

Departmental Disclosure Statement

Point England Development Enabling 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 the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 October 2016.

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Part One: General Policy Statement

Point England Development Enabling Bill

The purpose of the Bill is to enable housing development on 11.69 hectares of land (the development land) on the Point England Recreation Reserve in Tāmaki in east Auckland. The Point England Recreation Reserve comprises 45.43 hectares, and includes sports fields, a walkway, and other facilities for recreation. A portion of the reserve, of at least 18 hectares, has had very little investment, and public use is restricted as it is fenced for grazing. Auckland Council administers the reserve together with an adjacent Council-owned beach reserve of 2.92 hectares. The land is zoned under the current Auckland district plan and the new Auckland combined plan as Public Open Space.

The development land is Crown-owned but vested in Auckland Council as a recreation reserve under the Reserves Act 1977. The land's reserve status and zoning mean its use is restricted to reserve activities. The Bill enables housing to be built on development land by creating a new land parcel from within the reserve with separate title, revoking that parcel's reserve status, setting it apart for State housing purposes, and rezoning it as Residential – Mixed Housing Urban to allow appropriate residential development to occur. The balance of the reserve, 32.92 hectares, will remain as a recreation reserve, as will the Council-owned beach reserve.

The development land will be connected by road to Point England Road and Elstree Avenue, will not encroach on the elevated headland or the eastern sports fields adjacent to the Council-owned beach reserve, and will be set back from Omaru Creek. The development land adjoins housing owned by the Tāmaki Redevelopment Company that is due for redevelopment as part of the regeneration of the Tāmaki area.

A new housing development on the development land will result in new homes being made available that could rehouse existing Tāmaki Redevelopment Company tenants and therefore assist the regeneration. The new housing will also contribute to an increase in housing supply in the local area and Auckland, better utilise Crown land, and provide for mixed communities of social, affordable, and market-value housing in a desirable location near to public transport, with excellent access to the central business district and other employment centres.

The Bill will preserve existing interests in the land (both on the development land and the remainder of the reserve), which will continue on their current terms. These interests include a licence to the Tāmaki Model Aircraft Club and a right of first refusal under the Ngā Mana Whenua o Tāmaki Makaurau Redress Act 2014 and the deed that it gives effect to. After enactment of the Bill, the Crown intends to enter into a contract with a developer to provide housing on the development land that is consistent with the Crown's Treaty settlement obligations.

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?	YES
The Productivity Commission has considered the impact within New Zealand on the insufficient supply of land for housing, and some of the limits of the current planning system, in September 2015's Using land for housing http://www.productivity.govt.nz/inquiry-content/2060?stage=4 and its draft report on urban planning August 2016 http://www.productivity.govt.nz/inquiry-content/2682?stage=3 . Several of the Reserve Bank's reports into the impact of house inflation in Auckland are also publicly available at www.rbnz.govt.nz	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
The Ministry of Business, Innovation and Employment prepared a Regulatory Impact Statement to inform the policy decisions that led to this Bill. This statement titled "Regulatory Impact Statement: Point England Development Enabling Bill" was finalised on 21 October 2016 and can be accessed here: http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-point-england-development-enabling-bill.pdf	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Regulatory Impact Statement was not assessed by the RIA Team in the Treasury as it did not meet the threshold for RIA Team assessment. The Regulatory Impact Statement was reviewed by the Ministry of Business, Innovation and Employment's Regulatory Impact Analysis Review Panel. The Review Panel considers that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	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?	YES
<p>The Regulatory Impact Statement includes this analysis. The key trade-off for this Bill is the loss of amenity value provided by the 11.69 hectares of Point England Recreation Reserve to be developed against the benefits from it being developed for housing.</p> <p>Although these potential costs and benefits are difficult to quantify, the Ministry of Business, Innovation and Employment considers the proposal to provide a net benefit.</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?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>To achieve the policy objective, a developer – in the first instance most likely to be the commercial subsidiary of the iwi Ngāti Paoa – will be contracted to undertake a development under the terms of a Development Agreement.</p> <p>Residential development involves a level of commercial risk. Because of this, there is the potential for the housing objectives to be delayed or not delivered at all. The contractual Development Agreement and the remedies it contains are intended to ensure a housing development will either proceed as agreed or enable another developer to be brought in to deliver the outcomes sought. The Government is agreeing, or has agreed, similar Development Agreements in Christchurch and other parts of Auckland: the approach is not new to this proposal.</p>	

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?
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The Bill implements policy which is well established and can also be given effect to without legislation, being the revocation of reserve status and the rezoning of land. We have also reviewed Appendix 3 of the Legislation Advisory Committee, Guidelines on Process and Content of Legislation. We do not consider the Bill risks breaching any of 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?

The Bill assists the Government to conclude a historical Treaty of Waitangi settlement. If the housing development is not undertaken by the iwi Ngāti Paoa, under their Treaty settlement, the development opportunity will be offered to Ngā Mana Whenua o Tāmaki Makaurau under the terms of their Redress Deed and Act. The Office of Treaty Settlements, Te Puni Kōkiri and iwi/hapū in the wider region have been consulted on the policy and/or the related Treaty settlement proposal as part of the Office of Treaty Settlements engagement on the redress.

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
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Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, are accessible on the Ministry's website at:
<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

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?	NO
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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
In the course of the development of the proposal there has been consultation undertaken with Auckland Council, the Chair of the Maungkikie-Tamaki Local Board, local iwi/hapū Ngāti Paoa, other iwi and the Tāmaki Redevelopment Company.	

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?	NO

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?	NO

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?	NO

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?	YES
<p>The Bill requires the Auckland Council to make a change to the zoning in the proposed Auckland Unitary Plan. Rezoning is typically the responsibility of local government. However, the land is currently zoned “Open Space”. If the land is not rezoned by legislation it may cause a significant delay to the start of a housing development, as a private plan change will be required. Auckland Council has been consulted on these legislative provisions.</p>	