A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀTI WHĀTUA ŌRĀKEI ON SPECIFIED ISSUES

1 INTRODUCTION

1.1 Under the Deed of Settlement dated 5 November 2011 between Ngāti Whātua Ōrākei 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 "Protocol") setting out how the Minister and the Chief Executive for Manatū Taonga also known as the Ministry for Culture and Heritage (the "Chief Executive") will interact with the governance entity on matters specified in the Protocol. These matters are:

1.1.1 Protocol Area – Part 2

1.1.2 Terms of issue – Part 3

1.1.3 Implementation and communication – Part 4

1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5

1.1.5 The role of the Minister under the Protected Objects Act 1975 – Part 6

1.1.6 Effects on Ngāti Whātua Ōrākei interests in the Protocol Area – Part 7

1.1.7 Registration as a collector of Ngā Taonga Tūturu – Part 8

1.1.8 Board Appointments – Part 9

1.1.9 National Monuments, War Graves and Historical Graves – Part 10

1.1.10 History publications relating to Ngāti Whātua Ōrākei – Part 11

1.1.11 Cultural and/or Spiritual Practices and Professional Services – Part 12

1.1.12 Consultation – Part 13

1.1.13 Changes to policy and legislation affecting this Protocol – Part 14

1.1.14 Definitions – Part 15

1.2 For the purposes of this Protocol the governance entity is the body representative of the whānau, hapū, and iwi of Ngāti Whātua Ōrākei who have an interest in the matters covered under this Protocol. This derives from the status of the governance entity as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.

1.3 Manatū Taonga also known as the Ministry (the Ministry) and the governance entity are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.

1.4 The purpose of the Protected Objects Act 1975 (the "Act") is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga

Tūturu, and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.

1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in clause 1.1.

2 PROTOCOL AREA

2.1 This Protocol applies across the 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 This Protocol is issued pursuant to section 22 of the Ngāti Whātua Ōrākei Claims Settlement Act 2012 ("the Settlement Legislation") that implements the Ngāti Whātua Ōrākei Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

3.2 A summary of the provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued is set out in Attachment B of the Protocol.

4 IMPLEMENTATION AND COMMUNICATION

4.1 The Chief Executive will maintain effective communication with the governance entity by:

4.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;

4.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;

4.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry managers and staff;

4.1.4 meeting with the governance entity to review the implementation of this Protocol at least once a year, if requested by either party;

4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol;

4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and

4.1.7 including a copy of the Protocol with the governance entity on the Ministry's website.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

General

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

5.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand;

5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand;

5.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand;

5.1.4 notify the governance entity in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and

5.1.5 notify the governance entity in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

Applications for Ownership

5.2. If the governance entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.

5.3 If there is a competing claim or claims lodged in conjunction with the governance entity's claim of ownership, the Chief Executive will consult with the governance entity 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 Māori Land Court for an order confirming ownership of the Taonga Tūturu.

5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the governance entity may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

Applications for Custody

5.5 If no ownership application is made to the Māori Land Court for any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found elsewhere in New Zealand by the governance entity or any other person, the Chief Executive will:

5.5.1 consult the governance entity where there is any request from any other person for the custody of the Taonga Tūturu;

5.5.2 consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and

5.5.3 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

Export Applications

5.6 For the purpose of seeking an expert opinion from the governance entity on any export applications to remove any Taonga Tūturu of Ngāti Whātua Ōrākei origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage's Register of Expert Examiners.

5.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Ngāti Whātua Ōrākei origin from New Zealand, the Chief Executive will consult the governance entity as an Expert Examiner on that application, and notify the governance entity in writing of his or her decision.

6. THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975

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

6.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or

6.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand.

6.2 The Ministry will notify the governance entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the governance entity was consulted as an Expert Examiner.

7. EFFECTS ON NGĀTI WHĀTUA ŌRĀKEI INTERESTS IN THE PROTOCOL AREA

7.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects Ngāti Whātua Ōrākei interests in the Protocol Area.

7.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Whātua Ōrākei interests in the Protocol Area.

7.3 Notwithstanding clauses 7.1 and 7.2 above the Chief Executive and governance entity shall meet to discuss Ngāti Whātua Ōrākei interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

8. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

8.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tūturu.

9. BOARD APPOINTMENTS

9.1 The Chief Executive shall:

9.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

9.1.2 add the governance entity's nominees onto Manatū Taonga/Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and

9.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

10. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

10.1 The Chief Executive shall seek and consider the views of the governance entity on any national monument, war grave or historical grave, managed or administered by the Ministry, which specifically relates to Ngāti Whātua Ōrākei interests.

10.2 The Chief Executive will provide for the marking and maintenance of any historic war grave identified by the governance entity, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

11. HISTORY PUBLICATIONS RELATING TO NGĀTI WHĀTUA ŌRĀKEI

11.1 The Chief Executive shall:

11.1.1 provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāti Whātua Ōrākei; and

11.1.2 where reasonably practicable, consult with the governance entity on any work the Ministry undertakes that relates substantially to Ngāti Whātua Ōrākei:

(a) from an early stage;

(b) throughout the process of undertaking the work; and

(c) before making the final decision on the material of a publication.

11.2 The governance entity accepts that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes

identified by the governance entity, is entitled to make the final decision on the material of the historical publication.

12. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

12.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngāti Whātua Ōrākei within the Protocol Area, the Chief Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.

12.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services.

12.3 The procurement by the Chief Executive of any such services set out in Clauses 12.1 and 12.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

13. CONSULTATION

13.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the governance entity in each case are:

13.1.1 ensuring that the governance entity is 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;

13.1.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;

13.1.3 ensuring that sufficient time is given for the participation of the governance entity in the decision making process including the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;

13.1.4 ensuring that the Chief Executive 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 that are the subject of the consultation; and

13.1.5 report back to the governance entity, either in writing or in person, in regard to any decisions made that relate to that consultation.

14 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

14.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impact upon this Protocol, the Chief Executive shall:

14.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

14.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and

14.1.3 report back to the governance entity on the outcome of any such consultation.

15. DEFINITIONS

15.1 In this Protocol:

Chief Executive means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as 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 Tūturu, discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tūturu and which suggest that the Taonga Tūturu 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

governance entity means Ngāti Whātua Ōrākei Trustee Limited as trustee of the Ngāti Whātua Ōrākei Trust

Ngā Taonga Tūturu has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu

Ngāti Whātua Ōrākei has the meaning set out in clause 8.5 of the Deed of Settlement

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 Protocol

Taonga Tūturu has the same meaning as in section 2 of the Act and means an object that—

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

ISSUED on 23/01/13

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

WITNESS

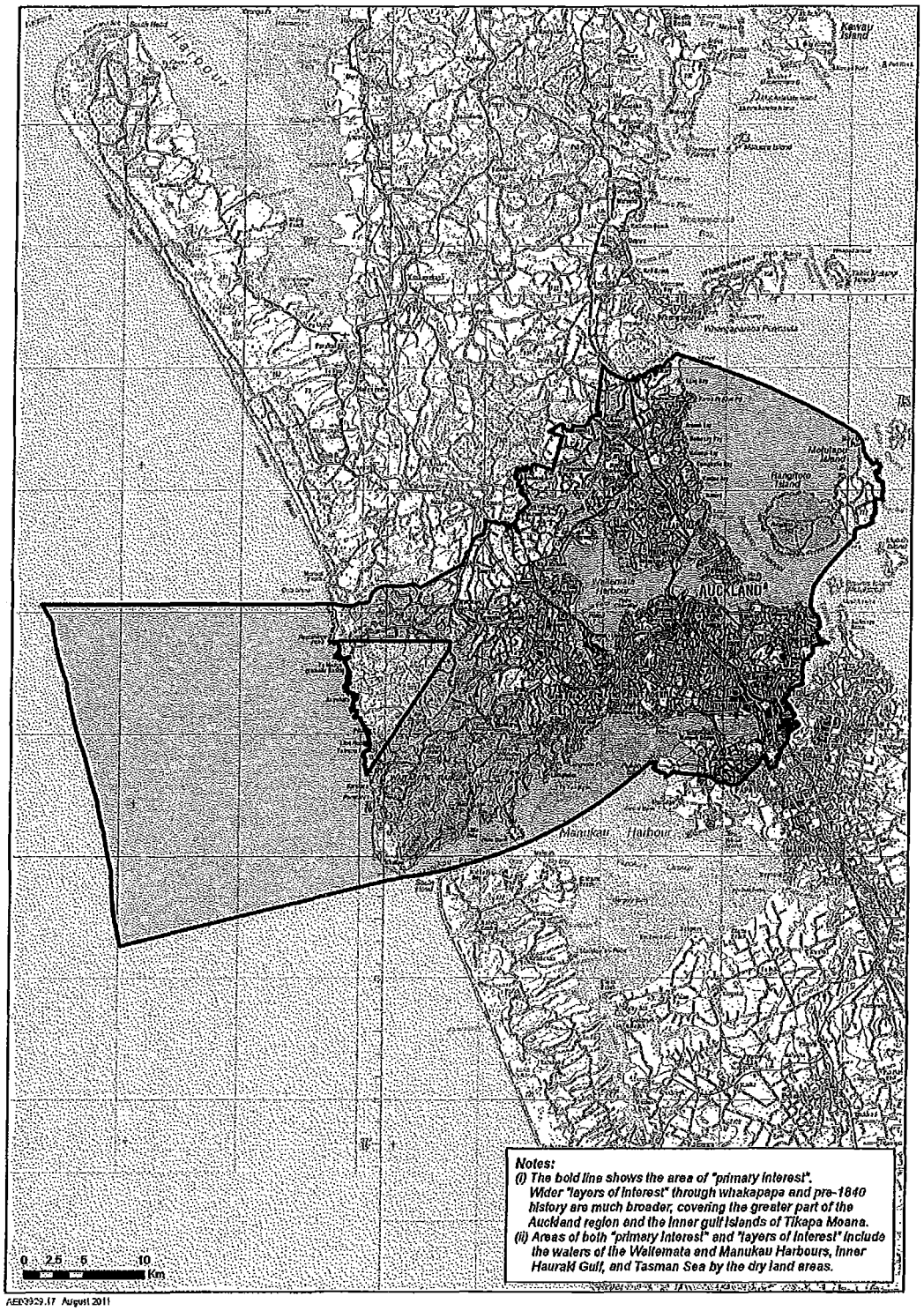
James Christmas

Name: JAMES CHRISTMAS

Occupation: POLITICAL ADVISOR

Address: WELLINGTON

PROTOCOL AREA MAP



Notes:
(i) The bold line shows the area of "primary interest". Wider "layers of interest" through whakapapa and pre-1840 history are much broader, covering the greater part of the Auckland region and the inner gulf islands of Tikapa Moana.
(ii) Areas of both "primary interest" and "layers of interest" include the waters of the Waitemata and Manukau Harbours, Inner Hauraki Gulf, and Tasman Sea by the dry land areas.

AED3929.17 August 2011

ATTACHMENT B - SUMMARY OF 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. **Amendment and cancellation**

1.1 The Minister may amend or cancel this Protocol, but only after consulting the governance entity and having particular regard to its views (section 22).

2. **Limits**

2.1 This Protocol does not:

2.1.1 restrict the Crown from exercising its powers and performing its functions and duties, in accordance with the law 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, hapu, marae, whanau or representatives of tangata whenua (section 23); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Whātua Ōrākei (section 23); or

2.1.3 grant, create or provide evidence of an estate or interest in, or rights relating to, taonga tūturu (section 25).

3. **Breach**

3.1 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).

3.2 A breach of this Protocol is not a breach of the deed of settlement (clause 5.6).