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# BEST PRACTICE GUIDELINES FOR ENGAGEMENT WITH MĀORI

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Te Runanga o Ngāti Ruanui Trust is the mandated authority for the iwi of Ngāti Ruanui. Ngāti Ruanui is predominantly located within Central and South Taranaki whereby their takiwā has witnessed considerable development of petroleum and minerals in recent years.

This development has placed Ngāti Ruanui in a unique position to acquire extensive experience and knowledge of the petroleum and minerals industry.

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# 1. Introduction

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## 1.1 Introduction

Te Rūnanga o Ngāti Ruanui Trust is the mandated authority for the iwi of Ngāti Ruanui.

Ngāti Ruanui is predominantly located within Central and South Taranaki whereby their takiwā has witnessed considerable development of petroleum and minerals in recent years.

This development has placed Ngāti Ruanui in a unique position to acquire extensive experience and knowledge of the petroleum and minerals industry.

## 2. PURPOSE AND SCOPE

### 2.1 Purpose

The Guidelines are voluntary principles to assist industry to effectively engage with iwi in the ongoing development of petroleum and minerals within New Zealand.

In particular, the Guidelines seek to:

- › Establish a voluntary approach to managing engagement with iwi;
- › Provide industry with tools to successfully engage with iwi; and
- › Provide for dialogue between Industry and iwi to address opportunities and issues.

The Guidelines may also be of use to iwi and other Māori groups in their engagement with industry.

### 2.2 Scope

The Guidelines encompass petroleum and minerals prospecting, exploration and production activities in New Zealand.

The Guidelines provide assistance on managing engagement with iwi where the requirements are not adequately covered by legislation, policy and guidelines.

The Guidelines are not intended to be legally enforceable and they do not restrict any power or discretion under statute. Nothing in the Guidelines removes the need to comply with other laws, regulations, rules, standards, guidelines, or other such articles that are relevant to any activities undertaken by the Industry in relation to engagement with iwi.

## 3. CONTEXT

### 3.1

Māori are the tangata whenua or indigenous people of New Zealand. Māori have distinct groups known as iwi (tribe), hapū (sub-tribe) and whānau (extended family) who share strong cultural, spiritual and economic ties to their traditional land and resources.

### 3.2

New Zealand has a very unique history and indigenous context that the minerals, oil and gas industry should be aware of prior to engaging with Māori.

In 1840 the Treaty of Waitangi (Māori: Tiriti o Waitangi) was signed by the British Crown and some Māori chiefs and British sovereignty over the country was proclaimed.

There are two versions of the treaty – English and Māori – which differ significantly.

Different understandings of the Treaty have long been the subject of debate.

From the 1970s many Māori have called for the terms of the Treaty to be honoured and as a result, in 1975 the Waitangi Tribunal was created. The Tribunal has the exclusive right to determine the Treaty as it is embodied in the two texts (Māori and English) and to decide issues raised by the difference between them. More than 2000 claims have been lodged with the Tribunal, and a number of major settlements have been reached.

### 3.3

In 2010 the Tribunal held an urgent inquiry to investigate the management of the petroleum resource in modern times. The WAI 796: Report on the Management of the Petroleum Resource is the Waitangi Tribunal's second report on petroleum claims and formed the sequel to the Tribunal's first report, published in 2003, which considered the ownership of the petroleum resource.

Having examined the evidence presented, the Tribunal ruled that it was "disturbed by the extent to which the current legislative regime depended, for its protection of Māori interests, on the ad hoc involvement of Māori individuals and groups who are ill-resourced to bear the burdens involved."

For the petroleum management regime to meet the standards of the Treaty, the Tribunal found that four criteria needed to be met. Tangata whenua must be able to:

1. Count on being involved at key points in decision-making processes that affect their interests;
2. Make a well-informed contribution to decisions;
3. Afford to have that level of involvement; and
4. Be confident that their contribution will be understood and valued.

The Tribunal made 11 recommendations which to date have not been adopted by the Crown so the issue of rights remains an important part of iwi and hapū engagement.

### 3.4

It is important to also point out that New Zealand has endorsed the United Nations Declaration on the Rights of Indigenous Peoples 2007. There is strong relevance between some of the articles of the Declaration and government departments and expectations in respect to Māori engagement.

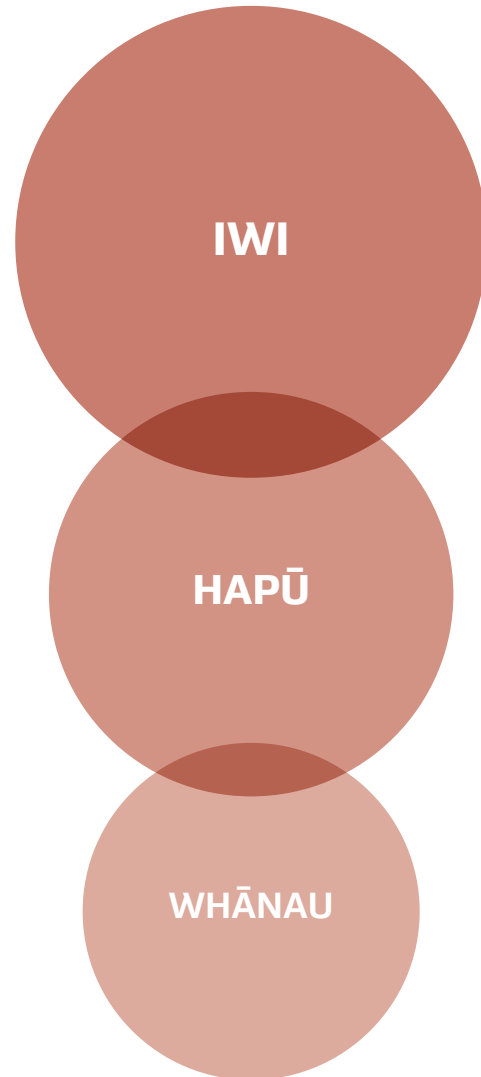


### DIAGRAM 1: Māori grouping - whānau, hapū and iwi

**Iwi** are the largest political grouping in Māori society. Iwi usually consist of several related hapū (sub-tribe) and take their name from a founding ancestor.

**Hapū**- A hapū or sub-tribe range in size from one hundred to several hundred people and consist of a number of whānau (extended families).

**Whānau**- A whānau (extended family) consists of elders (such as grand-parents, great uncles and aunts) their sons and daughters, together with their spouses and children.



#### Other relevant Māori groups include:

For the purposes of this document the term iwi is used although engagement will not necessarily occur with iwi in all circumstances.

Other relevant Māori groups include:

- **Hapū**
- **Whānau**
- **Marae committees**
- **Dedicated Iwi Environment Units** and so on.



## Three main types of permits:

**Prospecting permits:** To undertake reconnaissance prospecting or minimum impact work including aerial or low impact ground methods.

**Exploration permits:** For the purpose of evaluating the feasibility of mining. Activities include geological, geophysical and geochemical surveys, drilling, bulk sampling and mine feasibility studies.

**Mining permits:** For the extraction of Crown minerals.

### DIAGRAM 2: Permitting regime for Crown owned minerals in New Zealand



\* In addition to obtaining a permit the applicant is required to obtain consent from the relevant authority that is responsible for regulating the activities that are exercised under a permit.

### 3.5 Legislation

1. The Government's key policy objective for petroleum and minerals is set out in Section 1A of the Crowns Minerals Act 1991 which states:
  - a. The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.
2. To this end, this Act provides for:
  - a. the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals; and
  - b. the effective management and regulation of the exercise of those rights; and
  - c. the carrying out, in accordance with good industry practice, of activities in respect of those rights; and
  - d. a fair financial return to the Crown for its minerals.
3. The increasing demand for natural resources around the world is driving prospecting, exploration and production activities in New Zealand which is likely to continue for the long term.
4. Oil, gas and minerals operations can often affect Māori ties to their traditional land and resources and impact upon the cultural integrity of Māori. For the purposes of this document the term iwi is used although engagement will not necessarily occur with iwi in all circumstances. As outlined in Diagram 2, New Zealand follows a specific permitting regime for the purposes of achieving the Government's Key Policy Objective for petroleum and minerals.
5. It is acknowledged that the regulatory and policy framework for dealing with iwi engagement is neither certain nor comprehensive. The result of this uncertainty is often confusing amongst organisations, iwi and decision makers.
6. Given this environment all parties acknowledge the need to establish a set of voluntary principles that will be known as 'Guidelines.'
7. Both iwi and best practising companies have contributed significantly to the development of these Guidelines.
8. Key sources used in the preparation of this document have included national and local government reports, interviews with experts in the field and unpublished case studies of agreements between iwi and oil and minerals companies, including interviews.



## 4. PRINCIPLES

### 4.1 Proper engagement requires that:

- › The nature/object of the engagement be dependent upon the circumstances;
- › Adequate information is given to all parties;
- › Respondents are given a reasonable opportunity to state their views; and
- › The process reflects an intermediate situation involving meaningful discussion.

Similarly, proper engagement must not be:

- › Treated as a mere formality;
- › Entered into with closed minds; or
- › An opportunity to make demands

In summary, the engagement process is to be underlain by fairness, as a basic principle.

### 4.2 Why engage?

The Māori world view can be very beneficial for an exploration or mining operator working in New Zealand. Iwi can often recognise pitfalls or gaps in thinking and put forward otherwise unforeseen issues or opportunities.

Iwi will always have a strong presence in their communities and often their knowledge 'on the ground' is second to none. This 'on the ground' knowledge, that can help a company decide how to consult or where to invest, is the kind of knowledge that only comes as a result of being present in a community for hundreds of years with the intention of being present for thousands of years to come.

Engaging with iwi will often lead to an improved reputation for a company in the eyes of the overall community.

Early feedback from iwi may help influence a company's technical reports or management plans.

**The following list of principles should always guide a company seeking to engage with iwi:**

#### **Kaitiakitanga:**

The environmental, spiritual and cultural guardianship role of iwi and the commitment of an operator to conduct environmentally sustainable operations.

#### **Wairuatanga:**

Encouragement and promotion of the spiritual identity with the land, sea and air, supporting a unified and holistic approach.

#### **Whakamana i te Tangata:**

Respect. Show respect by understanding and supporting Māori tikanga and kawa, including any regional differences.

#### **Whakapapa:**

Kinship. Connections are important. When you meet, find out where people come from, be clear about who you represent, and acknowledge any connections you have.

#### **Rangatiratanga:**

Recognition of the mana of the iwi.

#### **Mana ki te Mana:**

"Chief to Chief". Dedicate staff to engagement that are of a similar status to those being engaged with.

#### **Kanohi ki te kanohi:**

Face-to-face. Where possible, engage in person, not just by letter or email.

#### **Manaakitanga:**

Mutual respect. Work together with fairness and integrity.

#### **Kotahitanga:**

Unity. While people may hold diverse views, it is important to identify a shared sense of purpose that contributes to positive outcomes for all.

#### **Ōhangatanga:**

The recognition of both parties goal to significantly improve their current economic positions.

## 5. GENERAL PROTOCOLS

Below are general protocols the Guidelines recommend operators to adopt when undertaking engagement with Māori.

### 5.1 Begin talking as early as possible

The participation of iwi should not be an afterthought. The importance of establishing a positive relationship between an operator and iwi cannot be emphasised enough. This should be irrespective of the operator's success with tenders, work permits or consents. Iwi expect engagement to be an ongoing process rather than a one-time 'tick the box' approval. An effective tool in achieving this type of process is early engagement.

Early engagement and discussions with iwi will not only help build a better understanding and make subsequent debate better informed but it will also allow iwi to anticipate, amongst other matters, how they will manage communications 'on the ground.'

### 5.2 What if I can't get started?

There will be occasions where operators come across affected iwi who are not interested in engaging. For example, the affected iwi may share a view or policy that opposes the type of development being proposed or they may simply have other priorities.

**Where iwi are not interested in undertaking engagement it is recommended that the following approach is adopted by the operator:**

- › Keep an 'open door policy' as there may be a stage where iwi want to start talking. This means showing a willingness to undertake engagement at any stage of the project. If iwi choose to approach an operator it is likely it will not be by a low level representative. The operator should always be prepared for this whereby iwi can access senior executives without going through several gatekeepers or layers of bureaucracy.

- › Operators should always acknowledge the mana whenua that iwi hold over their rohe (tribal area) and respect the difference in values, views and priority held between iwi and a company.
- › While iwi may not be interested in undertaking full engagement with operators, an operator should attempt to establish a contact within iwi whereby information can still be communicated to iwi about the operator's ongoing work plan within their rohe. Iwi views are dynamic and always changing, therefore having some level of contact with iwi will also enable a company to regularly go back and gauge if there is a change in position.
- › Apply the principles of engagement outlined in the Principles section when communicating with iwi.
- › Respond to iwi concerns with adequate and detailed information. Do not patronise iwi by providing sub-standard or watered down information. A list of information that iwi may request from companies is attached as **Appendix 1**.

### 5.3 Ensure you are speaking to the right people

Determining the appropriate iwi to engage with can be a difficult exercise and considerably harder where iwi boundaries overlap or the activity is of large scale (e.g. offshore or on a national scale).

However, it is important that, when undertaking engagement, the operator is:

- a. Speaking with the right iwi, hapū or whānau; and
- b. Speaking to the right people of that iwi, hapū or whānau.

The right people will have a clear mandate to speak and make decisions on behalf of the iwi and usually exist in the form of an entity or committee.

That said, there may be circumstances in which there is no clear, mandated authority. There may also be competing claims to engagement over a project where rohe overlap or internal disagreement between hapū exists. This may be particularly relevant to the EEZ, where iwi relationships with the area may be far from certain. In such circumstances, the operator should not be required to determine who holds the mandate, noting the importance of any engagement being as open and transparent as possible.

## 5.4 How to find the right people

There are a number of avenues an operator can use to ensure they are engaging with the right people.

### New Zealand Petroleum and Minerals (NZP&M)

NZP&M is a branch of the Ministry of Business, Innovation and Employment. NZP&M is responsible for managing New Zealand's Crown Mineral Estate which includes oil, gas, mineral and coal resources. NZP&M may be able to assist with finding the correct iwi/entity/committee. Contact details for NZP&M can be found on their website: [www.nzpam.govt.nz](http://www.nzpam.govt.nz)

### Te Puni Kōkiri has developed a useful tool called Te Kāhui Māngai:

Te Puni Kōkiri is the Ministry of Māori Development.

Te Kāhui Māngai is a directory of iwi and Māori organisations. The directory can be found on this website: [www.tkm.govt.nz](http://www.tkm.govt.nz)

### The Iwi Chairs Forum – Oil and Minerals:

Contact details can be found on this website: [www.iwichairs.maori.nz/Kaupapa/](http://www.iwichairs.maori.nz/Kaupapa/)

### Conduct your own research and utilise your contacts.

Research may help you to find contacts that are not readily available and there may be instances where an operator is already in discussions with iwi who can advise on the right people to contact within another iwi.

### Map of iwi boundaries

A map of New Zealand with the names of iwi and an indication of where their boundaries lie can be found at [www.tkm.govt.nz](http://www.tkm.govt.nz). It is not always clear who the appropriate iwi is to engage with as Māori dynamics are continually evolving. This can often be further complicated by matters outside of an operator's control such as iwi restructuring, internal politics or capacity. An operator should therefore be flexible in its approach to engagement and be particularly mindful where iwi, hapū or whānau share common areas of interest.

Operators that have built strong, enduring relationships and are esteemed by iwi often provide detailed company information well in advance of the work being undertaken. This information includes:

#### Work Programmes

#### Health, safety and environmental credentials

#### Emergency Response Plans\*

#### Detailed technical information including drilling mud componentry

\*A best practice example of an Emergency Response Plan that incorporates iwi is attached as Appendix 2

## 5.5 Provide as much information as possible

In order to ensure full engagement, it is suggested that operators should provide as much information as possible to the relevant iwi authority/hapū/whānau. This will allow for a thorough investigation of any Māori interests in the operation, and prevent problems arising later in the consenting or permitting process. In the mining and petroleum contexts, the information listed in **Appendix 1** of the Guidelines would provide considerable knowledge on which frank and open discussion can be had around any potential conflicts.



## 6. ENGAGEMENT

### 6.1 Designing the engagement process

STEP 1:

**AGREE TO MUTUAL OBJECTIVES, OUTCOMES AND PROCESSES**

STEP 2:

**ESTABLISH TIMEFRAMES**

STEP 3:

**ANTICIPATE RESOURCES AND SUPPORT REQUIRED**

STEP 4:

**IDENTIFY POTENTIAL RISKS**

STEP 5:

**EXECUTE THE ENGAGEMENT PROCESS**

STEP 6:

**DOCUMENT ALL ENGAGEMENT RECORDS AND CORRESPONDENCE**

STEP 7:

**IDENTIFY THE CULTURAL ISSUES AND MITIGATION MEASURES**

STEP 8:

**IMPLEMENT THE DECISION(S)**

STEP 9:

**IDENTIFY THE CULTURAL ISSUES AND MITIGATION MEASURES**

Once initial contact has been made with the relevant iwi it is recommended the parties work together on a collaborative design that outlines what future and ongoing engagement will look like.

It is encouraged that operators adopt a framework that views engagement as a multi-layered and ongoing process rather than a one-time 'tick the box' approval.

The level of formality for engagement will depend largely on the nature, magnitude and potential impacts of the project (see diagram 3). There is no 'one size fits all' approach; however at the very least the parties should agree to mutual objectives, outcomes and processes that respect and accommodate tikanga Māori while at the same time ensuring a company's time is being used efficiently.

Having input from both the operator and iwi at the planning stage should also enable time frames to be realistic as the parties should have a fair idea of what is capable of being achieved and by when.

Some iwi organisations have dedicated environment units who provide technical and policy advice, while other iwi will require more assistance in terms of achieving the planned outcomes for engagement.

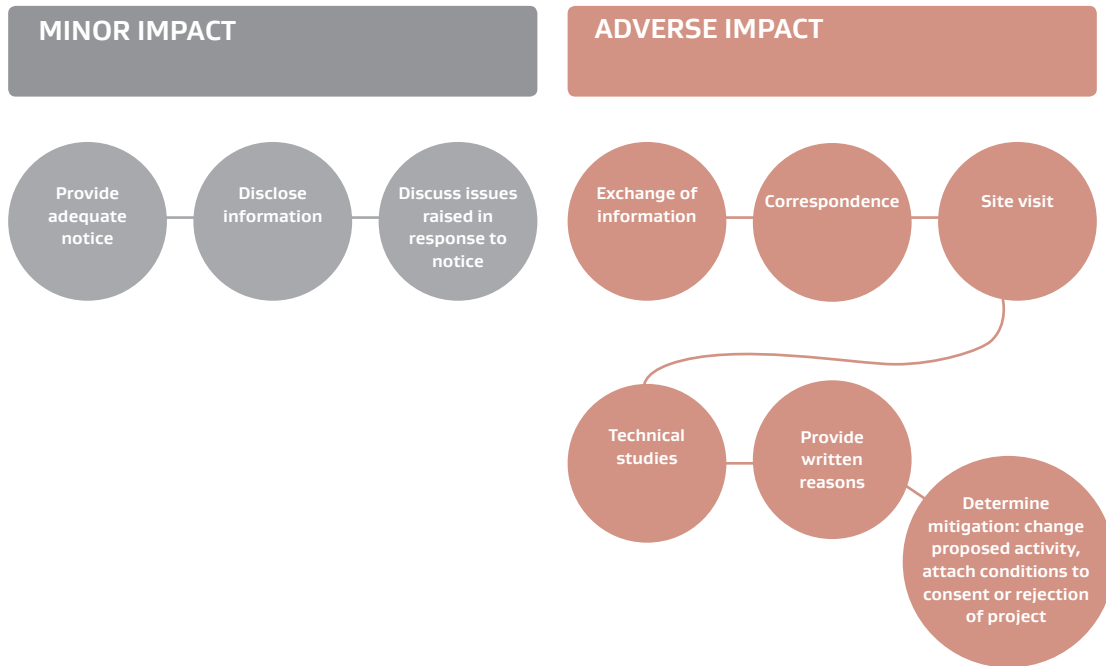
**Note:** Since 1975 Māori have brought claims to the Waitangi Tribunal relating to actions or omissions of the Crown that breached the promises made in the Treaty of Waitangi.

This consequently affects who operators need to engage with.

Iwi who are post settlement will have a clear mandated iwi authority that will often have dedicated resources to deal with engagement (e.g. policy advisers or environment units). Tangata whenua who have not settled their claims may, at times, default decision making to hapū level.



Diagram 3: The engagement continuum



**Further considerations**

When planning the engagement process both parties should therefore consider:

- › What existing organisation, financial, training and cultural resources do the parties have access to, to achieve the agreed outputs? Is there a gap in resources and how will this be filled?
- › Where will regular meetings and large-scale meetings take place?
- › Who will manage the engagement process on behalf of the company and on behalf of affected iwi?
- › How often will company staff and iwi representatives meet? Is there a need for upper tier management and governance to meet regularly?
- › When is it appropriate to conduct a visit to the site proposed for development?
- › Can parties provide support for each other? What will this look like?

The increasing economic base of iwi will continue to change the way iwi can engage with operators in the future. For foreign operators choosing to embark on a project that takes advantage not only of the natural and physical but also spiritual and cultural assets within an iwi rohe, it is recommended practice that the operator identifies opportunities to assist iwi at the early and planning stages of engagement.

An important aspect of effective engagement is relationship-building. In achieving a successful relationship it is essential that both parties recognise the need to foster respect and trust at all levels of operation.

Therefore, when planning the engagement process both parties should identify opportunities where governance, management and operations staff can regularly meet to discuss what is working for the parties, what is not working and how the parties can best facilitate the relationship going forward.



The following is a list of capacity areas for which support has been provided to iwi in the context of engagement processes with companies in the past:

- › information-sharing;
- › technical workshops;
- › meeting facilitations;
- › travel costs;
- › independent expert advice and professional fees (cultural, technical and legal);
- › analysis and reporting related to potential impacts on iwi and related interests;
- › communications and printing;
- › research and development; and
- › administrative fees.

In the final step of designing the engagement process the parties should identify the potential risks that may be involved with implementing the process that has been agreed to.

There may be commonplace risks that are almost inevitable. For example, the risk that a team member becomes sick for part of the process. There may also be some unlikely but high impact risks; for example, new information comes to light that forces the operator or iwi to completely disengage.

It is recommended that the parties only focus on immediate risks rather than making the spectrum for consideration of risks too broad. By identifying the immediate risks the parties will be in a better position to deal with the risk if it occurs as well as determine whether action can be taken now to reduce or avoid the risk completely.





Diagram 4: An engagement process example

Objective/task name	Start date	End date	Assigned to	Resources	Risk	Comments
e.g Initial hui with relevant iwi/ hapū members.  (introduce applicant, outline project and gauge initial response from attendees).	10/07/13	10/07/13	Both parties	Marae	Low attendance	Offset potential risk of low attendance by publicly notifying meeting in newspaper 2 weeks ahead of meeting.
Applicant to provide baseline studies/ technical reports and Assessment of Environmental Effects (AEE) to iwi.						
Iwi technical team to assess AEE/ baseline studies/ technical reports.						
Iwi technical team to discuss assessment with relevant iwi/ hapū members  (Separate from applicant).						
Site visit  (Opportunity to identify waahi tapu and other cultural indicators).						
Follow up hui  (Opportunity for iwi to report any issues that have been identified and discuss potential mitigation measures).						
Cultural Impact Assessment/report/ letter from iwi.  (A formal reply from iwi that addresses the potential impacts of the activity on iwi cultural values, interests and associations with the affected site).						
Ongoing relationship management.  (This recognises the potential long-term life cycle of oil, gas and mineral development).						

## 6.2 Implementing engagement

Once the parties have agreed to a process for engagement the next step is to execute the agreement.

It is likely that this point of engagement will be demanding on both parties due to the pressure of expected outputs, timeframes and, at times, stretched resources. Prior planning should alleviate some of the pressure and stress involved throughout the process.

**'When emotions start running high remember the Guidelines' principles of engagement, on page 9.'**

Throughout the engagement process it is encouraged that all parties also keep a record system that documents all meetings and correspondence they enter into. An effective record keeping system will provide the parties with a reliable referencing tool and serve a number of purposes including clarity and direction.

### Manage issues as soon as they arise

There may be instances where the process is not working for the parties. Managing issues as soon as they arise ensures that evaluation is occurring constantly throughout, rather than just at the very end of, the engagement process. This is particularly important when an issue has the potential to escalate and cause parties to disengage from the process.

### Adjust the process as necessary

The parties should always adopt an attitude towards engagement that allows for flexibility to adjust the process as necessary.

## 6.3 Mitigation

As a result of implementing the engagement process, the relevant iwi will reach a stage where they can communicate the cultural issues that arise from the operator's project and proposed activities. At this stage the parties should meet *kanohi ki te kanohi* or face-to-face to discuss the issues and how they may be accommodated.

The Māori world view is holistic so be prepared to consider issues that may be outside the operator's immediate focus.



Once iwi identify cultural issues and discuss the potential mitigations with the company, this should enable the project to move forward.

Ideally the parties will reach an agreement that enables iwi to exit the process prior to the operator lodging an application for consent with the relevant decision maker. However this will depend on whether the operator can address cultural issues to a standard that is satisfactory to iwi.

Alternatively, iwi may wish to stay involved in the formal process to see whether they can achieve specific conditions for consent or, in rare cases, continue to oppose the proposed activity. In either case, it will be clear to the company at this stage where iwi see themselves involved in the formal process for consent.

It is important to note that iwi involvement does not stop at the conclusion of the consenting phase.

**Iwi now expect engagement to be a multi-layered and ongoing process rather than a one-time 'tick the box' approval.**

This means iwi place a heavy emphasis on their continued involvement both throughout and to the conclusion of the activity to ensure their interests are adequately protected.

#### The difference between onshore and offshore activities

Iwi are likely to use different approaches to engagement depending on where the proposed activity is taking place. Where an activity is proposed onshore iwi are often in an easier position to monitor the activity throughout its different stages of development. Offshore activities are likely to be more technical in nature and location therefore wider considerations will need to be given including how site visits will be conducted or whether there is a need for the operator to provide regular updates to iwi.

## Diagram 5: Potential issues and mitigation measures

### ISSUES

#### Iwi may identify issues with an activity relating to the potential or likely impact on:

- › The land, water and resources;
- › ecosystems including mahinga kai (customary food source); mātauranga Māori (traditional knowledge); wāhi tapu (sites that have a particular significance to iwi);
- › The mauri (life force) of a place, time and environment;
- › Māori health and wellbeing;
- › Māori social and economic aspirations; and
- › Taonga species (treasured or native species).

More specific examples where iwi have raised issues with the oil and gas industry include:

- › Seabed or land disturbance associated with rig establishment and drilling;
- › Discharge of drilling cuttings and waste;
- › Physical presence of drilling rigs;
- › Noise and light disturbance to biodiversity and wildlife;
- › Impact of accidental events;
- › Removal of structures;
- › Rehabilitation of land, sea and bionetworks.

## MITIGATION

### Mitigation measures that have been adopted by applicants in the past include:

- › Following accidental discovery protocols that respect iwi's interests;
- › Allowing the presence of tribal monitors throughout the applicant's operations;
- › Site blessings;
- › Emergency procedures that include iwi as a first point of contact;
- › Monitoring programmes that incorporate cultural health indicators;
- › Providing iwi with relevant technical reports including the composition of drilling muds prior to drilling and prior to disposal (via injection to formation through casing annulus, land farming, bio-remediation, incineration and solidification);
- › Providing iwi with a copy of any and all monitoring conducted in relation to the applicant's activities;
- › Ecological surveys of the affected and surrounding site;
- › Education opportunities including scholarships and hosting technical workshops;
- › Funding iwi projects; and
- › Long-term relationship agreements.

## 6.4 Evaluation

At the conclusion of the engagement process it is important that time is set aside to evaluate what worked and what didn't for the parties throughout the engagement process.

Undertaking an evaluation not only allows the parties to assess the strengths and weaknesses of the engagement process but will also provide the parties with an insight into whether the process made a difference in managing relationships, achieving objectives, project efficiency and more.

When evaluating the engagement process both parties should consider the following questions:

- › Were all the relevant parties properly identified and appropriately involved?
- › Were the goals, objectives and outcomes met and achieved in the planned time frame?
- › Were roles and responsibilities in the process appropriate and understood?
- › Was the engagement process meaningful and flexible?
- › Did the engagement process reflect the nature, scope and complexity of the intended project, activity or decision?
- › Was the engagement process well documented in an official record system and was the information generated during the process easily accessible?
- › Were concerns raised by the relevant iwi adequately addressed? Have any concerns been overlooked?
- › Was the response to issues raised by iwi meaningful and was the operator's response communicated effectively? Is there any sense of lack of clarity or avoidance in the response? Were any concerns raised by the iwi's about the response?
- › Was a third party involved? Who was it and what was their role? Did they address iwi's concerns?
- › Were recommendations made by either party involved in the process for future engagement?
- › Have there been face-to-face meetings and, if not, were they necessary? Did the relevant iwi request such meetings? If so, what was the response?
- › How were issues of capacity addressed? Was it through monetary or non-monetary means or both?
- › Was funding available from the operator to support capacity? Is a funding agreement in place? Were other parties contributing to support capacity? Were final and financial reports provided in relation to transfer payments? Have transfer payments contributed to consultation objectives?

## 7. SPECIFIC INSTRUMENTS

This section looks at specific instruments that have been adopted successfully by operators and iwi in the past for the purposes of engaging over petroleum and minerals activities.

### Cultural Impact Assessments

A Cultural Impact Assessment (CIA) is a report documenting Māori cultural values, interests and associations with an area or a resource, and the potential impacts of a proposed activity on these.

CIA's are a tool to facilitate meaningful and effective participation of iwi in impact assessment. A CIA should be regarded as technical advice and just like any other technical report a CIA informs the decision maker when considering a company's application.

An effective CIA will not only look at the cultural impacts of an activity at the time of application but further act as a tool for supporting the on going process and relationship between the operator and the affected iwi.

There is not a statutory obligation on a company to produce a CIA, however, where there is any potential for impact on iwi, including their environment and culture, a CIA is best practice.

A CIA also assists iwi in often what is their priority to better understand the activity, how the activity will impact on ties to their traditional land and resources, then investigate possible opportunities for mitigation.

A CIA template is attached in **Appendix 3**.



## Agreements

### Resourcing agreements

After determining the level of iwi input required, it may be necessary to solidify resourcing requirements by way of a formal agreement.

A resourcing agreement can set out deliverables, time frames for delivery, support requirements and fees for each deliverable. The agreement can also set out meeting fee rates, dates and protocols.

### Confidentiality agreements

There will be instances where information exchanged between the parties is confidential or commercially sensitive in nature.

In these types of cases it is recommended practice that parties enter into a confidentiality agreement.

While it is expected that the parties intend to engage with each other based upon the principles outlined in this Guideline, a confidentiality agreement can sit as a backstop for any arrangement between the parties. A confidentiality agreement template is attached as **Appendix 4**.

### Relationship agreements

A relationship agreement records the nature of the relationship between an operator and iwi and enables the parties to mutually benefit from the positive influences that each brings to that relationship.

Relationship agreements can be likened to a Memorandum of Understanding in that it expresses a convergence of will between the parties. It is often used in cases where parties do not imply a legal commitment but rather see this method as a formal alternative to a 'gentlemen's agreement'.

There is no specific format that parties have to follow when drafting a relationship agreement as the benefit to these types of agreements is that they are specifically tailored to how both iwi and the operator view what are the important components that make up their relationship.

It is expected relationship agreements will become a common occurrence between the oil and minerals industry and iwi in the future as iwi push for operators to focus on long term involvement.

**There are numerous benefits that can result from relationship agreements for both parties including:**

- › partnership;
- › the promotion of the activities and prosperity of the company while developing a sustaining and prosperous environment for iwi;
- › positive participation and involvement of iwi;
- › social licensing opportunities that promote the company's contribution to positive cultural, economic and social outcomes for the development of iwi and its communities;
- › reducing exposure to disputes;
- › certainty;
- › potential access to local labour;
- › recognition of mana whenua/mana moana; and
- › relationships are defined and secured.

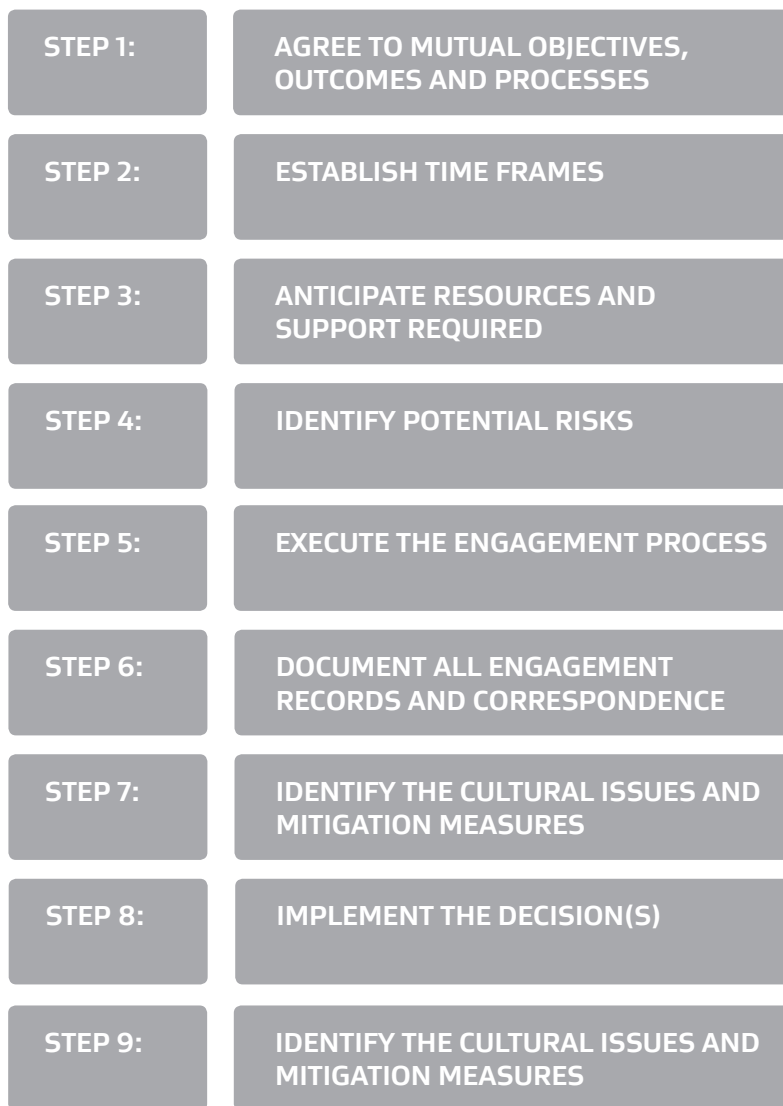
**Common components of a relationship agreement include:**

- › Clear protocols for engagement including shared information in respect to the company's permitting and consenting activities;
- › Distinct avenues for communication that encourages input from iwi in terms of relevant cultural and tikanga advice;
- › Explored opportunities for social licensing.

When used correctly the instruments in this section should help the parties to develop their own concept of social licence.

**DIAGRAM 6: Overview of best practice approach for engagement with Māori**

Iwi expect engagement to be a multi layered and ongoing process rather than a one-time 'tick the box' approval.



**Principles**

- › Kaitiakitanga
- › Rangatiratanga
- › Ōhangatanga
- › Kanohi Ki Te Kanohi

**General protocols**

- › Engage early
- › Adopt an open door policy
- › Ensure you are speaking with the right people

**Instruments**

- › CIA
- › Resourcing agreement
- › Confidentiality agreement
- › Relationship agreement

## 8. GLOSSARY

TERM	DEFINITION
Activity/Project/Proposal	Work that the applicant is seeking to undertake and obtain approval for.
AEE	Assessment of Environmental Effects
Aotearoa	New Zealand
Application	An application to the decision maker for consent.
Block Offer	New approach to allocating petroleum exploration rights in New Zealand. This approach uses the competitive Block Offer method for the allocation of petroleum exploration rights as opposed to the first-in first-served or “priority in time” method.
CMA	Crown Minerals Act 1991.
Consents	A consent that can be made under: <ul style="list-style-type: none"> <li>• HSNO</li> <li>• HSE</li> <li>• EEZ</li> <li>• RMA</li> <li>• and other relevant legislation</li> </ul>
CSA	Continental Shelf Act 1964
Cultural Impact Assessment (CIA)	A report documenting Māori cultural values, interests and associations with an area or a resource, and the potential impact of proposed activity on these.
EEZ	Exclusive Economic Zone Act and Continental Shelf (Environmental Effects) Act 2012.
Hapū	Sub-tribe
HSE	Health and Safety in Employment Act 1992
HSNO	Hazardous Substances and New Organisms Act 1996
Impact	Effect.
Industry	Organisations that make applications under: <ul style="list-style-type: none"> <li>• HSNO</li> <li>• HSE</li> <li>• EEZ</li> <li>• RMA</li> <li>• CMA</li> </ul>
Iwi	The largest political grouping in Māori society is the iwi (tribe). Iwi usually consist of several related hapū (sub-tribes) and take their name from a founding ancestor
Kaitiakitanga	Guardianship/Stewardship – the responsibility of Māori to act as caretakers (often used in the context of the environment).
Kanohi ki te Kanohi	Face-to-face.
Mahinga Kai	Customary food source or practice.
Mana	Authority/honour



TERM	DEFINITION
<b>Mana Moana</b>	The exercise of traditional authority where iwi, hapū or whānau claim historical and contemporary interests over an area of water.
<b>Mana Whenua</b>	The exercise of traditional authority where iwi, hapū or whānau claim historical and contemporary interests over an area of land.
<b>Manaakitanga</b>	Hospitality/kindness/mutual respect.
<b>Mātauranga Māori</b>	Traditional knowledge.
<b>Mauri</b>	Life force.
<b>MBIE</b>	Ministry of Business, Innovation and Employment.
<b>NZP&amp;M</b>	New Zealand Petroleum and Minerals. Division within MBIE that is responsible for managing New Zealand's Crown Mineral Estate.
<b>Permits</b>	A permit is permission granted by the Crown to prospect for, explore for or mine Crown owned minerals in a defined area. NZP&M is responsible for administering the permits under the CMA.
<b>Rangatiratanga</b>	Sovereignty/Self-Determination/Chieftainship/Right to exercise authority.
<b>RMA</b>	Resource Management Act 1991.
<b>Rohe</b>	A tribal district; the area of which iwi and hapū claim mana whenua
<b>Tangata Whenua</b>	Indigenous people.
<b>Taonga</b>	Objects that are of special significance to Māori.
<b>Te Puni Kōkiri</b>	The Ministry of Māori Development.
<b>Tikanga Māori</b>	Māori custom and traditions.
<b>Tiriti o Waitangi</b>	The Māori text of the Treaty of Waitangi. The translation of the Māori text, when compared with the English version, shows several crucial differences of meaning especially in the first and second article.
<b>Treaty of Waitangi</b>	A treaty signed in 1840 by the British Crown and some Māori chiefs. Often referred to as the founding document of New Zealand.
<b>Treaty of Waitangi Act 1975</b>	An Act to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi.
<b>United Nations Declaration on the Rights of Indigenous Peoples 2007</b>	The Declaration sets out the individual and collective rights of indigenous peoples and was adopted by the United Nations General Assembly in 2007. The Declaration has been endorsed by New Zealand and 145 other countries.
<b>Waahi Tapu or Wāhi Tapu</b>	Sacred sites.
<b>Wai 796</b>	The Waitangi Tribunal's Report on the Management of the Petroleum Resource.
<b>Waitangi Tribunal</b>	The Waitangi Tribunal was established under the Treaty of Waitangi Act 1975. The Tribunal is a permanent commission of inquiry charged with making recommendations on claims brought by Māori relating to actions or omissions that breach the promises made in the Treaty of Waitangi.
<b>Whakapapa</b>	Genealogy.
<b>Whānau</b>	Family.

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## APPENDIX 1

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### List of information iwi may request from companies

In undertaking engagement, iwi will expect to become well informed about a company's activities. In becoming better informed a company should therefore be mindful that iwi are likely to request the following types of information:

- › Work Programme
- › Baseline/Technical Reports
- › Archaeological Report
- › AEE including full attachments and technical reports
- › Sediment Management Plan
- › Storm Water Management Plan
- › Contingency Response Plan
- › Oil Spill Contingency Plan
- › Qualitative Risk Assessment
- › Air Quality Assessment
- › Noise Assessment
- › Traffic Impact Assessment
- › HSE Credentials
- › Work/Compliance History
- › Well work over fluids componentry
- › Water based muds/Synthetic based muds componentry
- › Maps
- › Time frames
- › Ecological Reports
- › Discharge Management Plan
- › Monitoring Records



# APPENDIX 2

Example of an Emergency Response Plan that incorporates iwi.

## CHEAL C WELLSITE SPILL CONTINGENCY PLAN & EMERGENCY MANAGEMENT CHART

**ACTION CHART - INITIAL RESPONSE**

```

        graph TD
            A[Spill Detected] --> B[Stop Work / Evacuate Area]
            B --> C[Containment / Control]
            C --> D[Notify iwi / Māori]
            D --> E[Notify Emergency Services]
            E --> F[Site Clean-up / Remediation]
            F --> G[Post-Incident Review]
            G --> H[Update Plan]
            
```

**SITE PLAN**  
Spill Well

**SITE PLAN**  
Spill Well

**LEGEND**

- Spill Containment Zone
- Spill Response Equipment
- Spill Response Personnel
- Spill Response Vehicle

**REVISIONS**

NO.	DESCRIPTION	DATE
1	Initial Issue	10/01/2014
2	Revised	10/01/2014
3	Revised	10/01/2014
4	Revised	10/01/2014
5	Revised	10/01/2014
6	Revised	10/01/2014
7	Revised	10/01/2014
8	Revised	10/01/2014
9	Revised	10/01/2014
10	Revised	10/01/2014
11	Revised	10/01/2014
12	Revised	10/01/2014
13	Revised	10/01/2014
14	Revised	10/01/2014
15	Revised	10/01/2014
16	Revised	10/01/2014
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43	Revised	10/01/2014
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46	Revised	10/01/2014
47	Revised	10/01/2014
48	Revised	10/01/2014
49	Revised	10/01/2014
50	Revised	10/01/2014

**APPROVED / ISSUED**

DATE: 10/01/2014

BY: [Signature]

FOR: [Signature]

**REVISIONS**

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## APPENDIX 3

### Cultural Impact Assessment Template

The following template may be used by iwi when producing a Cultural Impact Assessment:

#### INTRODUCTION

##### Background

Insert a brief overview of why the Cultural Impact Assessment (CIA) has been commissioned including details of the activity being sought.

##### Objectives

The Objective of a CIA can be summed up as follows:

“This CIA identifies key issues, concerns and comments that (the affected) iwi has over the proposed activities and its subsequent impacts to their relationship with the land or resource. This CIA clearly articulates the cultural and environmental impacts of the application on the iwi and where appropriate, measures to avoid, mitigate or remedy potential identified effects.”

##### Methods

Insert details of what methodology was used to create the CIA (e.g. hui, interviews, workshops etc)

#### STRATEGIC PLANNING FRAMEWORK

Insert the relevant statutes that are important in the application of the CIA. Iwi often identify the relevant legislation for the purposes of providing a foundation for the discussion of Treaty of Waitangi and tangata whenua issues.

#### TANGATA WHENUA: (AFFECTED IWI)

This section talks specifically about the affected iwi and provides the company and decision maker with an insight into their whakapapa and associations with the affected lands, waters and wider environment. Iwi can insert as much or as little detail as they want in this section depending on what they want the company to know.

#### ASSESSMENT OF CULTURAL IMPACTS

This section provides an analysis of the cultural and socio-economic impacts of the proposal on the affected iwi lands, waters and wider environment.

The following sub-headings may assist iwi to speak to each issue under this section-

- › Holistic Paradigm/Te Ao Māori
- › Kaitiakitanga
- › Mātauranga
- › Māori Mahinga Kai
- › Manaakitanga
- › Mauri
- › Whakapapa: Taonga Species

#### TABLE OF CULTURAL IMPACTS

This section tables the impacts associated with the activity and proposed mitigation measures that iwi consider appropriate. For example:

Potential Environmental Impact	Cultural/Socio-Economic Impact	Proposed Mitigation
Noise	Noise can also impact the mauri of the area as the fish species may avoid the area and this means the mauri has been altered. Long term this could affect mahinga kai and customary fishing.	Taonga species inventory to be established. Iwi and applicant to establish sufficient noise protection measures.

## APPENDIX 4

### Confidentiality Agreement Template

#### Confidentiality Agreement

##### INTRODUCTION

Each party proposes to disclose Information in connection with

\_\_\_\_\_ (purpose).

Unauthorised further disclosure or use of the Information could be damaging with respect to the competitive or strategic interests of either party. The parties have agreed to regulate use of the Information on the terms of this schedule, together with any attachment that further describes the Information or the Purpose.

##### TERMS OF USE OF INFORMATION

###### 1. Definitions and interpretation

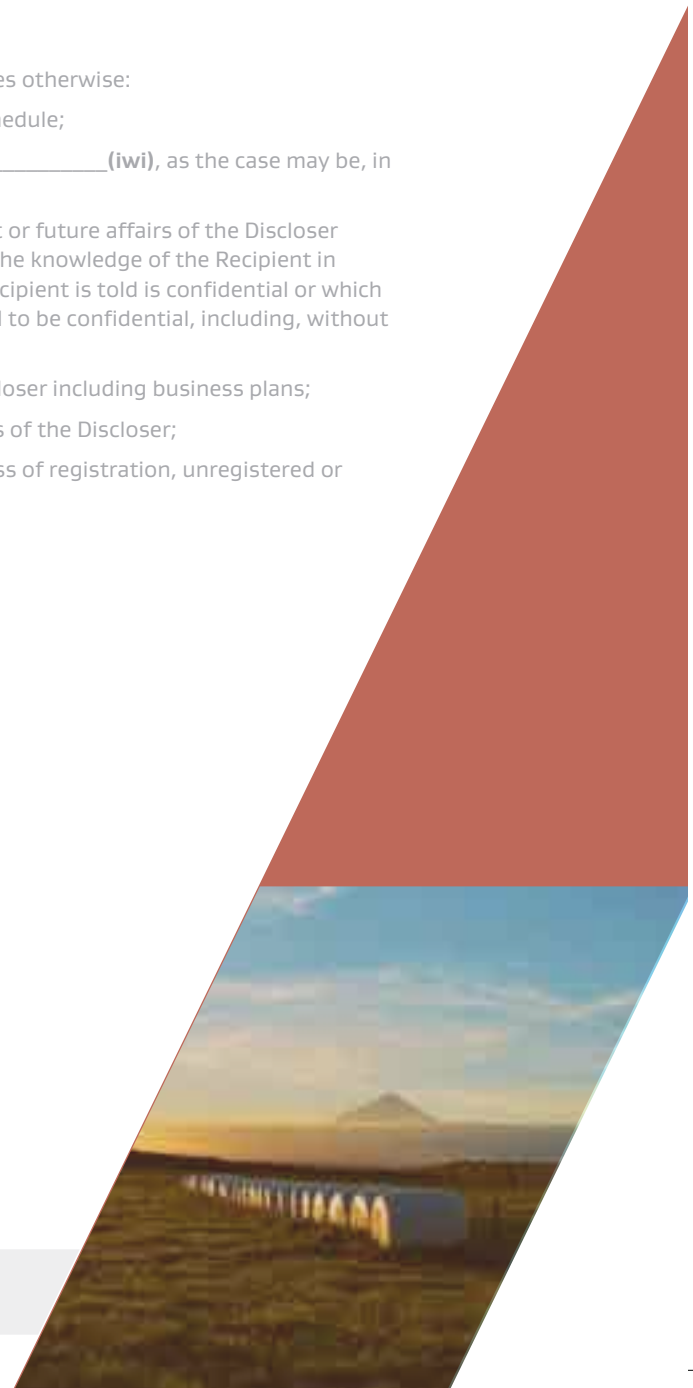
In this Schedule and its Introduction, unless the context requires otherwise:

**Schedule** has the meaning given in the Introduction to this Schedule;

**Discloser** means either \_\_\_\_\_ (**Applicant**) or \_\_\_\_\_ (**iwi**), as the case may be, in its capacity as a discloser of Information to the other;

**Information** means all information relating to the past, current or future affairs of the Discloser which the Recipient is given, has access to, or which comes to the knowledge of the Recipient in connection with the Relationship Agreement, and which the Recipient is told is confidential or which from its nature and content is or would reasonably be expected to be confidential, including, without limitation:

- a. information relating to the business interests of the Discloser including business plans;
- b. information relating to the financial position or prospects of the Discloser;
- c. all intellectual property (whether registered, in the process of registration, unregistered or unregistrable) of the Discloser;
- d. the existence and contents of this Agreement;
- e. draft applications;
- f. opinions including expert opinions;
- g. records;
- h. reports;
- i. drill hole logs;
- j. calculations;
- k. maps, drawings and sketches;
- l. charts;
- m. documents;
- n. summaries;
- o. memoranda;
- p. studies;
- q. analysis; and
- r. other geological, technical or cultural information.



*This does not include information which:*

- s. is or becomes publicly available other than by reason of the Recipient or any third party breaching this Schedule or any other obligations of confidentiality owed by it to the Discloser; or
- t. can be established by written record to have been:
  - i. in the Recipient's possession at the time of disclosure to the Recipient and not acquired (directly or indirectly) from the Discloser, or from any third party in breach of obligations of confidentiality owed by it to the Discloser;
  - ii. received by the Recipient from a third party who is not in breach of obligations of confidentiality owed by it to the Discloser; or
  - iii. independently developed by the Recipient without the use of the Discloser's Information;

**Purpose** has the meaning given to it in the Introduction to this Schedule;

**Recipient** means either \_\_\_\_\_ (**Applicant**) or \_\_\_\_\_ (**iwi**), as the case may be, in its capacity as a receiver of Information under this Schedule, and includes any Related Person of that party; and **Related Person** means, any person that is related to the Recipient and includes any director, officer, employee, agent, subcontractor or contracted adviser of the Recipient or that person.

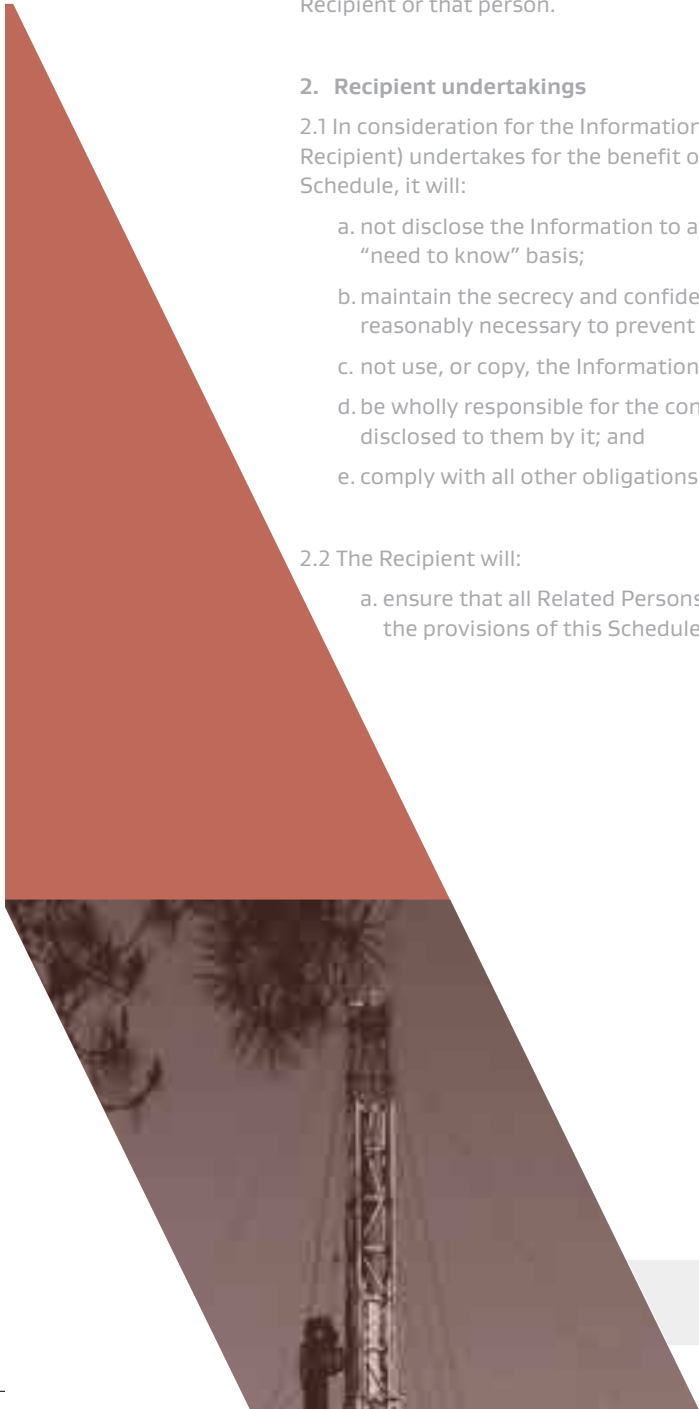
## 2. Recipient undertakings

2.1 In consideration for the Information being made available for the Purpose, each party (as Recipient) undertakes for the benefit of the other party (as Discloser) that, subject to clause 3 of this Schedule, it will:

- a. not disclose the Information to any person other than its Related Persons, and then only on a "need to know" basis;
- b. maintain the secrecy and confidentiality of the Information including taking all action reasonably necessary to prevent any unauthorised person gaining access to it;
- c. not use, or copy, the Information for any purpose other than the Purpose;
- d. be wholly responsible for the conduct of its Related Persons in respect of any Information disclosed to them by it; and
- e. comply with all other obligations of the Recipient set out in this Schedule.

2.2 The Recipient will:

- a. ensure that all Related Persons to whom it discloses Information are aware of and observe the provisions of this Schedule as if they were a party to it.



### 3. Disclosure required by law

If the Recipient or one of its Related Persons is required by any applicable law, court or authority, or by any applicable stock exchange listing rules, to disclose Information to any person, it will:

- a. give the Discloser prompt written notice of the disclosure, where practicable before it occurs, so that the Discloser has sufficient opportunity to prevent the disclosure through appropriate legal means;
- b. disclose only that part of the Information which the Recipient's legal advisers consider is legally required to be disclosed; and
- c. use all reasonable endeavours to obtain an assurance that the Information disclosed will be treated confidentially by the recipient.

### 4. Intellectual property

Neither this Schedule nor the transfer of information under it is to be construed as granting to a Recipient any right, licence, ownership or interest in all or any part of the Information disclosed.

### 5. Return of information

When the Relationship Agreement comes to an end, or otherwise upon receipt of a written request from the Discloser, the Recipient will promptly return to the Discloser or destroy (as the Discloser may require) all the Information (including any copies of the Information) in the possession or control of the Recipient, together with all information and documentation in any way relating to the Information, and confirm in writing that it has done so, provided that a Recipient is not required to return or destroy:

- a. its board papers, minutes of its board (or of a committee of its board) which refer to or contain Information, provided that it keeps such Information secure and makes it available solely for internal governance and audit purposes; or
- b. documents that are created or retained by any adviser of the Recipient where those documents are required to be held by law or for the purposes of compliance with any professional standards or insurance policies applicable to the adviser.



## 6. Breach

6.1 The Recipient acknowledges that a breach of this Schedule will cause serious and irreparable harm to the Discloser and, in the event of any threatened, apparent or actual breach of this Relationship Agreement, the Discloser may seek immediate injunctive relief.

6.2 If a Recipient or any person to whom it has disclosed any Information breaches any term of this Schedule, the Recipient will indemnify the Discloser against all damages, losses, costs, and expenses (including reasonable legal fees and costs) suffered by the Discloser.

6.3 If there is a breach of the terms of this Schedule by the Recipient or by any person to whom the Recipient has made any of the Information available, the Discloser may seek equitable relief in addition to damages. In any proceeding brought by the Discloser seeking equitable relief for a breach of this Schedule, neither the Recipient nor any person directly or indirectly under its direction or control may claim that the breach is one which may not or ought not be the subject of equitable relief.

## 7. Construction

7.1 In this Schedule, unless the context otherwise requires:

- a. the singular includes the plural and vice versa; and
- b. a reference to:
  - i. a clause or party is a reference to a clause of, and a party to, this Schedule;
  - ii. legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
  - iii. conduct includes an omission, act, statement and undertaking, whether or not in writing;
  - iv. “including” means “including but not limited to” and “include” and “includes” have corresponding meanings;
  - v. a person includes a partnership and also a body of persons, whether corporate or unincorporated; and
  - vi. either party includes that party’s successors and legal personal representatives.

7.2 Where any provision of this Schedule is expressed to be for the benefit of any person other than a party, such provision is intended to confer a benefit on such person, enforceable at the suit of that person, in terms of the Contracts (Privity) Act 1982.

7.3 The obligations in this Schedule are considered reasonable by the parties and necessary for the protection of a Discloser’s legitimate interests in the Information. If any of the obligations are found to be void or voidable but would be valid and enforceable if some part or parts were deleted or amended, they will apply with such modifications as may be necessary to make them valid and enforceable. If such modification is not possible then the relevant provisions are to be severed from this Schedule, without affecting the enforceability, legality or validity of any other provision of this Schedule.

7.4 This Schedule will not be deemed to create a partnership, joint venture or agency relationship of any kind.





**8. General**

8.1 This Schedule:

- a. contains the entire understanding between the parties, superseding all prior or contemporaneous communications, agreements, and understandings between the parties, with respect to the disclosure and protection of Information in connection with the Relationship Agreement;
- b. applies with respect to all Information received by the Recipient in connection with the Relationship Agreement, whether received prior to or after the date of this Schedule; and
- c. takes precedence over any specific legends or statements associated with any Information when received.

8.2 This Schedule does not:

- a. create any obligation upon either party to disclose any Information to any person; or
- b. impose any obligation on either party in relation to the carrying out of the Relationship Agreement, or to enter into any further agreements.

8.3 No failure to exercise or delay in exercising any right, remedy or power under this Schedule, and no failure to insist on strict compliance with any obligation under this Schedule, will constitute a waiver of the right to demand compliance.

8.4 Except to the extent otherwise agreed by the parties in writing, the obligations set out in this Schedule are ongoing and will survive completion or termination of the Relationship Agreement.

8.5 This Schedule is governed by and is to be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the New Zealand courts in all matters relating to this Schedule.

SIGNED for and on behalf of	SIGNED for and on behalf of
_____ (Organisation)	_____ (iwi)
By _____	By _____
Position _____	Position _____
Date _____	Date _____







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