

Departmental Disclosure Statement

Te Pire mō Ō-Rākau, Te Pae o Maumahara / The Ō-Rākau Remembrance Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Te Arawhiti.

Te Arawhiti certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

4 March 2024.

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features	8
Appendix One: Further Information Relating to Part Two.....	10

Part One: General Policy Statement

Legislation is required to give effect to certain provisions of Te Whakaaetanga Whakataunga mō Ō-Rākau, Te Pae o Maumahara/Deed of Agreement Relating to the Ō-Rākau Site dated 31 October 2023 (the Ō-Rākau deed) between the Crown, Maniapoto, Raukawa, and Waikato. This Bill enables the record of title for the Ō-Rākau site to be held in the names of ngā tūpuna (the ancestors) who fought at the battle of Ō-Rākau (or had other connections with the land) and enables Maniapoto, Raukawa, and Waikato to jointly exercise the rights and obligations of registered owners of the Ō-Rākau site on behalf of those tūpuna.

Background

Ō-Rākau, located near Kihikihi (approximately 40 kilometres south of Hamilton) is an area to which Maniapoto, Raukawa, and Waikato have long-standing customary connections. It was the site of a pā constructed by Kīngitanga forces during the 1863–64 Crown invasion of the Waikato, and the site of the last major battle of the Waikato War. Additional iwi are recognised as having connections to the Ō-Rākau site through their involvement in the battle of Ō-Rākau, which took place from 31 March to 2 April 1864.¹

Key elements of this Bill

The vesting and ownership arrangements in this Bill are not redress provided for in settlement of any historical Tiriti o Waitangi/Treaty of Waitangi claims. The Ō-Rākau deed and this Bill instead reflect the desire of all parties to acknowledge the history associated with, and the national significance of, the battle of Ō-Rākau and to enable the recognition of ngā tūpuna associated with the Ō-Rākau site.

Tūpuna title is an established means of holding title. The Ō-Rākau site will be vested in a list of tūpuna that is provided by Maniapoto, Waikatō and Raukawa and recorded in schedule 2 of the Bill. While the record of title will be registered in the names of ngā tūpuna, Maniapoto, Raukawa, and Waikato will act as kaitiaki on behalf of ngā tūpuna, having the rights, duties, and powers of the registered owners of the Ō-Rākau site, and must perform those duties jointly. Certain provisions of the Bill, such as that the Ō-Rākau site is non-rateable under the Local Government (Rating) Act 2002, will cease to apply to the Ō-Rākau site if it is transferred from ngā tūpuna.

The Bill also provides that Maniapoto, Raukawa, and Waikato will be able to jointly apply to the Register-General of Land to add, remove or amend ngā tūpuna recorded on the record of title for the Ō-Rākau site to reflect developing historical research. In addition, the three iwi may apply to the relevant Minister to update the list of tūpuna in schedule 2 of the Bill for consistency with changes made on the record of title. These changes to the Bill must be brought into effect by the Governor-General via an Order in Council.

The Ō-Rākau deed records that Maniapoto, Raukawa, and Waikato intend to establish a managing entity to involve groups with a connection to the battle of Ō-Rākau in the administration of the Ō-Rākau site and will facilitate a process inviting those groups to each develop a historical narrative that sets out that group's unique association with and perspective of the battle of Ō-Rākau.

¹ The additional iwi who have been identified as having interests in and connections to Ō-Rākau are Ngāti Kahungunu, Ngāti Manawa, Ngāti Porou, Rongowhakaata, Te Aitanga-a-Māhaki, Te Whānau-ā-Apanui, Ngāi Tūhoe, Ngāti Tūwharetoa, Whakatōhea, and Ngāti Whare.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
--	-----------

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
--	-----------

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
---	-----------

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
--	-----------

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
---	-----------

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The broader policy associated with this Bill has total cost to the Crown of \$2.11 million, including:</p> <ul style="list-style-type: none">• \$1.73 million for the transfer of the Ō-Rākau site at no cost to iwi;• \$75,000 to fund the establishment of a managing entity for the Ō-Rākau site; and• \$306,000 to fund historical research to identify tūpuna with connections to the site, and to assist iwi to prepare narratives setting out their connection to the battle. <p>The Minister of Finance has also approved a tax indemnity to cover any GST and income tax obligations which arise from transfers to iwi, to a maximum value of \$696,630. Inland Revenue assesses there is a low risk of tax liability from proposed transfers. The tax indemnity if engaged will be fiscally neutral.</p> <p>The Bill includes provision for a local government ratings exemption for the Ō-Rākau site. The value of rates for one of the two councils affected by that provision was \$3,032.08 for 2022/23.</p> <p>There is no analysis available for the benefits of the policy, which are generally relationship-based.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Bill has been referred to Crown Law Office for consideration of consistency with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Policy to be given effect to by the Bill has been developed through extensive consultation with a large number of Māori groups with interests in the Ō-Rākau site. Representatives of Maniapoto, Raukawa and Waikato iwi have been directly involved in the process of drafting the Bill and the deed to which it gives partial effect.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice is not currently available to access.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

YES

The Bill provides for the listing at Schedule 2 of the names of tūpuna who were present during the battle of Ō-Rākau or had prior customary connections to the Ō-Rākau site, and subsequent modification of that list under sections 12 and 12A.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

NO

The Privacy Commissioner has not been consulted on this provision on the basis that all tūpuna to be listed are deceased, and that names have been listed in consultation with living relatives.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
Information provided at Appendix One .	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
Information provided at Appendix One .	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
--	-----------

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
The Bill at section 15(6) makes the Ō-Rākau site non-rateable under the Local Government (Rating) Act 2002. This provision has been included at the request of iwi to reduce the cost of owning the Ō-Rākau site, and has been agreed with Waipā District Council and Waikato Regional Council.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
---	-----------

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
---	-----------

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
--	-----------

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill provides at section 12A that the Minister for Māori Crown Relations: Te Arawhiti may recommend the Governor-General replace or amend by Order in Council the list of tūpuna at Schedule 2. The Minister may make such a recommendation upon joint application by Raukawa, Maniapoto and Waikato following updates to the record of title for the Ō-Rākau site.</p> <p>This process means that an ongoing process of historical research into ngā tūpuna can be undertaken, and Schedule 2 of the Bill can be kept up to date through this process. Including a list of tūpuna in the Bill ensures that these tūpuna are publicly visible, and provides appropriate recognition for those tūpuna, their whānau, hapū and iwi, and their connection to the battle at Ō-Rākau.</p> <p>The power to amend the legislation is limited to replacing or amending the list of tūpuna at Schedule 2, and will be exercisable only on joint application by Raukawa, Maniapoto and Waikato where there would otherwise be inconsistency between the lists of tūpuna on the site title and in legislation. Any amendment to the list of tūpuna in legislation will have no effect on the legal ownership of the site which will be recorded on the record of title.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
--	-----------

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
--	-----------

Appendix One: Further Information Relating to Part Two

External consultation – question 3.6

The Office for Māori Crown Relations – Te Arawhiti has been in discussion with Maniapoto, Raukawa and Waikato (the Three Iwi) since 2015 on the return of the Ō-Rākau site. Since 2022, Te Arawhiti has worked with the Three Iwi to develop the details of the policy given effect to by this legislation. Representatives of the Three Iwi have provided regular feedback on the drafting of the Bill, and are signatories to the deed which it is intended to implement.

The Three Iwi have led regular consultation with the more than 10 other Māori groups whose tūpuna were present at the battle of Ō-Rākau on proposed ownership and management structures for the site. Those groups have also been engaged in historical research work to identify tūpuna to be listed under Schedule 2 of the Bill.

Treasury has provided advice on the tax indemnity agreed to by the Minister of Finance via the deed which the Bill gives partial effect to, as well as the process of seeking funding for the broader policy underlying the Bill.

Inland Revenue has also provided advice on the tax indemnity agreed by the Minister of Finance.

Toitū Te Whenua Land Information New Zealand (LINZ) has been consulted on the process of and requirements for transferring the Ō-Rākau site out of the Treaty settlements landbank. LINZ, through the Registrar General of Lands, has also approved the proposed title structure for the Ō-Rākau site and provision for listing the names of tūpuna on the title for the site.

The Department of Internal Affairs has been consulted in the development of the proposal for a local government rates exemption for the Ō-Rākau site.

The Waipā District Council and Waikato District Council have also been consulted on the proposed local government rates exemption. Council staff have given provisional approval to enact a rates exemption through legislation and undertaken to confirm support of elected members as part of the Select Committee process.

Parliamentary Counsel Office has been responsible for the drafting of the Bill on advice from Te Arawhiti and representatives of the Three Iwi. Parliamentary Counsel Office has also reviewed the Bill for consistency with Legislation Design and Advisory Committee Legislation Guidelines.

Crown Law has reviewed the Bill for consistency with the New Zealand Bill of Rights Act 1990, and for compliance with relevant international standards and obligations.

Other testing of proposals – question 3.7

LINZ through the Registrar General of Lands has approved provisions of the Bill relating to proposed title arrangements for the Ō-Rākau site.

The Department of Internal Affairs, Waipā District Council and Waikato District Council have given either final or provisional approval for the local government rates exemption contained in the Bill.