

Mauao Historic Reserve Vesting Bill

Government Bill

Explanatory note

General policy statement

Mauao (Mount Maunganui) was acquired by the Crown in the 1880s. It has been administered as a historic reserve since 1981. The iwi of Tauranga Moana, Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga, have sought to have Mauao returned to them since the late 1990s. Te Runanganui o Tauranga Moana Incorporated (the Runanganui), on behalf of the iwi, initiated negotiations with the Crown for this purpose.

The Runanganui has agreed with the terms and conditions of an agreement, dated 11 August 2007 and signed by iwi representatives (including representatives of Waitaha), the trustees of the Mauao Trust, and the Crown, providing for the introduction of this Bill. The agreement provides that the transfer of Mauao is not consideration for the settlement of any Treaty or other claim against the Crown, but rather is to assist the Crown's objective of building healthy relationships with Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pūkenga, and Waitaha.

The Preamble to the Bill acknowledges the significant cultural, traditional, historical, and spiritual importance of Mauao to Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga. It also recognises that Waitaha has ancestral associations and historical connections with Mauao.

The Bill then vests the fee simple estate of Mauao historic reserve in the trustees of the Mauao Trust, to hold on behalf of Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga. However, in recognition of the wider significance Mauao has to the public generally, the Bill also

provides that Mauao historic reserve remains a historic reserve subject to the Reserves Act 1977. The reserve will continue to be administered by the Tauranga City Council.

The Bill also provides that the Crown, Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga acknowledge Waitaha's statement of recognition in relation to Mauao.

Vesting Mauao historic reserve in the trustees of the Mauao Trust and providing for the continuation of its reserve status and administration cannot be achieved without legislation.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill will come into force on the day after the date on which it receives the Royal assent.

Clause 3 sets out the interpretation to be given to terms used in the Bill.

Clause 4 states that the Bill binds the Crown.

Clause 5(1) vests the fee simple estate in Mauao historic reserve in the trustees of the Mauao Trust subject to—

- the provisions of the Bill; and
- the encumbrances set out in *Schedule 2* of the Bill (which relate to the existing water reservoir and its associated infrastructure within the reserve, and to existing power lines on the reserve); and
- any authority the Tauranga City Council has in relation to fencing the reserve under the Historic Places Act 1993; and
- any statutory rights (including of access) to the reserve that any person may have (for example, to the navigational beacon sited on the reserve).

Clause 5(2) requires the trustees of the Mauao Trust to hold the fee simple estate in Mauao historic reserve on trust for Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga in accordance with the trust deed of the Mauao Trust.

Clause 6 prohibits the trustees of the Mauao Trust from disposing of, transferring, or charging the reserve or any part of it. *Subclause (2)* provides an exception by reference to *clause 9*. That clause provides for the exchange of any part of the reserve for other land in accordance with section 15 of the Reserves Act 1977.

Clause 7 states that for the purposes of any enactment (other than this Bill) or rule of law, Mauao historic reserve must be treated as if the fee simple in the reserve were still vested in the Crown. This means that the Crown, for all legal purposes, continues to bear the rights and obligations in respect of the reserve as if it were still the owner of the reserve. The trustees of Mauao Trust, therefore, do not have any obligations under, for example, the Building Act 2004 that the holder of the fee simple estate may have in relation to structures, or alterations to structures, on the reserve.

Clause 8 is a particular application of *clause 7* in relation to the Reserves Act 1977. The clause sets out the consequences of the Crown continuing to be treated as if the fee simple in the reserve were still vested in it. Under the Reserves Act 1977, Mauao historic reserve remains a historic reserve and the Minister of Conservation continues to have, in respect of it, the functions, obligations, and powers of the Minister in relation to a reserve vested in the Crown. *Clause 8(1)(c)* maintains the current position of Tauranga City Council as administering body for the reserve.

However, *clause 8(2)* limits the Crown's rights under *subclause (1)*. *Clause 8(2)* prevents the Minister from exercising any power under section 26 of the Reserves Act 1977 to vest the reserve in other persons.

Clause 9(1) authorises the Minister to exchange part of the reserve in accordance with section 15 of the Reserves Act 1977, but only if the Minister has the written consent of the trustees of the Mauao Trust to do so. *Subclause (2)* sets out the consequences of an exchange in relation to the affected land.

Clause 10 sets out the consequences for Mauao historic reserve if the Minister of Conservation revokes the reservation of the reserve, or part of it, as a reserve under the Reserves Act 1977. The fee simple in the reserve (or the part of it that ceases to be reserve) remains vested in the trustees of the Mauao Trust subject to any restrictions, encumbrances, liens, or interests specified by the Minister in the *Gazette* notice revoking the reservation. In addition, *clauses 7, 8, and 9* of the Bill cease to apply to the land concerned. *Subclause (2)* states, for the avoidance of doubt, that the land does not become Crown land available for disposal under the Land Act 1948 or land over which the Minister of Conservation may specify the manner in and purpose for which it may be disposed.

Clause 11 preserves the rights and obligations in respect of the reserve of any person who was not a party to the vesting agreement (as that term is defined in *clause 3*). Only rights and obligations that arise before the vesting of Mauao historic reserve under *clause 5(1)* are preserved.

Clause 12 sets out how particular pieces of legislation interact with the Bill. *Subclause (1)* states that nothing in section 11 or Part 10 of the Resource Management Act 1991, which relate to subdivision of land, applies to the vesting of Mauao historic reserve under *clause 5(1)*. *Subclause (2)* states that the vesting of Mauao historic reserve under *clause 5(1)* does not limit section 10 or 11 of the Crown Minerals Act 1991, which relate to the ownership of certain minerals in land. *Subclause (3)* sets out how and when the requirements under Part 4A of the Conservation Act 1987, which relates to marginal strips, are triggered in relation to Mauao historic reserve.

Clause 13 states that the rule against perpetuities and the Perpetuities Act 1964 do not prescribe or restrict the period during which the Mauao Trust may exist in law or how the trustees, in their capacity as trustees, may hold or deal with property.

Clause 14(1) is an acknowledgement by the Crown, Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga of the statement of recognition of Waitaha. The statement is set out in *Schedule 3*. *Clause 14(2)* clarifies how the statement of recognition fits with the general law.

Clause 15 relates to registration matters and sets out what actions the Registrar-General of Land must take as a consequence of the vesting of Mauao historic reserve under *clause 5(1)*.

Clause 16 authorises the Governor-General, by Order in Council, to amend *Schedule 1*, which contains the legal description of Mauao historic reserve, to reflect any changes in the legal description of the reserve arising from an exchange of land under *clause 9* or any other lawful alteration to the boundaries of the reserve or the computer freehold register for it.

Hon Parekura Horomia

Mauao Historic Reserve Vesting Bill

Government Bill

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Preamble

- (1) Mauao, or Mount Maunganui, is of significant cultural, traditional, historical, and spiritual importance to Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga:
- (2) In addition, Waitaha have ancestral associations and historical connections with Mauao: 5
- (3) Mauao historic reserve (comprising almost all of Mauao) is vested in fee simple in the Crown, and is subject to the Reserves Act 1977. Under that Act, Tauranga City Council is the administering body of the reserve:
- (4) In July 2004, in order to assist its objective of building healthy relationships with Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pūkenga, and Waitaha, the Crown agreed (in principle) to transfer the fee simple estate in Mauao historic reserve to Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga, subject to certain conditions. The transfer was not to be consideration for the settlement of any claim against the Crown that was, or was founded on, a right arising from the Treaty of Waitangi, the principles of the Treaty, or in any other way: 10
15
- (5) By deed dated 2 July 2007, the Mauao Trust was created empowering the trustees of the trust to hold the fee simple estate in Mauao historic reserve on trust for Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga: 20

- (6) Legislation is required to enable Mauao historic reserve to be vested in the trustees of the Mauao Trust and the Crown's conditions in relation to the vesting to be met:
- (7) An agreement to introduce vesting legislation in relation to Mauao, dated 11 August 2007, was signed by the Minister of Māori Affairs, representatives of Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pūkenga, and Waitaha, and the trustees of the Mauao Trust: 5

The Parliament of New Zealand therefore enacts as follows:

- 1 Title** 10
This Act is the Mauao Historic Reserve Vesting Act **2007**.

- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1 15 **Preliminary provisions**

- 3 Interpretation**
In this Act, unless the context otherwise requires,—
- deed of trust—**
- (a) means the deed of trust, dated 2 July 2007, between Te Runanganui o Tauranga Moana Incorporated (as settlor) and the trustees (being representatives of Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga) establishing the Mauao Trust; and 20
- (b) includes any amendments validly made to the deed 25
- Mauao historic reserve** means the land described in **Schedule 1**
- Mauao Trust** means the trust established by the deed of trust
- Minister** means the Minister of Conservation
- Ngāi Te Rangi** means every individual who affiliates to Ngāi Te Rangi through descent from a primary ancestor of the iwi (as determined by the iwi) 30
- Ngāti Ranginui** means every individual who affiliates to Ngāti Ranginui through descent from a primary ancestor of the iwi (as determined by the iwi) 35

Ngāti Pūkenga means every individual who affiliates to Ngāti Pūkenga through descent from a primary ancestor of the iwi (as determined by the iwi)

trustees means the trustees, for the time being, of the Mauao Trust

vesting agreement means the agreement to introduce vesting legislation in relation to Mauao dated 11 August 2007 and signed by the Minister of Māori Affairs, representatives of Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pūkenga, and Waitaha, and the trustees

Waitaha means every individual who affiliates to Waitaha through descent from a primary ancestor of the iwi (as determined by the iwi).

4 Act binds the Crown

This Act binds the Crown.

Part 2

Vesting of Mauao historic reserve and related matters

Vesting of Mauao historic reserve

5 Mauao historic reserve vested in trustees of Mauao Trust

(1) The fee simple estate in Mauao historic reserve is vested, by way of gift, in the trustees of the Mauao Trust subject to—

- (a) this Act; and
- (b) the encumbrances set out in **Schedule 2**; and
- (c) any authority granted to the Tauranga City Council under the Historic Places Act 1993 to retain, maintain, and replace existing fencing on the reserve; and
- (d) any statutory access or other rights in relation to the reserve that any person may have (including rights of access under the Cadastral Survey Act 2002 or the Maritime Transport Act 1994 to the trig station and navigational beacon on the reserve).

(2) The trustees must hold the fee simple estate on trust for Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga in accordance with the deed of trust.

- 6 Trustees must not dispose of, transfer, or charge Mauao historic reserve**
- (1) The trustees must not dispose of, transfer, or charge Mauao historic reserve or any part of it.
- (2) **Subsection (1)** is subject to **section 9**. 5
- 7 General law continues to apply as if Mauao historic reserve vested in the Crown**
- For the purposes of any enactment (other than this Act) or rule of law, Mauao historic reserve must be treated as if the fee simple estate in the reserve were still vested in the Crown. 10
- 8 Reserves Act 1977 continues to apply as if Mauao historic reserve vested in the Crown**
- (1) Without limiting **section 7**,—
- (a) Mauao historic reserve remains a historic reserve under the Reserves Act 1977 (unless and until its reserve status is changed, or its reservation as a reserve is revoked, under that Act); and 15
- (b) the Minister continues to have, in respect of Mauao historic reserve, the functions, obligations, and powers of the Minister under the Reserves Act 1977 in relation to a reserve vested in the Crown; and 20
- (c) the Tauranga City Council continues to be appointed as the administering body of the reserve under section 28 of the Reserves Act 1977 (unless and until its appointment as the administering body is revoked under that Act). 25
- (2) However, neither **section 7** nor **subsection (1)(b)** entitles the Minister to exercise the power under section 26 of the Reserves Act 1977 (being the power to vest the reserve in other persons). 30
- Exchange of part of Mauao historic reserve*
- 9 Exchange of part of Mauao historic reserve**
- (1) The Minister may authorise the exchange of part of Mauao historic reserve in accordance with section 15 of the Reserves Act 1977, but only if the Minister has the written consent of the trustees to do so. 35
- (2) If the Minister acts in accordance with **subsection (1)**,—

- (a) the fee simple in the part of the reserve that is exchanged—
 - (i) ceases to be vested in the trustees; and
 - (ii) is no longer subject to this Act or the Reserves Act 1977; and 5
- (b) the land acquired by way of the exchange—
 - (i) vests in fee simple in the trustees; and
 - (ii) is held by the trustees on trust for Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga in accordance with the deed of trust; and 10
 - (iii) is held as part of Mauao historic reserve subject to—
 - (A) the same control and management and for the same objects and purposes as those for which the land given in exchange was held; and 15
 - (B) this Act and the Reserves Act 1977.

Revocation of reserve status

- 10 Revocation of reserve status**
- (1) If the Minister revokes the reservation of Mauao historic reserve, or a part of it, as a reserve under section 24 of the Reserves Act 1977,— 20
 - (a) the fee simple in the reserve (or the part of it that ceases to be reserve) remains vested in the trustees, subject to any restrictions, encumbrances, liens, or interests specified in the *Gazette* notice revoking the reservation; and 25
 - (b) **sections 7, 8, and 9** of this Act cease to apply to the reserve (or the part of it that ceases to be reserve).
 - (2) To avoid doubt, and without limiting **subsection (1)(b)**, Mauao historic reserve (or the part of it that ceases to be reserve) does not become— 30
 - (a) Crown land available for disposal under the Land Act 1948 in accordance with section 25 of the Reserves Act 1977; or
 - (b) land over which the Minister may specify, under section 25 of the Reserves Act 1977, the manner in and purpose for which it may be disposed. 35

*Vesting has no effect on existing rights***11 Vesting has no effect on existing rights**

The vesting of Mauao historic reserve under **section 5(1)** does not affect any rights or obligations in respect of the reserve of any person—

- (a) who is not a party to the vesting agreement, including any rights or obligations in relation to the ownership, management, or control of fixtures, structures, and improvements (including trees) attached to, on, or under the reserve; and
- (b) that arise before any revocation of its reservation as a reserve.

*Particular application of other enactments and general law***12 Application of other enactments**

- (1) Nothing in section 11 or Part 10 of the Resource Management Act 1991 applies to the vesting of Mauao historic reserve under **section 5(1)**.
- (2) The vesting of Mauao historic reserve under **section 5(1)** does not limit section 10 or 11 of the Crown Minerals Act 1991.
- (3) The vesting of Mauao historic reserve under **section 5(1)** is not a disposition of land by the Crown for the purposes of Part 4A of the Conservation Act 1987, unless—
 - (a) the reservation of the reserve as a reserve is revoked, in which case—
 - (i) the reserve is to be treated as having been disposed of by the Crown for the purposes of Part 4A; and
 - (ii) that Part, other than sections 24(2A), 24A, 24AA, and 24B, applies accordingly with any necessary modifications; or
 - (b) the reservation of part of the reserve as a reserve is revoked, in which case—
 - (i) the part of the reserve is to be treated as having been disposed of by the Crown for the purposes of Part 4A; and
 - (ii) that Part, other than sections 24(2A), 24A, 24AA, and 24B, applies accordingly with any necessary modifications.

13 Rule against perpetuities does not apply

Neither the rule against perpetuities nor any relevant provisions of the Perpetuities Act 1964 prescribe or restrict the period during which—

- (a) the Mauao Trust may exist in law; or 5
- (b) the trustees (in their capacity as trustees) may hold or deal with property (including income derived from the property).

*Waitaha statement of recognition***14 Waitaha statement of recognition** 10

- (1) The Crown, Ngāi Te Rangi, Ngāti Ranginui, and Ngāti Pūkenga acknowledge the statement of recognition of Waitaha in **Schedule 3**.
- (2) However, the statement of recognition—
 - (a) must not affect, or be taken into account by, a person exercising a power or performing a function or duty under an enactment or a bylaw made by a local authority under an enactment; and 15
 - (b) does not affect the lawful rights or legal obligations of any person; and 20
 - (c) does not grant, create, or affect any interests or rights relating to Mauao historic reserve.

*Miscellaneous provisions***15 Registration of ownership**

- (1) The Registrar-General of Land must, on written application by the Minister, comply with **subsections (2) and (3)**. 25
- (2) The Registrar-General of Land must—
 - (a) register the trustees as the proprietors of the fee simple estate in Mauao historic reserve; and
 - (b) make the entry in the register; and 30
 - (c) include a notification on the entry recording that the reserve—
 - (i) was vested in accordance with this Act; and
 - (ii) is subject to this Act, including a specific reference to **sections 5(1) and 12(3)**. 35
- (3) However, if Mauao historic reserve does not comprise all the land in a computer freehold register, or there is no computer

freehold register for all or part of the reserve, the Registrar-General must instead—

- (a) create a computer freehold register and register the trustees as the proprietors of the fee simple estate in Mauao historic reserve; and 5
- (b) include a notification on the entry recording that the reserve—
 - (i) was vested in accordance with this Act; and
 - (ii) is subject to this Act, including a specific reference to **sections 5(1) and 12(3)**. 10
- (4) The Registrar-General of Land complies with **subsection (2)(a) or (3)(a)** by registering the trustees as the proprietors using the words “the trustees for the time being of Mauao Trust”. 15
- (5) **Subsection (3)** applies subject to any survey necessary to facilitate the creation of the computer freehold register being completed. 15
- (6) A computer freehold register must be created under this section as soon as is reasonably practicable but no later than—
 - (a) 2 years after the reserve vests in the trustees; or
 - (b) any later date that may be agreed in writing by the trustees and the Crown. 20
- (7) This section overrides sections 26A(3), 112(2), and 116 of the Reserves Act 1977 and in the event of inconsistency, any other enactment or rule of law to the contrary.

16 Alteration of Schedule 1 by Order in Council 25

The Governor-General may, by Order in Council, make amendments to **Schedule 1** to reflect any changes in—

- (a) the legal description of Mauao historic reserve resulting from an exchange of land authorised by the Minister under **section 9** or any other lawful alteration to the boundaries of the reserve; or 30
- (b) the computer freehold register for Mauao historic reserve.

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Schedule 1
Description of Mauao historic reserve

New Zealand Gazette 1981, p 3065 First Schedule

75.6658 hectares, more or less, being part Section 1, Section 3, and Section 12, Block VI, Tauranga Survey District. Part *New Zealand Gazettes* 1889, p 116, 1894, p 1422, and 1927, p 678. SO Plans 4802 and 51477.

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Schedule 2
Encumbrances

s 5(1)

- 1 The right of the Tauranga City Council, by resource consent issued under the Resource Management Act 1991, to place and maintain a water main on Mauao historic reserve (being documented in Tauranga City Council file P 260-1-2 RC 1581). 5

 - 2 Any right of the Tauranga City Council to retain and maintain the existing water reservoir and associated power line and water mains on Mauao historic reserve. 10
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Schedule 3**Statement of recognition of Waitaha's ancestral associations and historical connections with Mauao**

This statement of recognition reflects the history to which Waitaha subscribes, but it does not recount that history in full. Waitaha's history will sit alongside other iwi and hapū histories and altogether these histories make up the diverse relationships that are attributed to Mauao. 5

For Waitaha, that place is borne of the occupation of the maunga by Tutauaroa (the son of Waitaha), his son Taiwhanake, and Taiwhanake's son Kinonui. Tutauaroa moved to Otamarakau, leaving Taiwhanake to maintain Waitaha's presence on Mauao. Ngāti Ranginui and Waitaha occupied Mauao, later followed by Ngāi Te Rangi after the Battle of Kokowai. Mauao continues to be an integral part of Waitaha's history and their tribal future. 10 15

For Waitaha, the enduring protection of Waitaha's ancestral associations and historical connections with Mauao is paramount.