

Hon Kelvin Davis

Minister for Māori Crown Relations: Te Arawhiti

Proactive release – Return of the Ō-Rākau battle site

Date of issue: 3 May 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	Return of the Ō-Rākau battle site <i>Cabinet paper</i> Office of the Minister for Māori Crown Relations: Te Arawhiti 15 March 2023	Some information has been withheld in accordance with: <ul style="list-style-type: none">• section 9(2)(h) of the OIA to maintain legal professional privilege; and• section 9(2)(g)(i) of the OIA to maintain the effective conduct of public affairs through the free and frank expression of opinions.
2.	Return of the Ō-Rākau battle site <i>Minute of decision SWC-23-SUB-0015</i> Cabinet Social Wellbeing Committee Meeting date: 15 March 2023	Some information has been withheld in accordance with: <ul style="list-style-type: none">• section 9(2)(h) of the OIA to maintain legal professional privilege; and• section 9(2)(g)(i) of the OIA to maintain the effective conduct of public affairs through the free and frank expression of opinions.
3.	Report of the Cabinet Social Wellbeing Committee: Period ended 17 March 2023 <i>Cabinet minute CAB-23-MIN-0083</i> Cabinet Office Meeting date: 20 March 2023	Redacted in part because out of scope

In Confidence

Office of the Minister for Māori Crown Relations: Te Arawhiti

Chair, Cabinet Committee on Māori Crown Relations

Return of the Ō-Rākau battle site

Proposal

- 1 I seek Cabinet's agreement to the transfer of the Ō-Rākau battle site from the Crown to iwi and the creation of an ownership and management structure that will appropriately reflect the complex customary and historical interests in the site. I propose:
 - a. the land be transferred (through special legislation) into the ownership of tūpuna who fought at the battle of Ō-Rākau or had other connections to the land;
 - b. administration of the title be undertaken by the three post-settlement governance entities of Maniapoto, Raukawa, and Waikato-Tainui, who hold customary interests at Ō-Rākau; and
 - c. an incorporated society be established that will allow for the representation of all descendants of tūpuna listed on the title in the management of the site.
- 2 This will respond directly to the Government priority of working to ensure the Crown can grow to be a better Treaty partner and work in partnership with Māori.

Executive Summary

- 3 In 2015, the Crown purchased the property considered to be the site of the battle of Ō-Rākau with the intention of returning it to iwi. The Crown has since been in discussion with Maniapoto, Raukawa, Waikato-Tainui, and other iwi connected to the battle to agree the terms of transfer and ongoing administration of the property.
- 4 This paper seeks Cabinet agreement to the following elements of the transfer of this property:
 - a. that the land be vested in the names of tūpuna who fought at the battle of Ō-Rākau or had other connections to the land; and
 - b. that the post-settlement governance entities of Maniapoto, Raukawa, and Waikato-Tainui jointly administer this title, with the rights and powers of registered owners.
- 5 These provisions for title administration will also enable the three post-settlement governance entities to establish an incorporated society that will allow for the representation of all iwi with tūpuna who fought at the battle or who had other connections to Ō-Rākau in the management of the site. Cabinet authority is not required to establish the incorporated society.

- 6 The proposed transfer is subject to approval of financial arrangements. The property is proposed to be transferred at nil cost to iwi.
- 7 If this transfer is approved by Cabinet, special legislation will be drafted to enact this transfer. The Parliamentary Counsel Office does not expect the drafting of this legislation to be complex. I will seek further Cabinet agreement to introduce this legislation. Iwi preference is for the legislation to be introduced prior to the general election on 14 October 2023, which will allow progress to be made toward the transfer before the 160th anniversary of the battle in early 2024.

Background

The battle of Ō-Rākau

- 8 Ō-Rākau, located near Kihikihi (approximately 40 kilometres south of Hamilton), is an area to which Maniapoto, Raukawa, and Waikato-Tainui 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 of the last major battle of the Waikato War.
- 9 The battle of Ō-Rākau took place from 31 March to 2 April 1864. More than 150 Māori people, including women and children, were killed by Crown forces. This included as they attempted to break out of the besieged pā after three days of fighting, when supplies were exhausted. It was the final battle in one of the largest-scale acts of aggression by the Crown against Māori and was followed by massive land confiscations, including of Ō-Rākau itself, which have had continuing adverse economic and social effects on Māori.

The property at Ō-Rākau

- 10 The site is approximately 9.7 hectares and was a private farm until the Crown purchased it in 2015. It is listed with Heritage New Zealand Pouhere Taonga as a Wāhi Tapu. A small public memorial commemorating the battle sits on an adjacent road reserve in front of the property. The memorial provides a viewing point over the landscape, with signage giving basic information about the battle. **Appendix One** shows the site's location and boundaries.
- 11 The site is held as Crown land under the Land Act 1948 and was placed into the Treaty Settlement Landbank for use in a Treaty settlement. While Landbank property is typically reserved for use in Treaty settlements, there may be exceptions to this. Discussions between iwi and the Crown in 2015 left multiple options available for the eventual transfer and ownership of the land.

Recognising the many connections to Ō-Rākau

- 12 Maniapoto, Raukawa, and Waikato-Tainui all hold customary interests in the land, and a number of additional iwi are recognised as having connections to Ō-Rākau through their involvement in the battle. These include Ngāti Kahungunu, Ngāti Manawa, Ngāti Porou, Rongowhakaata, Te Aitanga-a-Māhaki, Te Whānau-ā-Apanui, Ngāi Tūhoe, Ngāti Tūwharetoa, Whakatōhea, and Ngāti Whare.
- 13 Discussions have been ongoing with iwi since 2015 to arrange a suitable ownership and governance model for the site. In 2017, the Crown and iwi agreed that treating Ō-Rākau as Treaty settlement redress for any one or all three of the iwi with customary interests would be inappropriate due to the many iwi with customary and other

connections to the battle and land. The Crown and iwi also decided the transfer of the land should not occur until all three iwi with customary connections to Ō-Rākau had completed their Treaty settlements.

- 14 With the completion of the Maniapoto settlement in late 2022, the three iwi with customary interests in Ō-Rākau have finalised their Treaty settlements¹, and this is an opportune time to progress the return of the land.
- 15 It is important this site is returned to iwi in a way which respects the many connections to the land held by iwi across the country. The three iwi with customary interests have consulted with the other iwi named above on plans for the land and have received their broad support. The many connections to Ō-Rākau are to be reflected in both the ownership and management of the land, post-transfer.

Elements of the transfer

Tūpuna title

- 16 I propose Cabinet agree the land at Ō-Rākau be vested in the names of tūpuna with connections to the battle or other connections to the land.
- 17 The vesting of the title in the name of tūpuna is intended to recognise their individual and collective connections to the battle and the land. Tūpuna title is an established means of holding title under Te Ture Whenua Māori Act 1993. However, the Crown has agreed with the three iwi with customary interests at Ō-Rākau that a trust is not an appropriate ownership entity given the layered interests. As such, Te Ture Whenua Māori Act 1993 is not a suitable instrument and bespoke transfer legislation is required.
- 18 Iwi estimate there could be up to 300 names on the tūpuna title. The Registrar-General of Land has advised there are no restrictions on the number of names that can be placed on a title and has no concern regarding cost or difficulty of amending the list of names on the title.
- 19 Historical research is being undertaken to establish the tūpuna names to be on the land title and the narrative of the connection of each iwi to Ō-Rākau. This work is intended to be funded by Te Arawhiti and does not require a Cabinet decision. It is expected to be largely completed prior to the transfer of the land. A list of tūpuna names will need to be completed in order to transfer and vest the property.
- 20 The legislation giving effect to the transfer will provide for tūpuna names to be added, removed, or altered on the title via an application to the Registrar-General of Land, as required. This will allow the title to not be limited by present knowledge of whakapapa and history and for the title to be updated to reflect developing historical knowledge.

Joint administration of the title

- 21 I propose Cabinet agree for the title of the land at Ō-Rākau be jointly administered by the three post-settlement governance entities of Maniapoto, Raukawa, and Waikato-Tainui, who would have the rights and powers of registered owners on behalf of the tūpuna listed on the title. The proposed special legislation will provide for these powers and give the three entities authority to manage the title to the land.

¹ Waikato-Tainui has yet to complete their remaining claims settlement, however they finalised their Raupatu Settlement in 1995, which would have covered this property, so for this purpose, I consider they are settled.

- 22 Subsequent to the purchase of the land, the Crown and iwi agreed that the most appropriate ownership model for Ō-Rākau would be for the post-settlement governance entities of the three iwi with customary interests to jointly administer the title. This model would require the three post-settlement governance entities to act jointly in making decisions affecting the title of the land. The three iwi with customary interests have advised that there has been broad support for this model from the other iwi with connections to Ō-Rākau.
- 23 The post-settlement governance entities of Maniapoto, Raukawa, and Waikato-Tainui are Te Nehenehenui, Raukawa Settlement Trust, and Te Whakakitenga o Waikato, respectively.

Management and future of the site

- 24 An incorporated society will be established to manage day-to-day administration of the site and the governing board will be appointed by the society's members (who will comprise members of iwi whose tūpuna are listed on the title and elect to become members of the society).
- 25 Decisions about the day-to-day management and running of the property will rest with the board of the incorporated society. Significant decisions, particularly those affecting the land title, will rest with the three post-settlement governance entities of Maniapoto, Raukawa, and Waikato-Tainui, who will have the rights and powers of registered owners. This will contribute to both the ownership and management of Ō-Rākau accounting for the layered interests of all relevant iwi.
- 26 Transfer of the property from the Crown to iwi is not conditional on its future use. Iwi have raised a range of possible development options, from a rongoā garden through to a fully developed educational or tourist facility. However, iwi intend to wait until the representative ownership and management structures are in place before making decisions about the site's future.

Precedent

- 27 The unique feature of this proposal is that it brings three aspects of land ownership and management, which are often used individually, together. Tūpuna title has been previously used in Treaty settlements, for example, Waikato-Tainui's raupatu settlement. The joint administration of a property by multiple iwi is a regular feature of Treaty settlements where there are shared interests. Incorporated societies are often used by hapū and iwi organisations whose objectives are social, educational, political, or cultural.
- 28 This proposal could create an expectation from other iwi that the Crown will purchase private property of particularly high cultural and historical significance and transfer it to them post-Treaty settlement or outside the Treaty settlement process. I consider we can manage that expectation by being clear this is a bespoke solution to recognise the particular circumstances of this property including layered customary and other interests of multiple iwi in the battle site.
- 29 The new legislation to enact this transfer will not provide for other land transfers to occur.

9(2)(g)(i)

■ [REDACTED] 9(2)(h)

■ [REDACTED]

■ [REDACTED] 9(2)(g)(i)

Authority to make further decisions

33 General technical decisions may be required to finalise the transfer of the Ō-Rākau battle site. I request Cabinet authorise me, together with relevant Ministers and in consultation with affected agencies, to finalise or vary general technical elements of the transfer, within the intent of the Cabinet decisions on the recommendations in this paper.

Next steps

34 If Cabinet approves the proposed transfer of the land at Ō-Rākau to iwi, a deed of agreement will be drafted and the Parliamentary Counsel Office will be instructed to draft legislation to implement the transfer. Iwi have indicated a strong desire that this legislation be introduced prior to the general election on 14 October 2023. Once the deed of agreement is signed, I will seek Cabinet agreement to introduce this legislation.

35 Special legislation is necessary to create an appropriate form of title, but it is not complex, and its introduction prior to the general election will allow progress to be made toward the transfer before the 160th anniversary of the battle in early 2024.

Release of draft legislation

36 I seek Cabinet agreement that Te Arawhiti may release draft legislation for the transfer to Maniapoto, Raukawa, and Waikato-Tainui representatives. It is common practice in Treaty settlement negotiations for draft bills to be released to the negotiating group. I consider that there are good reasons for the same practice to be followed in respect of the Ō-Rākau legislation as review of the legislation by these three iwi will be needed to ensure the elements of the transfer are workable.

37 Draft legislation is subject to legal professional privilege but may be shared, in confidence, with parties outside the Crown where Ministers and, in some instances, the Attorney-General approve. [REDACTED] 9(2)(h)

Consultation

- 38 In preparing this paper, Te Arawhiti has consulted and incorporated the views of Land Information New Zealand and Te Puni Kōkiri.

Financial Implications

- 39 Te Arawhiti intends to seek funding to support the transfer of the land at Ō-Rākau from reallocation of existing funding within Te Arawhiti. Approval for reallocation of funding will be sought directly from relevant Ministers.

Human Rights

- 40 The proposal outlined in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

- 41 There is no provision in the Land Act 1948 to transfer land to multiple iwi or vest land in the name of tūpuna and provide for its management. Bespoke legislation is required to enable the transfer on these terms, as agreed with iwi, and to give the three post-settlement governance entities the rights and powers of registered owners. This legislation will apply only to the transfer of this particular parcel of land.

Regulatory Impact Analysis

- 42 The Treasury's Regulatory Impact Analysis team has determined that the proposal for new legislation to transfer the property from the Crown to iwi is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 43 I intend to proactively release this paper in whole, making any necessary redactions, within 30 business days of final decisions being taken by Cabinet.

Recommendations

- 44 The Minister for Māori Crown Relations: Te Arawhiti recommends that the Committee:

Background

- 1 **note** the land at Ō-Rākau is considered to be the site of the battle of Ō-Rākau and is currently in Crown ownership, held in the Treaty Settlements Landbank;
- 2 **note** the Crown and iwi have jointly developed the proposal to return the land at Ō-Rākau to iwi;

Elements of the transfer

- 3 **agree** that the land at Ō-Rākau be vested in the names of tūpuna with connections to the battle and the land;

- 4 **agree** that the title of the land at Ō-Rākau be jointly administered by the three post-settlement governance entities of Maniapoto, Raukawa, and Waikato-Tainui, who would have the rights and powers of registered owners;
- 5 **note** the site will be managed by an incorporated society elected by all descendants of tūpuna listed on the title;
- 6 **note** the transfer is not contingent on future use of the site, which will be decided by iwi post-transfer;

■ [REDACTED] 9(2)(g)(i)
[REDACTED]

- 8 **authorise** the Minister for Māori Crown Relations: Te Arawhiti, together with relevant Ministers and in consultation with affected agencies, to finalise or vary general technical elements of the transfer, within the intent of Cabinet decisions in this paper;

Next steps

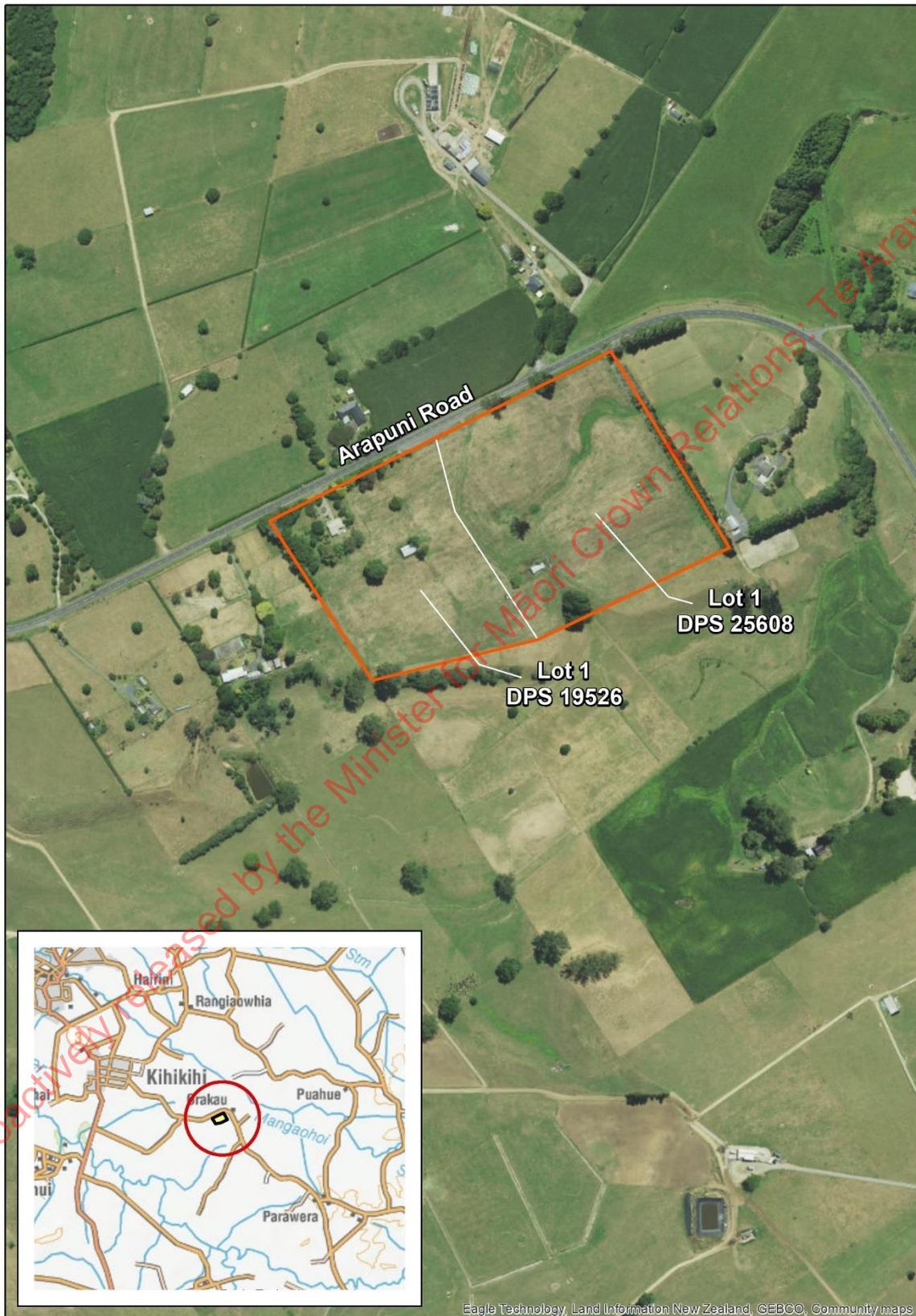
- 9 **note** that the Minister for Māori Crown Relations: Te Arawhiti intends to lodge a further Cabinet paper seeking agreement to introduce legislation to enact the transfer of the land at Ō-Rākau;
- 10 **note** that any release of draft bills to a non-Crown party requires the approval of the Minister concerned, and that Cabinet approval may also be sought during the policy development process;

[REDACTED] 9(2)(h)
[REDACTED]
[REDACTED]

- 12 **agree** that Te Arawhiti may release copies of the draft Ō-Rākau legislation to Maniapoto, Raukawa, and Waikato-Tainui representatives.

Hon Kelvin Davis
Minister for Māori Crown Relations: Te Arawhiti

Appendix One: Aerial view of Ō-Rākau site to be transferred from the Crown to iwi





Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Return of the Ō-Rākau Battle Site

Portfolio Māori Crown Relations: Te Arawhiti

On 15 March 2023, the Cabinet Social Wellbeing Committee:

Background

- 1 **noted** that the land at Ō-Rākau is considered to be the site of the battle of Ō-Rākau and is currently in Crown ownership, held in the Treaty Settlements Landbank;
- 2 **noted** that the Crown and iwi have jointly developed the proposal to return the land at Ō-Rākau to iwi;

Elements of the transfer

- 3 **agreed** that the land at Ō-Rākau be vested in the names of tūpuna with connections to the battle and the land;
- 4 **agreed** that the title of the land at Ō-Rākau be jointly administered by the three post-settlement governance entities of Maniapoto, Raukawa, and Waikato-Tainui, who would have the rights and powers of registered owners;
- 5 **noted** that the site will be managed by an incorporated society elected by all descendants of tūpuna listed on the title;
- 6 **noted** that the transfer is not contingent on future use of the site, which will be decided by iwi post-transfer;

9(2)(g)(i)

- 8 **authorised** the Minister for Māori Crown Relations: Te Arawhiti, together with relevant Ministers and in consultation with affected agencies, to finalise or vary general technical elements of the transfer, within the intent of the above decisions;

Next steps

- 9 **noted** that the Minister for Māori Crown Relations: Te Arawhiti has sought a category 4 priority on the 2023 Legislation Programme for legislation to enact the transfer of the land at Ō-Rākau;

- 10 **noted** that any release of draft bills to a non-Crown party requires the approval of the Minister concerned, and that Cabinet approval may also be sought during the policy development process;



9(2)(h)

- 12 **agreed** that Te Arawhiti may release copies of the draft Ō-Rākau legislation to Maniapoto, Raukawa, and Waikato-Tainui representatives.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Kiri Allan
Hon Priyanca Radhakrishnan
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Meka Whaitiri
Hon Willow-Jean Prime
Hon Rino Tirikatene
Jo Luxton MP

Officials present from:

Office of the Prime Minister
Office of the Chair
Office of Māori Crown Relations - Te Arawhiti
Officials Committee for SWC

Proactively released by the Minister for Māori Crown Relations: Te Arawhiti



Cabinet

Minute of Decision

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Report of the Cabinet Social Wellbeing Committee: Period Ended 17 March 2023

On 20 March 2023, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 17 March 2023:



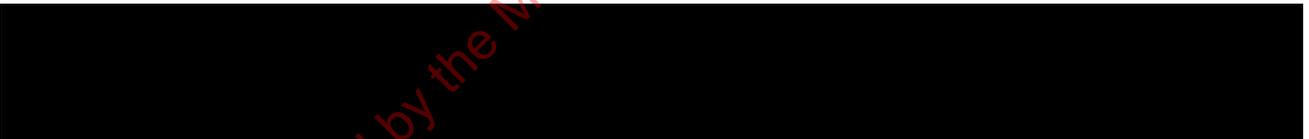
Out of scope

SWC-23-MIN-0015

Return of the Ō-Rākau Battle Site

CONFIRMED

Portfolio: Māori Crown Relations: Te Arawhiti



Out of scope

Rachel Hayward
Secretary of the Cabinet