

# Regulatory Impact Statement: New Zealand Memorial Museum Trust – Le Quesnoy: Tax benefits for monetary donations

## Coversheet

Purpose of Document	
Decision sought:	<i>The analysis in this Regulatory Impact Statement is for the purpose of informing final policy decisions to be taken by Cabinet about a request from the New Zealand Memorial Museum Trust – Le Quesnoy for overseas donee status</i>
Advising agencies:	<i>Inland Revenue</i>
Proposing Ministers:	<i>Minister of Revenue</i>
Date finalised:	<i>6 September 2024</i>
Problem Definition	
<p>With effect from 1 April 2018, the NZ Memorial Museum Trust – Le Quesnoy (the Trust) was granted overseas donee status as a special case for a time-limited period, that was extended in 2021, to end on 31 March 2025. The Trust has requested that Cabinet agree to granting it permanent overseas donee status from 1 April 2025 onwards.</p>	
Executive Summary	
<p>The New Zealand Memorial Museum Trust – Le Quesnoy is a New Zealand-based registered charity. Its purpose is to hold and manage the New Zealand Liberation Museum (Te Arawhata) at Le Quesnoy, France. Te Arawhata opened in October 2023 and commemorates New Zealand’s service during the First World War. Le Quesnoy was the chosen site of Te Arawhata because the town was liberated by the New Zealand Division during the closing weeks of the war. The liberation was achieved without the loss of civilian life and with minimal damage to the town itself.</p> <p>In 2018 the Trust was granted overseas donee status on a time-limited basis to support the development and construction of the museum. The Trust’s overseas donee status ends on 31 March 2025.</p> <p>The Trust is asking the Government for permanent overseas donee status (i.e., to remove the sunset date that currently applies). The purpose of the change being sought is to allow monetary donations received by the Trust after 31 March 2025 to be eligible for tax benefits. The tax benefits reduce the donor’s cost of donating money to the Trust.</p>	
<b>Tax settings</b>	
<p>The tax benefits to donors for monetary donations gifted to donee organisations consist of the following:</p>	

- The donation tax credit of 33<sup>1</sup>/<sub>3</sub>% of the value of the monetary donation made by a New Zealand resident individual taxpayer, capped to the amount of their taxable income.
- Tax deductions if the monetary donation is from a New Zealand resident company or Māori authority, capped to their net income.

Under the Income Tax Act 2007, these benefits are confined for the most part to monetary donations to New Zealand charities that have charitable purposes in New Zealand. An exception to this rule is known as “overseas donee status”, which applies to a specific class of charity that is named on schedule 32 of the Income Tax Act.

Decisions to add charities to the schedule are made by Cabinet using criteria that was set in 1978 (see **Cabinet’s approval criteria** below). The criteria are framed from a humanitarian aid point of view and focus on improving economic and educational outcomes in developing countries, or the relief of poverty, hunger, sickness, or the ravages of war or natural disaster.

The stated purposes of the Trust are outside the scope of Cabinet’s approval criteria.

Therefore, the Trust is seeking overseas donee status as a special case.

#### **Inland Revenue’s opinion**

Consistent with the practice set by the *Guidelines for Schedule 32 inclusion* (paragraph 13), Inland Revenue has reviewed the Trust’s request. In our view, the Trust’s request should be declined. We acknowledge, however, that the Government may want to support the Trust using the tax system because of its purposes, to commemorate New Zealand’s service in Europe during the First World War.

#### **Options and preferred option**

This Regulatory Impact Statement (RIS) considers whether the Trust should be granted permanent overseas donee status. There are three options:

- decline the Trust’s request; or
- agree to the Trust’s request for a permanent change; or
- agree to extend the end date of the Trust’s donee status for a further specified period.

Non-tax options that would provide direct Government assistance to the Trust, such as grants have not been considered. The Trust has signalled that it is not seeking this form of financial assistance.

Option 1: Inland Revenue recommends the Trust’s request should be declined. Option 1 maintains the status quo, that the Trust’s donee status ends on 31 March 2025. Inland Revenue has not identified any compelling tax policy reasons for changing from the status quo. The status quo would result in the cost of donating to the Trust increasing for taxpayers that rely on tax benefits as part of their decision to donate.

Option 2: The Government agrees to give the Trust overseas donee status as a special case (the Trust’s preferred option). Option 2 reduces the cost of donating to the Trust, so

it benefits the Trust's donors. Based on the Trust's fundraising objectives, this would have a permanent cost for the Government of \$0.330 million a year (assuming no growth for inflation or other factors). Option 2, however, has negative implications in terms of the coherence of the framework (Cabinet's approval criteria) used to consider requests for overseas donee status, and raises negative fairness issues in terms of charities that have been previously declined overseas donee status on the basis that their purposes are inconsistent with Cabinet's approval criteria.

Option 3: The Government agrees to give the Trust overseas donee status on a temporary basis. For example, extending the Trust's current sunset date to a later date. Option 3 provides similar benefits to the Trust's donors as per option 2 over the specified period. As with Option 2, this option has an annual cost for the Government of \$0.330 million a year over the specified period. This option has higher compliance costs for the Trust, because it would require it to re-engage with officials if it were to seek a further extension to the sunset date. Option 3 also has the same negative features (relative to the status quo) as Option 2. It is not immediately clear that imposing a time limit on the Trust's overseas donee status ameliorates the negative aspects we have identified if Cabinet agrees to grant the Trust overseas donee status. Of the three options considered, Option 3 is Inland Revenue's least preferred option.

### **Consultation**

The preparation of this RIS and the advice provided to Ministers was informed by discussions with the Trust and with other government agencies. The Trust is confident about the future of Te Arawhata and acknowledges that donation income is a critical component of its operations. Government agencies that were consulted by Inland Revenue questioned the need for the Government to financially support a private offshore museum venture.

## **Limitations and Constraints on Analysis**

### **Options considered**

The RIS does not consider other non-tax options that would provide direct Government assistance to the Trust, such as grants. The Trust has signalled that it is not seeking this form of financial assistance.

Other sub-options that would grant the Trust overseas donee status on a conditional basis, such as a fixed dollar cap, have not been explored. This type of option presents a number of problems in terms of implementation, and fairness and equity between donors. Therefore, if the Government wants to grant the Trust overseas donee status, the options considered are limited to either doing so on a permanent basis or on a time-limited basis.

### **Quality of data used for impact analysis**

In developing this RIS, Inland Revenue used information provided by the Trust in an in-confidence business case, and subsequent telephone and email contact. Te Arawhata has recently opened so the revenue and visitor projections contained in the business case cannot be readily tested or verified. Officials did make use of external information about tourism patterns in the north of France.

### Consultation

Consultation on this issue was in the form of email and telephone conversations between government agencies, the Trust’s Chair, and its advisor. Private sector consultation was not carried out.

### Sensitivity to tax benefits

Inland Revenue has been informed by the Trust that its potential donors are sensitive to the tax effects of their donations in their decision-making whether to donate. Inland Revenue does not have information to assess the effect of tax benefits on donors’ decisions to donate.

### Policy on memorials generally

The analysis does not consider the wider merits or policy behind the Government’s financial support of memorials or museums generally.

### Responsible Manager(s) (completed by relevant manager)

s 9(2)(a)

*Brandon Sloan*  
*Principal Policy Advisor*  
*Policy | Taukaea*  
*Inland Revenue | Te Tari Taake*  
*6 September 2024*

### Quality Assurance (completed by QA panel)

Reviewing Agency:	Inland Revenue Department
Panel Assessment & Comment:	<p>The Quality Assurance review panel at Inland Revenue has reviewed the Regulatory Impact Statement (RIS) prepared by Inland Revenue and considers that the information and analysis summarised in the RIS meets the Quality Assurance criteria.</p> <p>The significance of the decision in this RIS is dependent on the degree of sensitivity that donors have to tax benefits on their decision whether to donate. The Trust has advised that its potential donors are sensitive to tax effects, but Inland Revenue has no way of testing this. This is noted as a Constraint on Analysis and the panel considers it has been presented as well as could be expected; however, it still limits the reliance that can be placed on the analysis.</p>

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

#### Overseas donee status

1. This Regulatory Impact Statement considers whether a New Zealand charity, the New Zealand Memorial Museum Trust – Le Quesnoy (the Trust) should be granted permanent overseas donee status as a special case. The Trust currently has overseas donee status, but it is time limited, starting 1 April 2018 and ending 31 March 2025. After 31 March 2025, donors who make monetary donations to the Trust will no longer be eligible for tax benefits.
2. “Overseas donee status” is used to describe certain New Zealand charities that have charitable purposes outside New Zealand and whose donors are eligible for tax benefits. These benefits include:
  - the donation tax credit of  $33\frac{1}{3}\%$  of the value of any monetary donations made by a New Zealand resident individual taxpayer, capped to the amount of their taxable income; and
  - tax deductions if the monetary donation is from a New Zealand resident company or Māori authority, capped to the amount of their net income.
3. Providing tax benefits for monetary donations to charities is intended to foster a culture of charitable giving in New Zealand by reducing the donor’s cost of donating. For example, the cost to an individual of donating \$100 is reduced to \$66.67 (subject to the taxpayer’s relevant income caps). Supporting donors through the tax system can be a useful way of furthering social or Government objectives. Donations can be an effective indicator of when extra goods and services should be provided that might otherwise not exist in commercial market conditions.
4. Tax benefits for donations are limited under the Income Tax Act to registered charities (or benevolent, philanthropic, or cultural entities) with purposes in New Zealand. Overseas donee status is therefore an exception to this jurisdictional limitation in the Income Tax Act.
5. Overseas donee status mainly applies to New Zealand charities that meet Cabinet’s approval criteria (CM 78/14/7, see **Cabinet’s approval criteria**). Cabinet’s approval criteria reflect the decision in 1962 to allow tax benefits for donations to certain charities, on a case-by-case basis, that have a focus on international aid and humanitarian development in developing countries.

## Cabinet's approval criteria

6. In 1978, Cabinet set the parameters of overseas charitable activities that may be supported by the tax system:

*The basic criteria for adding an organisation to the list of approved "overseas" charities:*

- (i) *the funds of the charity should be principally applied towards:  
the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or  
the economy of developing countries\*;  
raising the educational standards of a developing country\*;*
- (ii) *charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify;*

*\* developing countries recognised by the United Nations.*

[CM 78/14/7 refers]

7. The criteria set out in CM 78/14/7 have, except in a few instances (see **Special cases**), been applied consistently in Cabinet decision-making over the last 40 years. Currently, 169 charities and other organisations are listed in schedule 32 of the Income Tax Act and have overseas donee status.
8. The eligible purposes are narrower than the common-law meaning of "charitable purpose" and the legislative framework in the Charities Act 2005. Assessing donee status, including overseas donee status, remains the responsibility of Inland Revenue because of the tax benefits attached to monetary donations. The process does not overlap the work of the Department of Internal Affairs – Charities Services.

## Special cases (decisions where exceptions to Cabinet's approval criteria have been made)

9. While Cabinet's approval criteria inform the majority of decisions made about New Zealand charities that seek overseas donee status, rare exceptions have been made.
10. Five organisations, including the Trust (albeit on a temporary basis), have been granted "overseas donee status", and have purposes that are outside the scope of Cabinet's approval criteria. These exceptions have been made when the charity or organisation's purposes have supported wider Government objectives or policies.
11. The decision to grant the Trust overseas donee status in 2018 was made to support the development and construction of a war memorial museum at Le Quesnoy. This decision was made at the time of the 100-year commemorations of the ending of the First World War. This support was to be time limited and represented the Government's full and final contribution to the Trust's project.
12. Other charities that have sought overseas donee status on an exception basis, such as charities that advance religious purposes, animal welfare, or conservation, have been declined.

## Analysing requests for overseas donee status

13. Consistent with the *Guidelines for Schedule 32 inclusion*,<sup>1</sup> CBC Min (09) 12/2, Inland Revenue analyses requests for overseas donee status to arrive at an opinion about

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<sup>1</sup> <https://www.taxpolicy.ird.govt.nz/news/2009/2009-12-09-guidelines-schedule-32-inclusion>

whether the relevant charity can meet its purposes and is accountable for the funds it collects. This process involves:

- (a) Reviewing the charity's governing documents (constitution and trust deed) to ensure the activities and purposes are consistent with Cabinet's criteria.
  - (b) Requiring the purposes stated in the charity's governing documents to be entirely within the scope of paragraph (i) of the Cabinet criteria and that no personal pecuniary profit can be derived.
  - (c) Looking at the clauses governing the nature and extent of the trustees' discretionary powers, the winding-up clause, and the trustees' ability to amend the governing documents,
  - (d) Looking at the charity's past, current, and proposed activities.
  - (e) Asking that the trustees provide Inland Revenue with the charity's financial statements.
  - (f) Considering the trustees' degree of control over the application of the charity's funds overseas, and procedures in place to ensure accountability for funds.
  - (g) Considering the planning, monitoring, and evaluation processes used by the trustees in respect of the application of the charity's funds, including how recipients use the funds, as well as the processes used to select beneficiaries and/or projects to support.
  - (h) Asking whether the charity has a legal presence in New Zealand and if it has registered under the Charities Act 2005.
  - (i) Considering each request on the basis of other generic tax policy objectives, such as fiscal implications (including risk to the New Zealand tax base), consistency with other current Government policy objectives, and the coherence effect.
  - (j) Consulting with other government agencies such as the Treasury and the Department of Internal Affairs – Charities Services. The Ministry of Foreign Affairs and Trade is also consulted to identify if any concerns exist with the charity or sensitivities with the countries in which the charity operates. Inland Revenue also uses the New Zealand Police's vetting service in connection with the charity's trustees or directors.
14. In this case, points (a) and (b) above were ignored, because the purposes of the Trust fall outside the scope of the Cabinet criteria. However, the Trust's deed has the required constraints prohibiting the trustees from deriving any personal pecuniary profit from the Trust's activities, over and above what would be expected from an arm's length transaction.



## The New Zealand Memorial Museum Trust – Le Quesnoy

15. The Trust is a registered charity set up to own and operate a war memorial museum (Te Arawhata<sup>2</sup>) in Le Quesnoy, France. It is a private endeavour. The trustees' vision for Te Arawhata is to establish a place of remembrance for the New Zealanders who fought in Europe during the First World War. Te Arawhata includes a visitor experience created by Wētā Workshop.
16. In October 2023, Te Arawhata was officially opened. The Trust is working with established First World War sites, such as La Carriere Wellington, in Arras,<sup>3</sup> to develop complementary tourism experiences. The Trust considers that now Te Arawhata has been completed it provides a quality tourism experience and the Trust asserts that it is a viable going concern.
17. The Trust selected Le Quesnoy as the base for Te Arawhata because the town's liberation was the last major action by the New Zealand Division in the closing weeks of the war. The Trust considers the story of the town's liberation by the New Zealand Division is compelling because it was achieved without the loss of any civilian lives and without material damage to the township itself.
18. The Rt Hon Helen Clark and the Rt Hon Sir Don McKinnon are patrons of the Trust. The initiative also has the support of several other high profile New Zealanders.
19. The Trust intends Te Arawhata to be a place where New Zealanders visiting France (and Europe) can commemorate those who lost their lives during the First World War on the Western Front, and learn about New Zealand's role in that war. It also provides a place for visitors from France and elsewhere to learn about New Zealand. Te Arawhata showcases the work of New Zealand artists and designers, such as Wētā Workshop.
20. The Mayor of Le Quesnoy supports and is an advocate of the Trust and Te Arawhata.

### Le Quesnoy and existing New Zealand memorials

21. The town of Le Quesnoy is in Northern France (12km from the Belgium border) and its current population is approximately 5,000. Le Quesnoy is noted for its 17<sup>th</sup> century Vauban-designed defensive fortifications. The town has little to no tourism

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2 Translates as "The Ladder" and reflects that the capture of the town was achieved using ladders against the town's 17th century fortifications.

3 The French town of Arras has forged strong links with Wellington (the Arras Tunnel) and Peter Jackson, Waihi, Rotorua, and the Cook Islands. While visitor numbers to the Tunnels were affected by the COVID pandemic, these numbers have recovered to pre-pandemic levels of 65,000+. Arras is the site of a local government-funded project, La Carriere (the Wellington Quarry), which consists of a visitor centre and underground museum experience founded to the memory of the British Army and Dominion Forces. La Carriere predominantly tells the story of the New Zealand Tunnelling Company.



infrastructure in the form of hotels or other visitor accommodation. It is typically a destination for day-trippers (estimated to be 4,000 a year).<sup>4</sup>

22. Te Arawhata is not the only memorial of the events of 1918 in Le Quesnoy, and in the immediate region. For example, the following memorials and acknowledgements mark the events at Le Quesnoy:
- Le Quesnoy Memorial Wall was unveiled in July 1923 and is located near where New Zealand soldiers scaled the town ramparts with ladders in 1918.
  - Le Quesnoy prominently featured in the WW100 First World War Centenary Programme – Ngā Tapuwāe First World War Trails, which includes a physical sign opposite the Memorial Wall, gifted by the New Zealand Government.
  - A plaque gifted by the New Zealand Government commemorating the centenary was unveiled next to the Town Hall on 4 November 2018 (the centenary of the town's liberation by the New Zealand Division).
  - New Zealand Garden of Peace (created under the French Art & Jardins association – Hauts-de-France and the French First World War Centenary Partnership Program), which acknowledges the New Zealand Division's contribution to liberating the town.
  - The Le Quesnoy Communal Cemetery Extension (where 50 soldiers from the New Zealand Division are buried) and memorial, maintained by the Commonwealth War Graves Commission.
23. There is a New Zealand Government relationship with the town of Le Quesnoy through the New Zealand Embassy in Paris in terms of the existing memorials in the town.

#### **Previous consideration of the Trust by the Government**

24. Officials have previously considered the merits of the Trust's request for overseas donee status. Both in 2018 and again in 2021, Inland Revenue recommended against granting the Trust overseas donee status as a special case.<sup>5</sup>
25. In 2018 the Trust was granted overseas donee status by Cabinet as a special case (CAB-18-MIN-0535 refers). Being a special case, the Trust's overseas donee status was time limited (ending March 2021) with the intention that providing tax benefits for monetary donations to the Trust would be the Government's full and final contribution to the war memorial museum project.
26. The decision to grant overseas donee status recognised the one-off and historic nature of the Trust's purpose to commemorate 100 years since the end of the First World War.
27. In 2021 the Trust requested an extension to the end date of the Trust's overseas donee status. The request was granted (CAB-21-MIN-0221 refers) in recognition that the Trust's ability to fundraise had been affected by the COVID-19 pandemic and that

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<sup>4</sup> We understand that many visitors to the northern region of France base themselves in cities such as Arras (population 42,000) or Amiens (population 132,000), both of which have highly developed tourism and accommodation infrastructure.

<sup>5</sup> RIA – New Zealand Memorial Museum Trust – Le Quesnoy: tax benefits for monetary donations Supplementary Order Paper No. 189 – Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill

<https://www.taxpolicy.ird.govt.nz/publications/2019/2019-ria-sop-189-armtarm-bill>

the Trust's main donors (being tax sensitive) wished to pay promised donations over a three- to four- year period.

28. The Trust's donee status ends on 31 March 2025.
29. The Government's expectation was that granting the Trust donee status as a special case would not involve additional future contributions (CAB-21-MIN-0221, paragraph 11).
30. Other than granting the Trust overseas donee status, there has been no further direct financial assistance from the Government. <sup>s 9(2)(g)(i)</sup>

### What is the policy problem or opportunity?

31. The Government's previous decisions provided temporary financial support through the tax system to assist with the development and construction of Te Arawhata. This support ends on 31 March 2025.
32. With Te Arawhata now complete, the Trust is seeking permanent overseas donee status. A new decision is therefore required from Cabinet. The decision for Cabinet is whether the Trust should be granted overseas donee status as a special case, either on a permanent, or time-limited basis.
33. Since the original decision to grant the Trust overseas donee status in 2018, there have been developments that mean that the commercial aspects of the memorial museum development, such as self-catered accommodation units, are no longer economic to advance. Therefore, the Trust is not self-funding as originally envisaged and it is managing the risk of a shortfall in finance from its operating activities. The Trust expects that it would continue to seek donations from its existing New Zealand donor base <sup>s 9(2)(b)(ii)</sup>
34. The Trust is seeking to raise \$1 million each year to support the operating and capital costs of running Te Arawhata. The Trust projects that donation income will make up a large proportion of its annual revenue.

### What objectives are sought in relation to the policy problem?

35. Overseas donee status is a tool that reduces the cost of donating to a specific class of charities that further overseas development aid objectives as set out in Cabinet's approval criteria.
36. The decision before Cabinet is whether the purposes of the Trust merit it being treated as a special case (that is, agreeing to give the Trust overseas donee status notwithstanding that its purposes are outside the scope of Cabinet's criteria). If the Trust's request is agreed to, the outcome would see a transfer of receipts from the Government to the Trust's donors by way of tax benefits for monetary donations (subject to the statutory conditions that apply to those tax benefits). By reducing the cost of donating, the Trust hopes to sustain and grow its New Zealand donor base.
37. A decision to decline the Trust's request would signal that the Government's temporary support for Te Arawhata through the tax system comes to an end on 31 March 2025,

as originally contemplated. Whether this results in a behaviour change by the Trust's donors cannot be assessed by officials.<sup>6</sup>

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6 An individual donor's sensitivity to tax is often difficult to determine and can be subject to a variety of personal motivations.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

38. Acknowledging that the Trust is seeking overseas donee status to support its fundraising efforts, the following criteria have been applied to assess the options:
- *Coherence*: Does the option maintain the integrity of the tax system and operate coherently with the frameworks used (Cabinet's approval criteria)?
  - *Fairness and equity*: Is the option consistent with previous decisions regarding granting overseas donee status?
  - *Benefit to the Trust's donors*: Does the option provide a tax benefit to the Trust's donors?
  - *Compliance and administration costs*: Does the option create costs on donors, the Trust, and Inland Revenue that are additional to the status quo.
39. Existing tax compliance implications have not been considered because there is little difference between the options in terms of their practical impact on the Trust.
40. Entitlements to tax benefits for monetary donations to charities with overseas purposes is prescribed by legislation. Non-legislative responses, apart from the status quo, are not viable. As noted earlier, the Trust is seeking the Government's support by using existing tools in the tax system to encourage donations.
41. Three options have been considered:
- the Trust's request for overseas donee status is declined (status quo option);
  - the Trust's request for permanent overseas donee status is accepted (the Trust's preferred option); or
  - the Trust's request for overseas donee status is accepted for another time-limited period.
42. None of the options discussed in this RIS are incompatible with the Government's expectation for the design of regulatory systems.
43. Non-tax related options have not been considered. The Trust has advised that it does not intend to seek Government financial support in the form of grants and subsidies. It is also not Government policy to provide financial support to private museums or memorials.

### Option 1: Decline the Trust's request for permanent overseas donee status (maintain the status quo)

44. If Cabinet declines the Trust's request, tax benefits for monetary donations to the Trust would be ineligible for tax benefits on and after 1 April 2025.
45. **Coherence**: Declining the Trust's request for permanent overseas donee status meets the coherence criteria because the Trust's purposes are outside the scope of Cabinet's approval criteria (CM 78/14/7 refers). Further, the initial decision in 2018 to

give the Trust overseas donee status was intended to be time limited and would not involve future contributions (CAB-21-MIN-0221 refers).

46. **Fairness and equity:** Declining the request would be consistent with earlier Cabinet decisions to decline overseas donee status for charities that do not meet the criteria in CM 78/14/7.
47. **Benefit to the Trust's donors:** On and after 1 April 2025, the cost of donating to the Trust is not reduced by tax benefits.
48. **Compliance costs:** This option does not create any additional costs in respect of donor compliance with the tax system. This option does not create any additional tax compliance costs on the Trust.

#### Comment

49. Declining the Trust's request for overseas donee status does not impact on Inland Revenue's administration of the tax system and confirms existing policy frameworks and practices. Declining the request does not create additional tax transaction costs for the Trust or Inland Revenue.
50. The Trust has noted that this outcome potentially affects its ability to fundraise and, among other things, may affect the continued operation of Te Arawhata. <sup>s 9(2)(g)(i)</sup>  
[Redacted]
51. Irrespective of the Trust being granted overseas donee status, other environmental factors, such as the location of Le Quesnoy and the absence of tourism infrastructure in the area, may have a more direct impact on Te Arawhata's viability.
52. <sup>s 9(2)(b)(ii)</sup>  
[Redacted]

#### Option 2: Grant the Trust's request for permanent overseas donee status

53. Under Option 2, monetary donations to the Trust would be granted overseas donee status on a permanent basis.
54. **Coherence:** From a coherence perspective, granting the Trust overseas donee status raises expectations that Cabinet could look favourably on future requests from charities whose purposes are not directed at overseas development. This is much worse than the status quo and could affect the cohesiveness of the approval process and make it more difficult to manage charities' expectations about being granted overseas donee status.
55. **Fairness and equity:** From a fairness and equity perspective, granting the Trust overseas donee status would be inconsistent with previous historical Cabinet decisions that have declined charities with, <sup>s 18(c)(i)</sup>  
[Redacted] This outcome is much worse than the status quo.
56. **Benefit to the Trust's donors:** On 1 April 2025 and for future income years, the cost of donating to the Trust decreases by the amount of the tax benefit that attaches to the

donation (subject to the statutory conditions of the tax benefit). This outcome is much better than the status quo for the Trust's donors.

57. **Compliance costs:** This option does not create any additional costs in respect of donor compliance with the tax system relative to the status quo. This option does not create any additional tax compliance costs on the Trust, because it would have donee status for future years starting 1 April 2025 unless by a future Government.

#### Comment

58. Tax policy aside, granting the Trust overseas donee status does not create any practical implementation concerns relative to the status quo. The Trust is unlikely to face any additional tax compliance costs relative to the status quo in terms of meeting its obligations under the Tax Administration Act 1994 as it applies to donee organisations.
59. From the Trust's perspective this outcome is much better than the status quo. The benefit accruing to the Trust depends on its fundraising efforts because this option only provides indirect Government support to the Trust's project on a "successful efforts" basis.

### Option 3: Grant the Trust's request for overseas donee status for another time-limited period (temporary overseas donee status)

60. Similar to Option 2, monetary donations to the Trust would be eligible for tax benefits but limited to a certain specified time. This would be achieved by extending the current sunset date that applies to the Trust to a later date in the future.
61. **Coherence:** From a coherence perspective, granting the Trust overseas donee status raises expectations that Cabinet will look favourably on future requests from charities whose purposes are not directed at overseas development. This is much worse than the status quo and could affect the cohesiveness of the approval process and make it more difficult to manage charities' expectations about being granted overseas donee status. Officials do not have an informed view about whether imposing a time limit ameliorates these concerns, however, from past experience, the ability to extend the end date suggests that it would not.
62. **Fairness and equity:** From a fairness and equity perspective, granting the Trust overseas donee status would be inconsistent with previous historical Cabinet decisions that have declined charities with, <sup>s 18(c)(i)</sup> [REDACTED]. This outcome is much worse than the status quo. Officials do not have an informed view about whether imposing a time limit ameliorates these concerns, however, from past experience, the ability to extend the end date suggests that it would not.
63. **Benefit to the Trust's donors:** On and after 1 April 2025, the cost of donating to the Trust decreases by the amount of the tax benefit that attaches to the donation for a specified period (subject to the statutory conditions of the tax benefit). This outcome is much better than the status quo for the Trust's donors over the specified period. The Trust would need to re-engage with officials if the end date of the specified period is to be extended.
64. **Compliance costs:** This option does not create any additional costs in respect of donor compliance with the tax system relative to the status quo. This option does create additional tax compliance costs on the Trust in terms of seeking any additional extension to the relevant sunset date.

## Comment

65. Tax policy aside, granting the Trust overseas donee status does not create any practical implementation concerns relative to the status quo. The extension would be achieved by amending the current statutory end date to a later date.
66. From the Trust's perspective this outcome is better than the status quo (but less so than Option 2). Under Option 3, it would be necessary for the Trust to incur further compliance costs if it subsequently wishes to seek a further extension to the prescribed sunset date. <sup>s 9(2)(b)(ii)</sup>



## How do the options compare to the status quo/counterfactual?

	Option 1 – Status quo – decline the Trust’s request for overseas donee status	Option 2 – Grant the Trust permanent overseas donee status	Option 3 Grant the Trust temporary overseas donee status
<b>Coherence</b>	0	--	--
<b>Fairness and equity</b>	0	--	--
<b>Benefit to the Trust’s donors</b>	0	++	++
<b>Compliance and administration</b>	0	0	-
<b>Overall assessment</b>	0	--	--

### Example key for qualitative judgements:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

**Which option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

- 67. Cabinet’s decision involves a trade-off between applying existing policy frameworks for granting overseas donee status or making a special case. Option 1, the status quo and Inland Revenues’ preferred option, preserves the integrity of the frameworks at the expense of the Trust’s ability to offer tax benefits to its donors. A decision to make the Trust a special case favours the Trust over existing policy frameworks.
- 68. From the Trust’s perspective, Option 2 best meets the problem definition as it applies to the continuing activities of Te Arawhata. It provides the Trust with certainty in respect of its fundraising efforts and communications with current and potential donors. However, this option has features that negatively affect the cohesiveness of the tax system in respect of the administration of requests for overseas donee status. Option 3 has similar benefits for the Trust as Option 2, but it has higher costs for the Trust and Inland Revenue if the Trust is required to re-engage with the Government if a further extension to the end date is sought.
- 69. In 2018, and again in 2021, Inland Revenue advised against making the Trust a special case for overseas donee status, because:
  - the Trust’s purposes are outside the scope of Cabinet’s approval criteria, which could negatively affect the coherence of the frameworks used to approve overseas donee status by raising issues of the fairness of previous Cabinet decisions for charities that were declined overseas donee status; and
  - the viability of the Trust is highly uncertain.
- 70. From Inland Revenue’s perspective these concerns are still valid in 2024. s 9(2)  
(g)(i)

[Redacted]

**Coherence risk**

- 71. For the most part, previous Governments have not departed from Cabinet’s approval criteria. s 18(c)(i)  
[Redacted]  
Charities with religious or political purposes are expressly excluded from the approval criteria.
- 72. When exceptions have been made from the criteria they have been made on very rare occasions and when a strong public policy case exists, for example, because the charity or organisation furthers Government objectives. Until the recent decision about the Trust (which was time limited), exceptions to Cabinet’s approval criteria have been largely historic.
- 73. The risk with exceptions is that they:
  - affect the coherence and fairness of earlier decisions (as above) to decline requests from charities to be treated as a special case;
  - affect the predictability of how Cabinet’s approval criteria are applied; and
  - raise expectations in the charitable sector that special cases will be made.
- 74. If exceptions to Cabinet’s approval criteria become embedded, further extensions to the criteria can become harder to decline and undermine the frameworks that support consideration of overseas donee status requests. Exceptions also raise questions around fairness for those charities that have been previously declined overseas donee

status on the basis their purposes are outside the scope of Cabinet’s approval criteria (paragraph 6).

75. From a tax policy perspective, Inland Revenue considers that there is nothing compelling about the Trust’s purposes that warrants it being treated as a special case.

#### Viability of the Trust and its assumptions

76. Our initial advice in 2018 about the Trust and the proposed war memorial museum and self-catering accommodation complex raised concerns about the long term viability of the project. <sup>s 9(2)(b)(ii)</sup>

The annual number of visitors to the town of Le Quesnoy historically sits around 4,000).

77. Inland Revenue have had, and continue to have, concerns that:

- Te Arawhata would be unable to realise its visitor number projections. <sup>s 9(2)(b)(ii)</sup>

- If the Trust’s projections are not realised over the short to medium term, it is debatable whether Te Arawhata could continue to function financially if the Trust is unsuccessful in growing or maintaining its donor base. <sup>s 9(2)(g)(i)</sup>

78. <sup>s 9(2)(b)(ii)</sup>

It is expected that donation income would make up the majority of the Trust’s total income.

79. Te Arawhata is in the process of establishing itself as a tourist experience. In our view Te Arawhata is operating in a complementary, co-operative, but nonetheless, competitive war memorial tourism market. In the context of the Ngā Tapuwae trail, the story of the liberation of Le Quesnoy is of interest to New Zealanders who visit other nearby war memorials and sites in France. However, the lack of amenities in the town, when contrasted, for example, with Arras (which also has its own New Zealand First World War story), potentially affects its attractiveness as a tourist destination. In our view the future of Te Arawhata is not certain.

80. We also note that Te Arawhata is not the only memorial of the events of 1918 in Le Quesnoy and in the immediate region (**Le Quesnoy and existing New Zealand memorials** refers).

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<sup>7</sup> <sup>s 9(2)(b)(ii)</sup>

## Stakeholder views

81. In response to our concerns, the Trust notes the following:

- The Trust asserts that its purposes and activities are genuinely exceptional. For this reason, granting it permanent overseas donee status should not be viewed as creating an unhelpful or inappropriate precedent.
- The Trust also considers that now Te Arawhata has been completed it provides a quality tourism experience and is a viable going concern. The Trust is also working with established First World War sites, such as La Carriere Wellington, in Arras, to develop complementary tourism experiences.

82. The Trust is seeking to raise \$1 million each year to support the operating and capital costs of running Te Arawhata. <sup>s 18(c)(i)</sup>

As Te Arawhata becomes an established site for First World War Western Front tourism, it is possible it may receive additional support from non-resident donors (who would not be eligible for New Zealand tax benefits).

83. The Treasury, Ministry of Foreign Affairs and Trade, and Ministry for Culture and Heritage were consulted in the preparation of the attached Cabinet paper. Comments from agencies generally questioned the need for the Government to support a private memorial venture.

## Inland Revenue's preferred option

84. From a tax policy perspective, Inland Revenue considers that there are no compelling arguments for giving the Trust overseas donee status. Our preferred option is that the request be declined (Option 1) and that the status quo prevail. Te Arawhata is a private venture by the Trust, and the Government has previously communicated that its support of the project was limited to its development and time limited to 31 March 2025. Under this option, monetary donations received by the Trust on and after 1 April 2025 would not be eligible for tax benefits. The strength of this option is that the current special case granted to the Trust ends. An effect of this option is that the Trust may lose its attractiveness to donors and Te Arawhata's financial viability may be at risk.

## What are the marginal costs and benefits of the option?

85. To make the impact analysis in this section more meaningful, it has been prepared illustrating the costs and benefits as if the New Zealand Memorial Museum Trust – Le Quesnoy was granted overseas donee status on a permanent basis (Option 2). The costs and benefits are therefore those that arise when contrasted against the status quo (no overseas donee status on and after 1 April 2025).

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value, where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
The Trust	Ongoing compliance costs of the Trust's preferred option are comparable to the status quo.	Low	High, based on current compliance behaviours.
Donors to the Trust	None	None	High
Inland Revenue	Administration costs increase in response	Unknown	Low, the behavioural

	to uncertainty in the decision-making process for overseas donee status.		response from the charitable sector is difficult to determine.
The Government	It is possible that granting the Trust overseas donee status may raise expectations of the Trust and the town of Le Quesnoy, that the New Zealand Government may contribute further additional funds (either directly or indirectly) to Te Arawhata to ensure its continued operation.	Unknown	Low, the current request is a direct response to the decision in 2018 to grant the Trust overseas donee status on a temporary basis.
<b>Total monetised costs</b>		\$0.330 million reduction in Government revenue a year. In the absence of inflation or other factors, the net present value of the benefit to donors is around \$7.7 million. <sup>8</sup>	Medium, the estimate is based on information supplied by the Trust. However, there is a behavioural response that could affect those estimates, but it is difficult to predict taxpayer sensitivity as noted earlier in the discussion on constraints.
<b>Non-monetised costs</b>		<i>Low</i>	

<b>Additional benefits of the preferred option compared to taking no action</b>			
The Trust	Improves the Trust's fundraising profile and attractiveness to donors.	Medium	High
Donors to the Trust	The cost of donating to the Trust reduces.	The benefit depends on the donors' decisions to claim a	Medium, there is a behavioural response that


<sup>8</sup> Assumes a discount rate of 4.30% as provided by *Discount rates and CPI assumptions for accounting valuation purposes*. [Discount Rates and CPI Assumptions for Accounting Valuation Purposes | The Treasury New Zealand](#)

		tax benefit in respect of their donation and the statutory constraints that apply (such as income levels).	could affect those estimates, but it is difficult to predict taxpayer sensitivity as noted earlier in the discussion on constraints.
Inland Revenue	None	N/A	N/A
The Government	None	N/A	N/A
<b>Total monetised benefits</b>			
<b>Non-monetised benefits</b>		<i>Low</i>	

86. Inland Revenue notes that, at this point of time, there are too many unknowns regarding the ongoing operation of Te Arawhata, and it is hard to assess the viability of the venture because it has been in operation for less than one year. As noted in 2018, a risk arising from the project promoted by the Trust is that it may put pressure on the Government to provide additional and ongoing contributions (either direct or indirect) to ensure the Trust's long-term and continued operations.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

87. Legislative change to the Income Tax Act (primary legislation) is necessary to implement Option 2 (or Option 3).
88. In 2016, advice to Inland Revenue from the Legislative Design and Advisory Committee confirmed that the use of legislation to implement decisions to give overseas donee status was appropriate, because:
  - determining overseas donee status has (or might have) a political and moral dimension; and
  - it ensures decision-making transparency and promotes a bipartisan approach.
89. s 18(c)(i) 
90. Inland Revenue would administer the proposed legislative changes. Inland Revenue's enforcement of the changes would be managed as part of its business-as-usual activities. Inland Revenue has assessed the size of the administrative impacts and considers that a decision to grant the Trust overseas donee status can be implemented for the start of the 2025/26 income year (1 April 2025), subject to amending legislation being enacted before 31 March 2025. For this reason, the proposed changes are being expedited by way of an Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

### How will the new arrangements be monitored, evaluated, and reviewed?

91. Inland Revenue would monitor the Trust to confirm that it is meeting its purposes if it is granted overseas donee status.
92. Monitoring the Trust would be done through existing relationships that Inland Revenue has with relevant stakeholders and their advisors, as part of its administration of the Inland Revenue Acts (Income Tax Act, Tax Administration Act, and Goods and Services Tax Act 1985).
93. The process for granting overseas donee status is based on an upfront analysis and vetting process. Charities that are granted overseas donee status may be the subject of routine audit or investigation by Inland Revenue if information comes to hand that warrants an administrative intervention.
94. Irrespective of Inland Revenue's tax administration, charities that are granted overseas donee status are required to comply with the requirements of the Charities Act 2005.
95. Non-compliance with the Charities Act, evidence of wrong-doing, or other actions that are contrary to the application of the Inland Revenue Acts may warrant further advice to the Government to the effect that the charity's overseas donee status should be removed.