

# Impact Summary: Temporary tax exemption for the Waitara hapū entity

## Section 1: General information

Purpose
The Department of Internal Affairs is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing policy decisions to be taken by Cabinet in relation to the proposal for a temporary six-month tax exemption for the Waitara hapū entity to be included in the New Plymouth District Council (Waitara Lands) Bill.

Key Limitations or Constraints on Analysis
<p><i>The initiative arises from a local bill</i></p> <p>The New Plymouth District Council (Waitara Lands) Bill (the Bill) is a local government initiative intended to resolve longstanding issues at Waitara between the New Plymouth District Council (the District Council) and Ngā Manukorihi and Otaraua (the Waitara hapū) resulting from the nineteenth century confiscation of Māori land. The Bill broadens the purposes for which funds from Waitara Endowment Lands can be used, including provision for a Hapū Land Fund. The District Council and the Waitara hapū seek a tax exemption for the part of the funds under the Bill which are provided to a Hapū Land Fund. The Waitara hapū dispute that tax consequences should arise from purchase of land which was confiscated. This Impact Summary addresses only the issue of the proposed tax exemption in the Bill.</p> <p>The tax exemption initiative arises in response to issues arising through the local Bill. Policy analysis is constrained as the work is undertaken under time constraints and reactive to circumstances arising outside of the Government’s planned policy and legislative work programme; it is not a Government policy initiative.</p> <p><i>The proposed tax exemption is inconsistent with general tax policy principles</i></p> <p>Such analysis as has been undertaken has been based on the premise that the Bill will bring substantial benefits and it is appropriate for the Crown to support the Bill although the proposed tax exemption is inconsistent with general tax policy principles. Action by the Crown in regards to the proposed tax exemption is considered necessary to support the Bill and to prevent its failure through the withdrawal of Waitara hapū support. It is assumed that, if the Crown takes no action, the Bill will fail to proceed. Officials have not undertaken significant work to explore whether other options would enable the Bill to proceed without a tax exemption.</p> <p>The initiative includes no mandate to review or change general tax policy principles. The need to respect the parameters of general tax policy principles constrained the options available.</p> <p><i>Timing limits the analysis undertaken</i></p> <p>A key limitation on the analysis is timing. The New Plymouth District Council (the District</p>

Council) and the Waitara hapū seek enactment of the Bill in 2018, to provide certainty, clarity and a resolution to the longstanding issues at Waitara. Given it is a local bill and can only be read on a members' day, officials are working to achieve Cabinet decisions relating to the tax exemption issue (and certain other matters not covered by this RIA) in advance of 12 December 2018, the final members' day of the 2018 Parliament sitting calendar.

*Decisions are a product of negotiations*

The Minister of Local Government and the Minister of Revenue have determined to recommend to Cabinet that a temporary tax exemption for the Waitara hapū entity for six months from the date of commencement should be included in this local Bill. The intention is that a six month tax exemption provides sufficient time for the Waitara hapū entity to obtain a decision on an application for charitable status registration. The six month period will allow for the process to take place, and results in a contingent fiscal cost of a maximum of \$0.3 million, depending on the use of the relevant fund during that period.

This recommendation is the result of a negotiated solution to reach a compromise between the competing objectives of complying with general tax policy principles and meeting the aspirations of the District Council and the Waitara hapū for a tax exemption to be included in the Bill. The objective of the initiative is for the Crown to support the District Council's efforts to resolve the issues at Waitara and bring benefits to the local community, while balancing appropriate respect for the parameters of general tax policy principles.

**Responsible Manager (signature and date):**

Raj Krishnan  
General Manager  
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## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

#### *Problem definition*

The Bill provides for the distribution of funds from the Waitara Endowment Land, including a Hapū Land Fund to be applied to develop, manage and purchase land for the benefit of the Waitara hapū. The Waitara hapū seek a tax exemption for funds provided through the Hapū Land Fund and have strongly asserted that they will not support the Bill without Crown assistance through a tax exemption, on the basis that they should not be obliged to pay tax as a result of the partial return of stolen land. The District Council support the Waitara hapū's view.

If the Waitara hapū do not support the Bill, it is likely that the District Council will withdraw the Bill because the longstanding issues at Waitara will not be resolved. If the Bill does not proceed the community benefits, including the unlocking of Waitara Endowment Land funds, will not result. The issues faced by the Waitara hapū will remain unresolved, including the disconnection from Waitara lands, and the opportunity for the Waitara hapū to restore their economic and cultural base in Waitara will not occur. The potential wider benefits to relationships in the region between Māori, local government and the Crown will not be realised.

Any tax exemption through the Bill is inconsistent with general tax policy principles. The issue faced is to balance the competing interests of minimising inconsistency with general tax policy principles while seeking to meet the aspirations of the Waitara hapū and the District Council, to enable the Bill to proceed.

This is a local Bill, and it is not usual to include Crown policy issues in a local Bill or for the Crown to intervene. However, there are unique circumstances in Waitara and the Bill represents a 'once in a generation' opportunity to resolve the issues in Waitara. The Bill will provide substantial benefits for the wider community, as well as for the Waitara hapū. For a number of reasons, including the District Council ownership of the Waitara Endowment Land, the longstanding issues in Waitara were not resolved by the Te Atiawa Claims Settlement Act 2016.

It is consequently considered appropriate for the Crown to support the Bill and to take positive steps to demonstrate that support. The Bill represents an innovative local government solution to a local issue, and Crown support for the District Council's initiative is likely to have additional flow-on benefits to the relationships between Māori, local government and the Crown in the region.

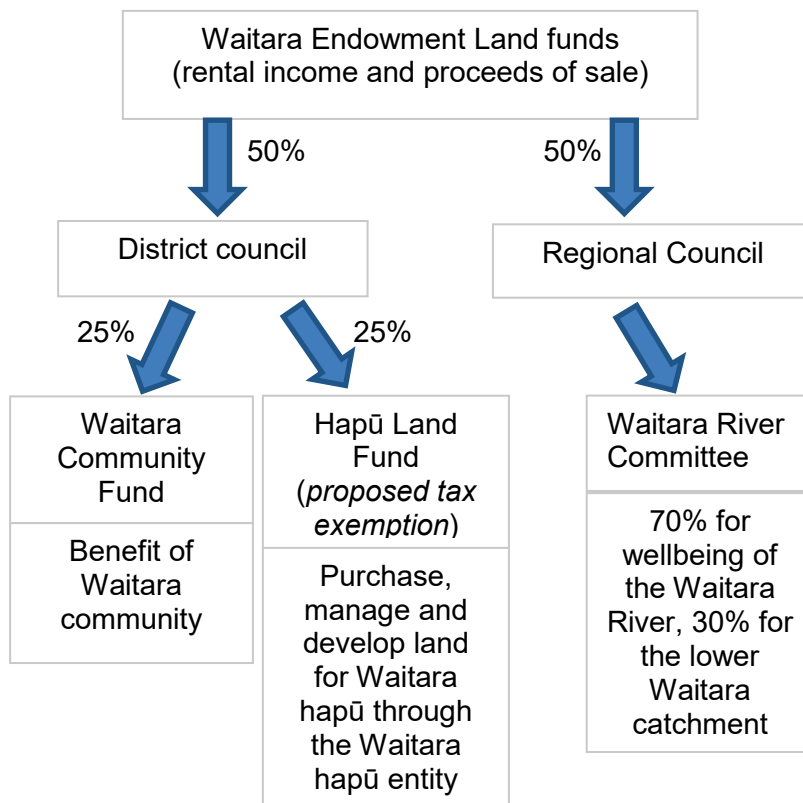
#### *Background to the Bill*

The Bill intends to restore the cultural and economic base of the Waitara hapū, and to provide future opportunities for economic and cultural development and the exercise of hapū rangatiratanga. The Bill also seeks to provide significant community benefits to Waitara, New Plymouth and the wider Taranaki region while resolving the longstanding issue at Waitara caused by the nineteenth century confiscation of Māori land. It does so by unlocking the use of Waitara Endowment Land funds

The Bill broadens the purposes for which the District Council can apply rental income and proceeds of sale of the Waitara Endowment Land. The tax exemption sought relates to the part of the Waitara Endowment Land funds that will be channelled into the Hapū Land Fund. The relevant arrangements in the Bill are:

- Waitara Endowment Land will remain in the District Council's ownership with accumulated and future income arising from the leases and proceeds of any sale applied equally between the District Council and Taranaki Regional Council (the Regional Council);
- The District Council funds will be split equally between the Hapū Land Fund and the Waitara Community Fund, and the Regional Council funds will be in the control of the Waitara River Committee;
- A statutory body (the Board) will be established to oversee and administer the District Council's funds. The Board will comprise an equal number of members appointed by the District Council and by the Trustees of Te Kotahitanga o Te Atiawa (the representative body of the iwi who are tangata whenua in Waitara);
- The Hapū Land Fund will receive 50 per cent of the District Council's funds to be applied to develop, manage and purchase land for the benefit of the Waitara hapū (25 per cent of the overall Waitara Endowment Land funds). A Hapū Land Fund Committee consisting of members of the Waitara hapū will be established to determine distributions from the Hapū Land Fund and make recommendations to the Board about the investment policy;
- The Waitara Community Fund will receive 50 per cent of the District Council's funds to be spent for the benefit of the Waitara community with spending decisions made by the Board (25 per cent of the overall funds);
- The Waitara River Committee will be established as a standing committee of the Regional Council consisting of an equal number of members nominated by the Regional Council and by iwi with interests in the Waitara River. The income controlled by the Waitara River Committee will be spent on restoring the environmental, cultural and spiritual health of the Waitara River (70 per cent) and any matter benefiting Waitara or the lower catchment of the Waitara River (30 per cent);
- The Waitara hapū entity will be established under the Bill. This is the body corporate, legal entity or unincorporated trust recognised by the Trustees of Te Kotahitanga o Te Atiawa as representing the Waitara hapū; and
- The Bill entitles leaseholders at Waitara to purchase freehold title to the land they have leasehold title over. Proceeds of sale will be added to the Waitara Endowment Land funds.

The funds from Waitara Endowment Land (leasehold fees and freehold proceeds) will be distributed under the Bill as follows:



## 2.2 Who is affected and how?

- The District Council: has committed significant resources to the Bill and seeks to realise the community benefits under the Bill;
- The Waitara hapū: the Bill provides the opportunity to resolve the longstanding issues caused by the confiscation of Māori land at Waitara and the subsequent vesting of that land in the District Council;
- Leaseholders of Waitara endowment land: the Bill provides the right to purchase the freehold to the land they have leasehold title over, which they have sought through approximately 20 years of court action against the District Council. The Bill provides certainty and a defined mechanism to enable the purchase of the freehold;
- The wider Waitara community: will benefit from the portion of the proceeds of the Waitara endowment land which will be paid into the Waitara Community Fund (25% of the total fund), for community benefit and from the part of the Waitara River Committee funds which are allocated by the Bill to general Regional Council expenditure in Waitara (15% of the total fund);
- The Waitara River: will benefit from the Waitara endowment land funds which are paid to the Waitara River Committee to restore the environmental and cultural health and wellbeing of the Waitara River, bringing benefits to the wider Taranaki community (35% of the total fund); and

- The Crown: will benefit from actively demonstrating support for this local government initiative. The initiative has the potential to improve the Māori-local government relationship in the region and to demonstrate more broadly the opportunities for local government to find innovative local solutions, as well as contributing to the tripartite relationship between Māori, local government and the Crown.

### **2.3 Are there any constraints on the scope for decision making?**

The primary constraint on the scope for decision making is that the issue arises in the context of negotiations over the content of a local bill. The primary negotiations are between the District Council and the Waitara hapū and the Crown has a limited role.

The analysis is limited by timing. The issue of the tax exemption arose in early October 2018. The Ministers' decision as to recommendations to make to Cabinet was made on 30 October 2018, supported by advice from officials from the Department of Internal Affairs, Inland Revenue and the Treasury. The limited timeframes placed a significant constraint on the depth of analysis underpinning officials' advice and consequent constraints on the scope for decision making.

The scope for decision making by the Crown is limited to balancing the competing objectives of meeting the aspirations of the Waitara hapū and the District Council while minimising inconsistency with general tax policy principles.

The initiative includes no mandate to review or change general tax policy principles. The need to respect the parameters of general tax policy principles constrained the options available. Such analysis as has been undertaken has been based on the premise that the Bill will bring substantial benefits and it is appropriate for the Crown to support the Bill. Action in regards to the proposed tax exemption is necessary to support the Bill and to prevent its failure. Officials have not undertaken significant work to explore whether other options would enable the Bill to proceed without a tax exemption.

# Section 3: Options identification

## 3.1 What options have been considered?

- Permanent tax exemption for the Waitara hapū entity in relation to distributions from the Hapū Land Fund;
- Charitable status: no tax exemption and no specific action by the Crown to support the Bill. Waitara hapū entity to apply for charitable status, seeking charitable status to be backdated to date of application;
- Six-month temporary tax exemption for the Waitara hapū entity in relation to distributions from the Hapū Land Fund;
- Māori Authority status for the Waitara hapū entity (providing a reduced tax rate of 17.5%, compared with 28% for a body corporate or 33% for a trust); and
- District Council to reimburse any tax on distributions (effectively grossing up distributions from the Hapū Land Fund to the Waitara hapū entity).

Detailed analysis was not carried out on the options in the time available. Other options to demonstrate Crown support for the Bill, for example a grant to refund tax paid, were not considered.

The following table summarises the pros and cons of each option and the principal criteria applied; to ensure the support of the District Council and Waitara hapū for the Bill, to demonstrate Crown support for the Bill; and to minimise as far as possible inconsistency with general tax policy principles. The overall intention was to seek a pragmatic solution that recognises the unique circumstances at Waitara and is effective in enabling the Bill to progress.

### Table of options

Option	Supported by District Council and Waitara hapū?	Demonstrates active Crown support for the local bill?	Minimises inconsistency with tax policy principles	Pros	Cons
Permanent tax exemption <i>(District Council and Waitara hapū preferred option)</i>	✓	✓	✗	<ul style="list-style-type: none"> <li>• Enables the Bill to proceed</li> <li>• Bill creates taxable activity – without the Bill, the endowment funds are held by the Council and only used for a limited range of activities which fall within the Council’s local authority tax exemption. The Bill creates revenue for the Crown through tax receipts that would not eventuate without the Bill</li> <li>• Recognises Crown role in land confiscation</li> </ul>	<ul style="list-style-type: none"> <li>• Inconsistent with tax policy principles</li> <li>• Ongoing direct cost to the Crown in lost tax revenue if the Bill proceeds</li> <li>• Risk of precedent effect</li> </ul>
Hapū entity to register as a charity and no specific tax exemption <i>(Inland Revenue and Treasury preferred option)</i>	✗	✗	✓	<ul style="list-style-type: none"> <li>• Consistent with tax policy principles</li> <li>• No direct fiscal implications</li> <li>• No practical disadvantage to Waitara hapū if charitable status is conferred and backdated to date of application</li> </ul>	<ul style="list-style-type: none"> <li>• Dependent on decisions by Charities Registration Board, which cannot be pre-empted through legislation</li> <li>• Does not demonstrate Crown support for the approach of the District Council</li> <li>• Risk of delay which may result in the Bill not proceeding</li> </ul>



**Table of options**

<p>Temporary six-month tax exemption <i>(Compromise option; DIA preferred option)</i></p>	✓	✓	✓	<ul style="list-style-type: none"> <li>• Sufficiently acceptable to the District Council and the Waitara hapū that they will continue to support the Bill</li> <li>• Limits inconsistency with tax policy principles (regarded as a temporary extension of typical transitional arrangements for local government restructuring)</li> <li>• The Bill's arrangements create taxable activity which would otherwise not eventuate – actually creates tax revenue for the Crown in the long-run</li> <li>• Allows time for the Waitara hapū entity to obtain a determination on an application to register for charitable status</li> <li>• Recognises Crown role in land confiscation (in a more limited way than a permanent tax exemption)</li> </ul>	<ul style="list-style-type: none"> <li>• Inconsistent with tax policy principles</li> <li>• Direct cost to the Crown (limited by the temporary nature of the exemption)</li> <li>• Risk of precedent effect</li> </ul>
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**Table of options**

Māori Authority status	✘	✓	✓	<ul style="list-style-type: none"> <li>• Fits with general tax principles</li> <li>• No fiscal implications for the Crown</li> </ul>	<ul style="list-style-type: none"> <li>• Not acceptable to Waitara hapū or District Council</li> <li>• Effectively undermines the Bill; the Bill would likely not proceed</li> <li>• Waitara hapū entity not assessed under Māori Authority framework; may have a precedent effect for organisations seeking Māori Authority status; greater risk of unintended consequences</li> </ul>
District Council reimburses tax to the Waitara hapū	✘	✘	✓	<ul style="list-style-type: none"> <li>• Fits with general tax principles</li> <li>• No fiscal implications for the Crown</li> </ul>	<ul style="list-style-type: none"> <li>• Not acceptable to hapū or District Council</li> <li>• Would effectively undermine the Bill, and the Bill would likely not proceed</li> <li>• Requires funding from rating base, so would offset the benefits to the wider community through the bill. District Council would need to undergo its own decision-making process; may delay Bill and delay may ultimately result in the Bill not proceeding</li> </ul>

### 3.2 Which of these options is the proposed approach?

The temporary six-month tax exemption is the preferred option. It achieves the primary objective of demonstrating Crown support for the Bill and enabling the Bill to proceed, while limiting the inconsistency with general tax policy principles. This option provides an acceptable balance between the competing objectives. It is a compromise option which seeks to allow sufficient time for the Waitara hapū entity to avail themselves of the tax advantages of charitable registration.

## Section 4: Impact Analysis (Proposed approach)

### 4.1 Summary table of costs and benefits

<b>Affected parties</b> <i>(identify)</i>	<b>Comment:</b> nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	<b>Impact</b> <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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#### Additional costs of proposed approach, compared to taking no action

Regulated parties	No additional costs (save for the Waitara hapū entity's costs of compliance to account for a part-year tax exemption)	Low
Regulators	Loss of potential tax revenue for a six month period	\$0.3m (upper limit)
Wider government	Reduction in the between-Budget contingency reducing funding available for other priorities	Low
Other parties	None	None
<b>Total Monetised Cost</b>	Over a six month period	\$0.3m (upper limit)
<b>Non-monetised costs</b>	Related to the impact of the monetised costs	Low

#### Expected benefits of proposed approach, compared to taking no action

Regulated parties	<ul style="list-style-type: none"> <li>Provides 6 months tax free receipt of distributions from the Hapū Land Fund</li> <li>Removes a barrier to the hapū members agreeing to the provisions in the Bill</li> <li>Active demonstration of Crown support for the District Council's approach to the Bill</li> </ul>	<ul style="list-style-type: none"> <li>\$0.3m (upper limit)</li> <li>High</li> </ul>
Regulators	Tax revenue on \$60-\$80m over approximately 20 years (unquantifiable: depends on decisions of leaseholders and distributions from the fund)	High
Wider government	Active demonstration of Crown support for the District Council's approach, bringing wider benefits to the relationship between the Crown, local government and Māori	Medium
Other parties	Benefits to the wider community in Waitara township, New Plymouth district and the Taranaki region resulting from the provisions in the Bill	Medium
<b>Total Monetised Benefit</b>	\$0.3 million for the Waitara hapū	n/a
<b>Non-monetised benefits</b>	Benefits likely to be spread over a 20 year period	High

## 4.2 What other impacts is this approach likely to have?

The Bill provides a 'once in a generation' opportunity to resolve the longstanding issues at Waitara. While it is to be hoped that the Bill will encourage other local authorities to explore innovative solutions to enhance relationships with local Māori communities, it is not expected to set a precedent. The circumstances in Waitara are unique and officials are not aware of any similar or comparable circumstances. In addition to the historical factors, the unique circumstances include that this is endowment land, so the funds provided under the Bill are not obtained from rates and are not otherwise available for general use, and that the interests of the leaseholders are protected and enhanced by the Bill. The likelihood of similar arrangements emerging and the risk of the Bill setting a precedent that adversely impacts on the Crown's tax revenue are low.

Leaseholders benefit under the Bill, given that it provides a mechanism for them to purchase the freehold title to the same land over which the leasehold title is held. The proposed solution of the six-month tax exemption enables the Bill to proceed, and leaseholders to realise the benefits of the Bill.

## Section 5: Stakeholder views

### 5.1 What do stakeholders think about the problem and the proposed solution?

The District Council and the Waitara hapū strongly support the tax exemption and agree with the proposed solution of a temporary tax exemption. Trustees of the local iwi authority, Te Kotahitanga o Te Atiawa, support the proposed tax exemption. The views of the Regional Council have not been sought, as the proposed tax exemption relates to funds transferring from the District Council to the Waitara hapū entity and does not apply to the Regional Council funds, which remain in the control of the Regional Council through the Waitara River Committee.

# Section 6: Implementation and operation

## 6.1 How will the new arrangements be given effect?

The temporary six-month tax exemption will be given effect through statutory provisions included in the Bill. No transitional arrangements are necessary; effectively, the temporary tax exemption itself is a transitional arrangement.

The District Council will report on the new arrangements through the reporting mechanisms in the Bill and the standard local authority reporting mechanisms. Local authority reporting documents are publicly available.

The fiscal cost to the Crown of \$0.3 million will be charged against the between-Budget contingency established as part of Budget 2018.

Possible implementation risks have not been considered; the Crown has no role to play in implementation of the arrangements under the Bill as it is a local bill.

# Section 7: Monitoring, evaluation and review

## 7.1 How will the impact of the new arrangements be monitored?

The District Council will report on arrangements under the Bill through its standard reporting mechanisms.

The Waitara hapū entity will be obliged to complete an annual tax return and/or a charities return which will report on the impact of the time limited tax exemption.

## 7.2 When and how will the new arrangements be reviewed?

No review is planned or required for the tax exemption as the arrangement is a temporary one, only in place for six months.

Responsibility for reviewing the broader set of arrangements under the Bill will sit with the District and Regional Councils.