tuturu Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the "**Protocol Area**").

**3. TERMS OF ISSUE**

3.1 The Taonga Tuturu Protocol is issued pursuant to section [ ] of the [insert name of settlement legislation] (the "**Settlement Legislation**") that implements clause 9.5 of the 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 terms of issue set out in Attachment B.

#### **4. THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL**

##### **General**

4.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the Te Pumautanga Trustees within the limits of the Act. From the date this Protocol is issued the Chief Executive will:

4.1.1 notify the Te Pumautanga Trustees in writing of any taonga tuturu found within the Protocol Area or identified as being of Affiliate Te Arawa Iwi and Hapu origin found anywhere else in New Zealand;

4.1.2 provide for the care, recording and custody of any taonga tuturu found within the Protocol Area or identified as being of Affiliate Te Arawa Iwi and Hapu origin found anywhere else in New Zealand;

4.1.3 notify the Te Pumautanga Trustees in writing of their right to lodge a claim with the Chief Executive for ownership of any taonga tuturu found within the Protocol Area or identified as being of Affiliate Te Arawa Iwi and Hapu origin found anywhere else in New Zealand;

4.1.4 notify the Te Pumautanga Trustees in writing of their right to apply directly to the Maori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any taonga tuturu found within the Protocol Area or identified as being of Affiliate Te Arawa Iwi and Hapu origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such taonga tuturu; and

4.1.5 notify the Te Pumautanga Trustees in writing of any application to the Maori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any taonga tuturu found within the Protocol Area or identified as being of Affiliate Te Arawa Iwi and Hapu origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such taonga tuturu.

## **Applications for Ownership**

- 4.2. If the Te Pumautanga Trustees lodge a claim of ownership with the Chief Executive and there are no competing claims for any taonga tuturu found within the Protocol Area or identified as being of Affiliate Te Arawa Iwi and Hapu origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Maori Land Court for an order confirming ownership of the taonga tuturu.
- 4.3 If there is a competing claim or claims lodged in conjunction with the Te Pumautanga Trustees' claim of ownership, the Chief Executive will consult with the Te Pumautanga 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 Maori Land Court for an order confirming ownership of the taonga tuturu.
- 4.4 If the competing claims for ownership of any taonga tuturu found within the Protocol Area or identified as being of Affiliate Te Arawa Iwi and Hapu origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive, at the request of the Te Pumautanga Trustees may facilitate an application to the Maori Land Court for determination of ownership of the taonga tuturu.

## **Applications for Custody**

- 4.5 If no ownership application is made to the Maori Land Court for any taonga tuturu found within the Protocol Area or identified as being of Affiliate Te Arawa Iwi and Hapu origin found elsewhere in New Zealand by the Te Pumautanga Trustees or any other person, the Chief Executive will:
  - 4.5.1 consult the Te Pumautanga Trustees where there is any request from any other person for the custody of the taonga tuturu;
  - 4.5.2 consult the Te Pumautanga Trustees before a decision is made on who may have custody of the taonga tuturu; and
  - 4.5.3 notify the Te Pumautanga Trustees in writing of the decision made by the Chief Executive on the custody of the taonga tuturu.

## **Export Applications**

- 4.6 For the purpose of seeking an expert opinion from the Te Pumautanga Trustees on any export applications to remove any taonga tuturu of Affiliate Te Arawa Iwi and Hapu origin from New Zealand, the Chief Executive will register the Te Pumautanga Trustees on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 4.7 Where the Chief Executive receives an export application to remove any taonga tuturu of Affiliate Te Arawa Iwi and Hapu origin from New Zealand, the Chief Executive will consult the Te Pumautanga Trustees as an Expert Examiner on that application, and notify the Te Pumautanga Trustees in writing of his or her decision.

## **Other Matters**

4.8 The Chief Executive will also:

- 4.8.1 discuss with the Te Pumautanga Trustees concerns and issues notified by the Te Pumautanga Trustees about the Act;
- 4.8.2 review the implementation of this Protocol from time to time, or at the request of the Te Pumautanga Trustees, unless otherwise agreed in writing by both the Te Pumautanga Trustees and the Chief Executive; and
- 4.8.3 as far as reasonably practicable train relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol.

## **5. THE ROLE OF THE MINISTER UNDER THIS PROTOCOL**

5.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the Te Pumautanga Trustees within the limits of the Act. In circumstances where the Chief Executive originally consulted the Te Pumautanga Trustees as an Expert Examiner, the Minister may consult with the Te Pumautanga Trustees where a person appeals the decision of the Chief Executive to:

- 5.1.1 refuse permission to export any taonga tuturu, or nga taonga tuturu, from New Zealand; or
- 5.1.2 impose conditions on the approval to export any taonga tuturu, or nga taonga tuturu, from New Zealand.

5.2 The Ministry will notify the Te Pumautanga Trustees in writing of the Minister's decision on an appeal in relation to an application to export any taonga tuturu where the Te Pumautanga Trustees were consulted as an Expert Examiner.

## **6. CONSULTATION**

6.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the Te Pumautanga Trustees in each case are:

- 6.1.1 ensuring that the Te Pumautanga 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;
- 6.1.2 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;
- 6.1.3 ensuring that sufficient time is given for the participation of the Te Pumautanga Trustees in the decision making process including the preparation of submissions by the Te Pumautanga Trustees in relation to any of the matters that are the subject of the consultation;

- 6.1.4 ensuring that the Chief Executive 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; and
- 6.1.5 report back to the Te Pumautanga Trustees, either in writing or in person, on any decisions made that relate to that consultation.

## **7 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL**

- 7.1 If the Chief Executive consults with Maori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive will:
  - 7.1.1 notify the Te Pumautanga Trustees of the proposed policy development or proposed legislative amendment upon which Maori generally will be consulted;
  - 7.1.2 make available to the Te Pumautanga Trustees the information provided to Maori as part of the consultation process referred to in this clause; and
  - 7.1.3 report back to the Te Pumautanga Trustees on the outcome of any such consultation.

## **8 DEFINITIONS**

- 8.1 In this Protocol:

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

**Chief Executive** means the Chief Executive of the Ministry for Culture and Heritage and includes any authorised employee of 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 tuturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the taonga tuturu and which suggest that the taonga tuturu 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;

**Nga taonga tuturu** has the same meaning as in section 2 of the Act and means 2 or more taonga tuturu;

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

**Taonga tuturu** has the same meaning as in section 2 of the Act and means:

an object that—

- (a) relates to Maori culture, history, or society; and
- (b) was, or appears to have been,—
  - (i) manufactured or modified in New Zealand by Maori; or
  - (ii) brought into New Zealand by Maori; or
  - (iii) used by Maori; and
- (c) is more than 50 years old;

**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

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

ISSUED on this                      day of                      2009

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



in the presence of:

**WITNESS**

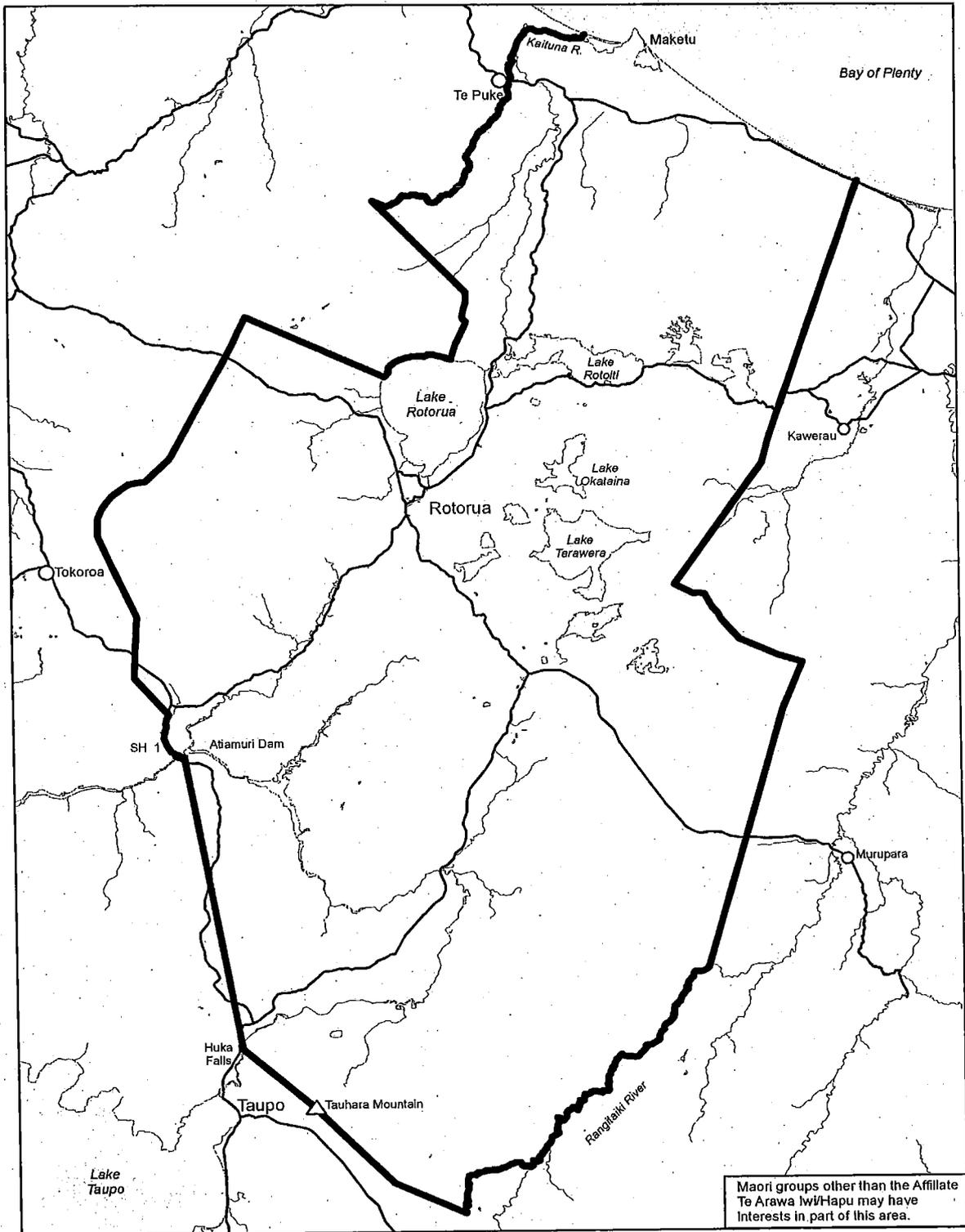


Name: **FINLAY BIRD**  
Occupation: **PRIVATE SECRETARY**  
Address: **16 SELWYN TCE WELLINGTON**

**ATTACHMENT A**

**TAONGA TUTURU PROTOCOL AREA**

*(The map follows this page.)*



## 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 Deed of Settlement relating to Protocol

##### 1.1 The Deed 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 the Crown considers appropriate including any iwi, hapu, marae, whanau or other representative of tangata whenua (clause 9.9); and

1.1.3 this Protocol does not override or diminish:

- (a) the requirements of the Act;
- (b) the functions and powers of the Minister for Arts, Culture and Heritage or the Chief Executive for the Ministry for Culture and Heritage under the Act; or
- (c) the rights of Affiliate Te Arawa Iwi and Hapu, or a Representative Entity, under that Act (clause 9.7.4).

1.2 **Representative Entity** has the same meaning in this Protocol as it has in clause 1.8 of the Deed.

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

Section [ ] of the Settlement Legislation provides that:

*[Quote the section of the Settlement Legislation included in accordance with clauses 9.7.1-9.7.3 of the Deed of Settlement]*

#### 3 Protocols subject to rights and obligations

Section [ ] of the Settlement Legislation provides that:

*[Quote the section of the Settlement Legislation included in accordance with clause 9.7.4 of the Deed of Settlement]*

#### **4 Enforcement of Protocol**

Section [ ] of the Settlement Legislation provides that:

*[Quote the section of the Settlement Legislation included in accordance with clauses 9.7.5 and 9.7.7 of the Deed of Settlement]*