

Protected Objects Act 1975

Guidelines for Taonga Tūturu

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WHAT THE GUIDELINES COVER

These guidelines explain how sections 11 to 16 of the Protected Objects Act 1975 are applied operationally. Specifically they deal with the registration of privately owned taonga tūturu for sale by licenced dealers and auctioneers, and the registration of newly found taonga tūturu by public museums and other notifying bodies.

The guidelines are also designed to provide some guidance as to the current approach by the Ministry to particular parts of the legislation. These guidelines are not intended to replace legal advice.

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ADMINISTERING BODY

The Ministry for Culture and Heritage (the “Ministry”) is responsible for administering the Protected Objects Act 1975 (the “Act”).

If you have any questions or issues regarding taonga tūturu and any other matters in these Guidelines, contact the Heritage Operations Unit of the Ministry by:

Phone: (04) 499 4229

Email: protected-objects@mch.govt.nz

Fax: (04) 499 4490

Web: www.protected-objects.govt.nz

OUTLINE OF THE PROTECTED OBJECTS ACT

A copy of the Act can be found in the “Statutes” section of www.legislation.govt.nz.

Purpose of the Act

The Protected Objects Act 1975 has several purposes. The areas most relevant to taonga tūturu are that it:

- establishes and records the ownership of taonga tūturu;
- controls their sale within New Zealand; and
- regulates their export from New Zealand.

Summary of what the Act covers

The Act is divided into the following sections:

| | |
|--------------------|--|
| Sections 1-3 | Purpose and Interpretation of the Act |
| Section 4 | The Minister may acquire protected New Zealand objects |
| Sections 5-10 | Export Regulations for protected New Zealand objects and protected Foreign objects |
| Sections 11-16, 18 | Ownership, Trade and Recording of Taonga Tūturu |
| Section 17 | Disclosure of Information |
| Section 18 A | Wilful damage |
| Sections 19-22 | Technical Provisions |
| Schedule 1 | Authorised Public Museums |
| Schedule 2 | UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property |
| Schedule 3 | UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects |
| Schedule 4 | Categories of protected New Zealand objects |

Legal Definitions

Taonga tūturu is one of nine categories of protected New Zealand objects defined in the Act. The Act regulates the export of all categories of protected New Zealand objects but taonga tūturu is the only category of objects to have separate regulations regarding ownership and trade.

Taonga tūturu is defined in section 2 of the Protected Objects Act. It replaces the term *artifact* that was defined in section 2 of the Antiquities Act.

The legal definitions are:

- **Taonga tūturu** 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**
- Under the Antiquities Act 1975, **artifact** meant any – chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Māori or other pre-European inhabitants of New Zealand and which was or appears to have been manufactured or modified in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor of any such inhabitant, or used by any such inhabitant, **prior to 1902**.
- **Found**, as defined in section 2 of the Protected Objects Act, means that the taonga tūturu was discovered or obtained in circumstances that do not indicate with reasonable certainty who has ownership of it and the last owner was not alive when it was found.

Taonga Tūturu and Artifacts

Prior to the Protected Objects Act, the Antiquities Act 1975 regulated the ownership, recording and trade of *artifacts* (see definition above).

With the commencement of the Protected Objects Act, *artifacts* became known as *taonga tūturu*. Additionally, with the expanded definition above, a number of other objects also became known as *taonga tūturu*.

Artifact is still used in this document to recognise the repealed requirements of the Antiquities Act 1975.

Retrospective Powers

It is important to note that the Protected Object Act **does not allow for** those objects found between 1 April 1976 and 1 November 2006 that did not meet the definition of *artifact* to be **retrospectively defined** as Crown owned *taonga tūturu* (Crown owned is explained on page 5). For example:

- A tekoteko known to be made in 1931 that was found in 1995 did not meet the definition of *artifact* when it was found. It is not a Crown owned *taonga tūturu* but it is a privately owned taonga tūturu.
- A tekoteko known to be made in 1931 that was found in 2007 meets the definition of *taonga tūturu*. It is *prima facie* Crown owned.
- A tekoteko known to be made prior to 1902 and found in 1995 met the definition of *artifact* when it was found. It is *prima facie* Crown owned; however, it is now referred to as a *taonga tūturu* rather than an *artifact*.

INTERPRETATION OF DEFINITIONS AND TERMS

Application of the Definition Taonga Tūturu

Taonga tūturu must be recorded and registered within 28 days of being found or prior to their sale by a licenced dealer and auctioneer if they are not already registered.

When **recording and registering an object as *taonga tūturu*** the following should be considered in conjunction with the definition:

- the whakapapa, provenance or history of the object is to be known; or
- it is self evident in the manufacture, design or style or in the manner the object was found (ie. recovered from archaeological site) that it is a Māori object.

If the above information is not known or self evident, then the object should not be registered and is not deemed to be *taonga tūturu*. In coming to the definition *taonga tūturu*, the Māori Reference Committee wanted a term that reflected the importance of objects handed down the generations and found. That is why whakapapa and manufacture are so important to applying the definition.

If you are unsure, please contact the Ministry.

The following points are irrelevant to the registration of the object:

- the condition of the object;
- it is no longer complete or is broken;
- its commonness;
- its monetary value;
- the title of the land on which it was found;
- how it was found (i.e. accidentally or during an archaeological investigation); and
- any protocols and agreements in place that have not complied with the legal requirements of the Protected Objects Act.

What objects could be Taonga Tūturu?

Note: This is by no means a complete or defining list of objects that could be taonga tūturu.

Taonga tūturu could include the following types of objects:

- Toki / Adze
- Wakahuia
- Kaheru / Wooden Spade
- Kakahu / Cloak
- Matau / fishhooks
- Taiaha and patu
- Carved firearms from the New Zealand Wars

There will be a number of objects where the whakapapa, provenance or history of the object will be crucial in determining if the object meets the definition of *taonga tūturu*.

Waste and byproducts of manufacturing such as flakes, shells, ovenstones and other 'scientific material' are not *taonga tūturu* **unless there is evidence that the**

object had a secondary use.¹ For example, a flake or shell would be regarded as a *taonga tūturu* if it was used as a secondary cutting or scraping instrument. However, there could be exceptional circumstances in which scientific material should be notified. The Ministry is happy to discuss these cases with iwi, archaeologists and/or the museum.

Fixed and structural objects do not necessarily come under the Act but once removed from the structure or site objects such as whakairo/carvings are regarded as *taonga tūturu*. Again, there may be instances where further discussion is needed between parties and the Ministry to determine the status of the objects.

Ownership

Sections 11, 12 and 15 of the Act regulate the ownership of *taonga tūturu*. Over the years, two terms had arisen to describe the ownership status of *taonga tūturu* – “privately” owned or “newly found”. “Newly found” usually refers to those *taonga tūturu* found after the commencement of the Act that are still in Crown ownership. Rather than use the term “newly-found”, *taonga tūturu* should be referred to being either **privately owned or Crown owned**.

Under section 11 of the Act, **all *taonga tūturu* found** after the commencement of the Act **are *prima facie*** (legal term for “in the first instance”) the property of the Crown until the **Māori Land Court makes a determination on ownership**.

Found, as defined in section 2 of the Act, means that the *taonga tūturu* was discovered or obtained in circumstances that do not indicate with reasonable certainty who has ownership of it and the last owner was not alive when it was found.

The table below shows which objects come under each of the headings:

| Privately Owned | Crown Owned (newly found) |
|--|---|
| <ul style="list-style-type: none">▪ <i>taonga tūturu</i> in private ownership prior 1 April 1976; or▪ <i>taonga tūturu</i> that did not meet the definition for <i>artifact</i> found prior to 1 November 2006; or▪ <i>Taonga tūturu</i> found after the Act commenced that the Māori Land Court has vested in private ownership | <ul style="list-style-type: none">▪ Māori objects previously referred to as <i>artifacts</i> found between 1 April 1976 and 1 November 2006; or▪ <i>Taonga tūturu</i> found after 1 November 2006. |

PRIVATELY OWNED TAONGA TŪTURU

Registration and Trade

A privately owned *taonga tūturu* can **only be sold or otherwise transferred to a registered collector, a public museum or a licenced dealer or auctioneer**. A *taonga tūturu* cannot be released to any person until the seller has proof that the purchaser is either of these three. The only exception to this is where the *taonga tūturu* are given to another group or individual as part of a will or estate.

¹ When considering the definition of *taonga tūturu*, the Māori Reference Committee wanted a term that reflected with worth and value of objects handed down and found. The exclusion of waste and byproducts is seen to be in line with the intent of the definition.

Licensed dealers and auctioneers can only trade in taonga tūturu which are in private ownership and have been registered. They cannot trade in Crown owned taonga tūturu. A **certificate of examination** (Y-Registration form) from an authorised museum must be obtained for the taonga tūturu before it is sold, if one has not already been issued, and the onus is on the dealer or auctioneer to obtain the certificate from the nearest authorised museum.

The **authorised museums** are: Auckland War Memorial Museum, Te Papa, Canterbury Museum and Otago Museum.

The authorised museum has **28 days upon receipt of the taonga tūturu** to issue the certificate and the licensed dealer or auctioneer is not to offer the taonga tūturu for sale, other than to a public museum, before the certificate has been issued.

The purchaser must be given the white copy of the certificate of examination, which must then be kept with the taonga tūturu (the taonga tūturu will also be labelled with a 'Y number'). The purchaser's copy must not state the name and address of the previous owner, as this is a breach of the Privacy Act 1993.

Private sales (sales not through an auction house or dealer) of taonga tūturu are allowed under section 14 of the Act. In private sales, the taonga tūturu do not have to be issued a 'Y' number but the buyer can approach an authorised museum to have a certificate of examination completed. When a registered collector purchases or sells taonga tūturu, they are required to notify the Ministry within 14 days of a change in their collection.

Offering for Sale and Auction Catalogues

Under the Act, a licensed dealer or auctioneer is required to obtain a certificate of examination from an authorised museum and is not to offer the taonga tūturu for sale, other than to a public museum, before the certificate has been issued. The authorised museum has 28 days to issue that certificate from the time the taonga tūturu is made available for examination.

A licensed dealer or auctioneer may include in its catalogue or advertising an object prior to the certificates for examination being issued but must not:

- sell any taonga tūturu, other than to a public museum, prior to a certificate being issued as stated in section 15(2)(b) of the Protected Objects Act; and
- anticipate the outcome of the examination by an authorised museum by implying that the object will be issued a certificate of examination. This includes stating "'Y' number to come" in the auction catalogue.

Dealers and auctioneers wishing to publish the catalogue prior to the certificates of examination being issued should use the following wording in their catalogue:

"The objects numbered xx to xx have been made available to an authorised museum for examination and may be classified as taonga tūturu under section 16 of the Protected Objects Act. If they are deemed to be taonga tūturu and issued a certificate of examination, they may only be sold to public museums, Registered Collectors of Taonga Tūturu, and dealers and auctioneers licensed with the Ministry for Culture and Heritage.

"The objects will not be sold prior to the certificate of examination being issued."

Where an object has been submitted for examination, the outcome of the examination should be declared prior to the start of bidding so that buyers are aware of the status of the object. That is, whether it is a taonga tūturu or not.

These provisions are intended to provide the buyer with some guarantee that the objects they buy through licensed auctioneers and dealers are genuine taonga tūturu.

CROWN OWNED TAONGA TŪTURU

Process for Newly Found

Under section 11 of the Act, newly found taonga tūturu are in the first instance Crown owned until a determination on ownership is made by the Māori Land Court. In the interim, the Ministry is legally responsible for recording, custody, facilitating claims for ownership and any conservation treatment for taonga tūturu. The **standard process** is as follows:

1. Taonga tūturu found².
2. Taonga tūturu taken by finder within 28 days to nearest public museum³ with the expertise to complete a notification form.
3. Notification forms completed by the museum and sent to the Ministry for Culture and Heritage. The public museum advises the Ministry of any conservation the taonga tūturu may need. Any expenditure for conservation must be pre-approved by the Ministry.
4. The Ministry assigns the taonga tūturu a registration number. The notifying museum is then asked to write the number on the taonga tūturu.
5. The Ministry notifies tangata whenua and other interested parties of the area where the taonga tūturu was found about the ownership or custody of the taonga tūturu.
6. The Ministry publishes a public notice in the local newspaper and on its website calling for claims of ownership to be lodged with the Ministry within 60 working days.
7. Interested parties are advised that they may apply to the Māori Land Court for a determination on ownership. Information for court documentation will be required.
8. Ownership and Custody
 - 8.1. If there are no claims for ownership and an agreement is reached, the Ministry awards custody. Custody arrangements can be changed at any time and claims for ownership can still be lodged.
 - 8.2. If only 1 claim of ownership is lodged, the chief executive of the Ministry must, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order that confirms the owner or owners of the taonga tūturu.
 - 8.3. If 2 or more competing claims are lodged, the chief executive of the Ministry must consult the claimants for the purpose of resolving the competing claims and if satisfied that the competing claims have been

² If a taonga tūturu is found in or recovered from a known person's grave, the matter is referred directly to the Coroner and the Māori Land Court

³ Some exceptions may be made. For instance, suitably qualified archaeologists, Department of Conservation or New Zealand Historic Places Trust staff can also complete the forms on behalf of their clients or organisation

resolved and that the resolution is valid, apply to the Registrar of the Māori Land Court for an order that confirms the owner or owners of the taonga tūturu.

8.4. If 2 or more competing claims are lodged, and cannot be resolved, the chief executive of the Ministry may, if requested by a claimant, facilitate the applications of any or all of the claimants to the Māori Land Court.

9. All parties are notified of the decision.

10. Museum hands over taonga tūturu to the owner or custodian, if the museum is not the owner or custodian. Custodians, other than museums must be registered collectors. Private owners do not necessarily have to be registered collectors

Once a taonga tūturu has been vested in private ownership, section 11 of the Act no longer applies but other sections of the Act do such as the regulations for trade and export.

Notifying the Ministry of a newly found taonga tūturu

Anyone who finds a complete or part of a taonga tūturu, accidentally or intentionally, is required to notify the Ministry within:

- 28 days of finding the taonga tūturu; or
- 28 days of completing field work undertaken in connection with an archaeological investigation authorised by the New Zealand Historic Places Trust.

The finder can **notify the Ministry directly or through a public museum** with the expertise to identify and record a taonga tūturu. Suitably qualified archaeologists, Department of Conservation or New Zealand Historic Places Trust staff can also complete the forms on behalf of their clients or their organisation.

The following points are irrelevant to the registration of the object:

- the condition of the object;
- it is no longer complete or is broken;
- its commonness;
- its monetary value;
- the title of the land on which it was found;
- how it was found (ie accidentally or during an archaeological investigation); and
- any protocols and agreements in place that have ignored the legal requirements of the Protected Objects Act.

Archaeological Sites

Known and suspected **archaeological sites are protected by the Historic Places Act 1993** and must not be deliberately disturbed in order to find taonga tūturu. If taonga tūturu are partially exposed and not in any immediate danger, the New Zealand Historic Places Trust should be contacted right away and the taonga tūturu left in the site.

If the taonga tūturu is in danger of being lost or destroyed, carefully remove it from the site and notify the Ministry of the find and the Historic Places Trust of the potential damage to the archaeological site.

If a taonga tūturu is found during the course of an archaeological authority, the Ministry is to be notified of the find within 28 days after the completion of the field work.

Investigation or disturbance of archaeological sites may be carried out only under an authority granted by the New Zealand Historic Places Trust (see www.historic.org.nz or phone (04) 472 4341 for more information).

SYSTEMS AND FORMS FOR TAONGA TŪTURU

Registration System

Taonga tūturū are recorded with sequential numbers and have an alpha prefix.

As a rule of thumb, only those taonga tūturū with the prefix 'Y' can be sold and traded. Those with the prefix 'Z' are owned by the Crown and cannot be sold.

The prefixes are as follows:

| Description | Alpha Prefix |
|--|--------------|
| Taonga tūturū in private ownership prior to 1 April 1976 | Y |
| Taonga tūturū that did not meet the definition of <i>artifact</i> found prior to 1 November 2006 | Y |
| Objects previously known as <i>artifacts</i> that were found between 1 April 1976 and 1 November 2006 (<i>prefix followed by a 4 digit number</i>) | Z |
| Taonga tūturū found after 1 November 2006 (<i>prefix followed by a 5 digit number issued by the Ministry</i>) | Z |
| Taonga tūturū where ownership has been transferred from the Crown to a private individual/group and it is agreed that the registration number be retained | YZ |

Example:

| | |
|---|----|
| A tekoteko found in 1935 | Y |
| A tekoteko known to be made in 1931 that was found in 1995 and did not meet the definition of <i>artifact</i> when it was found. | Y |
| A tekoteko known to be made prior to 1902 and found in 1995 that met the definition of <i>artifact</i> when it was found. | Z |
| A tekoteko known to be made in 1931 that was found in 2007 | Z |
| A tekoteko known to be made in 1931 that was found in 2007 that the Māori Land Court has vested in private ownership and agreed that its registration number is to remain | YZ |

Forms and Certificates

The following forms and certificates are issued by the Ministry to assist with the administration of the Act:

Notification of Found Taonga Tūturū – this form can be completed only by suitably qualified public museums and other people/institutions approved by the Ministry.

Certificates of Examination ('Y' forms) – issued by authorised museums prior to the sale of privately owned taonga tūturu. A number with the prefix 'y' will be written on the object.

Application to become a Licenced Dealer and Auctioneer – allows licenced dealers and auctioneers to trade in taonga tūturu

Certificate of Registration as a Licenced Dealer and Auctioneer – issued by the Ministry to licenced dealers and auctioneers every year and is displayed on the premises.

Application to become a Registered Collector of Taonga Tūturu – groups or individuals need to become a registered collector prior to purchasing privately owned taonga tūturu or becoming a Ministry appointed custodian of Crown owned taonga tūturu.

Certificate of Registration as a Collector of Taonga Tūturu – issued by the Ministry to Registered Collectors and is to be shown to the seller prior to uplifting purchased taonga tūturu.

Notification of Change in Collection of Taonga Tūturu – to be completed by Registered Collectors when they have a change in their collection or the location of their collection

Export Application Form – to be completed by the owner or trustees of the taonga tūturu and sent to the Ministry for approval prior to the taonga tūturu being prepared for export. Photographs must be included with the form.

A number of the application forms can be downloaded from the Ministry's website www.protected-objects.govt.nz but need to be printed off and faxed or posted to the Ministry. This is because they require a signature and the Ministry will not accept electronic signatures.

ROLE OF GROUPS/INSTITUTIONS

Manatū Taonga Ministry for Culture and Heritage

The Ministry is responsible for the administration of the Protected Objects Act and is legally responsible for recording, custody, facilitating claims for ownership and any conservation treatment for taonga tūturu.

It holds the central database for Protected Objects which includes a register of all Crown owned taonga tūturu and licenced dealers and auctioneers.

Māori Land Court

Section 12 of the Protected Objects Act provides for the Māori Land Court's jurisdiction over taonga tūturu and it has the power to:

- transfer ownership of newly found taonga tūturu from the Crown **to a private individual or groups;**
- **resolve any claims** for the ownership of Crown owned taonga tūturu;
- determine who can have custody of taonga tūturu recovered from the grave of any known person(s);
- prohibit the damage or destruction of taonga tūturu; and
- issue an order **prohibiting the sale** of taonga tūturu.

The Māori Land Court can vest the ownership of taonga tūturu to an **individual or group** such as a Runanga.

Owners of Taonga Tūturu

Owners of taonga tūturu can only sell or otherwise dispose of their taonga tūturu to registered collectors, public museums and licenced dealers and auctioneers. If the owner is a registered collector at the time of sale, transfer or purchase they are required to notify the Ministry of any changes to their collection.

Owners of taonga tūturu do not necessarily have to be registered collectors as the taonga tūturu may have been in their ownership prior to the passing of the Act or the Māori Land Court may have granted them ownership.

Under section 5 of the Act, owners must apply to the Ministry for permission to export taonga tūturu if they wish to take them out of New Zealand temporarily or permanently.

Authorised Museums

Under section 16 of the Act, authorised museums are required to issue certificates of examination to licenced dealers and auctioneers prior to the sale of taonga tūturu. Certificates can also be issued to private individuals if requested. The authorised museum holds a copy of the certificate and sends another copy to Te Papa for the central register.

The Authorised Museums are: Auckland War Memorial Museum; Museum of New Zealand Te Papa Tongarewa; Canterbury Museum; and Otago Museum.

Museum of New Zealand Te Papa Tongarewa

Te Papa is an authorised museum and issues certificates of examination. It also maintains the register for privately owned taonga tūturu that have been issued a 'Y'

certificate and offered for sale. Dealers and auctioneers must send their dealers registers to Te Papa within 28 days of the sale of any taonga tūturu.

Dealers and Auctioneers

Dealers and auctioneers licenced under the Auctioneers Act 1928 or the Secondhand Dealers and Pawnbrokers Act 2004 can trade in privately owned taonga tūturu if they have been authorised to do so by the Ministry. All licences issued by the Ministry are valid until 31 January and have to be renewed yearly. The Ministry posts a list of current dealers and auctioneers on its website www.protected-objects.govt.nz.

Licensed dealers and auctioneers are required to have taonga tūturu examined and a certificate issued prior to making the object available for sale. They must keep a register of all sales, including who the object has been sold to and send the register to Te Papa within 28 days of the sale. Licensed dealers can only sell to public museums, other licenced dealers and auctioneers and registered collectors.

Registered Collectors

Individuals and groups can apply to the Ministry to become a registered collector of taonga tūturu. To become a registered collector, the person or group must:

1. ordinarily reside in New Zealand; and
2. not have been convicted of an offence against the Protected Objects Act, the Antiquities Act or the Historic Places Act.

Registered collectors can purchase only privately owned taonga tūturu and must notify the Ministry of any changes to the collection and the location of their collection within 14 days. The Act also requires registered collectors to make their collections available for examination by the Ministry or any person authorised by the Chief Executive.

Registered collectors can become Ministry appointed custodians of Crown owned taonga tūturu.

Public Museums

Notifying bodies are to fill out a “Notification of Found Taonga Tūturu” form on the Ministry’s website www.protected-objects.govt.nz and submit photographs or sketches of the taonga tūturu. If the Ministry accepts the registration, a report will be emailed to the Museum with the ‘z’ number for their records. The ‘z’ number is then to be put on the taonga tūturu by the museum. The museum will also be consulted on which parties might have an interest in the taonga tūturu and asked to store it until a decision has been made on ownership or custody. If the notifying body does not have the facilities to store the taonga tūturu, the Ministry will seek alternative storage.

Public Museums can seek custody of Crown owned taonga tūturu.

Contract Archaeologists

Archaeologists working under an authority from the New Zealand Historic Places Trust are required to notify the Ministry within 28 days of completing field work of any taonga tūturu found during the course of their investigations.

Any taonga tūturu found outside an authority are also required to be notified to the Ministry.

Suitably qualified archaeologists can complete the “Notification of Found Taonga Tūturu” (see *Public Museums*). First time users will need to get in touch with the Ministry to receive a user name and password for the web form.

Finders

People who find taonga tūturu are required, within 28 days, to directly notify the Ministry or to take the object to a public museum for it to be notified to the Ministry. The taonga tūturu is, in the first instance, Crown owned and the Ministry prefers that taonga tūturu be kept at the museum or at another location designated by the Ministry until a decision is made on custody or ownership.

Finders can seek custody (to do so they must be a registered collector) or ownership of Crown owned taonga tūturu.

Custodians

Upon being notified of a newly found taonga tūturu, the Ministry must provide for its custody; that is, where it will be kept. Custody of Crown owned taonga tūturu may only be granted to public museums or registered collectors. As the custodian of the taonga tūturu, the person or group is responsible for the care of the taonga tūturu and may not sell or otherwise dispose of it without the permission of the Ministry. The Ministry should also be notified of any changes in the taonga tūturu’s location. Ownership of the taonga tūturu is still retained by the Crown and the Ministry can change the custody decision at any time.

Claims of ownership can still be made for the taonga tūturu while it remains in Crown ownership.