

# NGĀI TAHU (TŪTAEPATU LAGOON VESTING) BILL

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AS REPORTED FROM THE MĀORI AFFAIRS COMMITTEE

## COMMENTARY

### Recommendation

The Māori Affairs Committee has examined the Ngāi Tahu (Tūtaepatu Lagoon Vesting) Bill and recommends that it be passed with the amendments shown in the bill.

### Conduct of the examination

The Ngāi Tahu (Tūtaepatu Lagoon Vesting) Bill was referred to the Māori Affairs Committee on 6 November 1997. The closing date for submissions was 13 February 1998. We received and considered two submissions from Te Rūnanga o Ngāi Tahu and Pegasus Bay Coastal Estates Limited. As both submissions supported the bill, no submissions were heard orally by the committee. Consideration took one hour 45 minutes.

We received advice from the Office of Treaty Settlements, the Department of Conservation and the Parliamentary Counsel Office.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

### Background

#### Overview of the Deed of 'On Account' Settlement

In 1991 the Waitangi Tribunal (the Tribunal) published its report<sup>1</sup> on the major grievances of Ngāi Tahu. In that report the Tribunal found that when the Crown purchased Ngāi Tahu lands it failed to set aside specific mahinga kai reserves or to provide adequate lands to ensure that Ngāi Tahu had access to their traditional food resources. It also found that overall Ngāi Tahu mana and rangatiratanga in respect of their mahinga kai was improperly disregarded by the Crown. In 1995 the Tribunal published its report on certain ancillary claims of Ngāi Tahu, one of

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<sup>1</sup> The Ngāi Tahu Report 1991 (Wai 27).

which concerned the loss of the Tūtaepatu Lagoon, of importance to Ngāi Tahu as kāinga nohoanga, mahinga kai, and urupā.<sup>2</sup>

The Tribunal recommended that the Crown “vest the Tūtaepatu Lagoon in Ngāi Tahu in fee simple and, contemporaneously, enter into a joint management scheme with Ngāi Tahu to include Ngāi Tahu’s conservation policies, with the Crown to provide financial, technical, scientific and management resources.”<sup>3</sup>

The Tribunal also stated that Ngāi Tahu’s involvement with the development of the Tūtaepatu Lagoon in partnership with the Crown and the Canterbury Regional Council, would provide a measure of compensation for loss of mahinga kai in the Canterbury region.

### **Events leading up to the proposed special legislation**

In 1993, following the Waitangi Tribunal’s 1991 report, the North Canterbury Conservation Board and the North Canterbury Fish and Game Council were consulted by the Waimakariri District Council and Te Rūnanga o Ngāi Tahu on a proposal to:

- jointly vest the Woodend conservation area in the Waimakariri District Council and Te Rūnanga o Ngāi Tahu
- vest in fee simple in Te Rūnanga o Ngāi Tahu the Tūtaepatu Lagoon wildlife management reserve, freed from its public reserve and wildlife refuge status.

After a public consultation process, the North Canterbury Conservation Board agreed to support the overall proposals.

In 1994, in recognition of the long process of negotiations that had already taken place between the Crown and Ngāi Tahu to settle all of Ngāi Tahu’s claims, the Crown agreed to make an “on account” offer to Ngāi Tahu. The Ngāi Tahu (Tūtaepatu Lagoon Vesting) Bill gives effect to that part of the Deed of ‘On Account’ Settlement (the deed) which relates to the Tūtaepatu Lagoon, and which was signed by the Crown and Te Rūnanga o Ngāi Tahu on 14 June 1996. In the deed, the Crown agreed that it would:

- revoke the classification of the Tūtaepatu Lagoon as a Government purpose (wildlife management) reserve
- provide for the vesting of the Tūtaepatu Lagoon in Te Rūnanga o Ngāi Tahu in fee simple, free of marginal strip requirements, and subject only to a public walkway over its south-eastern corner
- revoke the classification of three other reserves and establish a new recreation reserve which will be vested in Te Rūnanga o Ngāi Tahu and the Waimakariri District Council as trustees, subject to the fulfilment of certain conditions
- include the Tūtaepatu Lagoon (while not part of the new reserve), in the management plan for the new recreation reserve.

### **Key elements of the legislation**

The lagoon will be vested in Te Rūnanga o Ngāi Tahu by way of a gift in fee simple. The lagoon will be subject to a public walkway over the south-eastern corner of the lagoon. The walkway will (except for certain sections which are irrelevant to this particular circumstance) be subject to the New Zealand Walkways Act 1990. Te Rūnanga o Ngāi Tahu will be the controlling authority of the walkway under the Walkways Act 1990.

<sup>2</sup> The Ngāi Tahu Ancillary Claims Report 1995 (Wai 9).

<sup>3</sup> Ibid.

As stated in the deed, a new reserve will be created comprising land from three existing reserves. While this new reserve will not include the lagoon, the lagoon will be included in the management plan to be prepared for the new reserve.

A trust will be established by the Waimakariri District Council and Te Rūnanga o Ngāi Tahu, and will be known as Te Kohaka o Tuhaitara Trust (the Trust). The purpose of the Trust will be to hold, administer and manage the new reserve. An equal number of trustees will be appointed by the Waimakariri District Council and by Te Rūnanga o Ngāi Tahu.

Te Rūnanga o Ngāi Tahu intends that the future management of the Tūtaepatu Lagoon will be in accordance with the objectives set out in Appendix 3 of the Deed of 'On Account' Settlement, or objectives which are similar. These are as follows:

- that the lagoon will be appropriately restored
- that there will be appropriate public access to the lagoon except when a rāhui is notified (the criteria for notification of a rāhui will be set out in the management plan to be developed)
- that scientific research, incorporating Ngāi Tahu management values, will be actively encouraged
- that the North Canterbury Fish and Game Council will have an opportunity to contribute its expertise
- that harvesting of birds and their eggs will be on a sustainable basis only.

## **Amendments to the bill**

### **The Wildlife Act 1953**

Clause 5, as currently drafted, excludes completely the application of the Wildlife Act 1953 to the lagoon. This would remove the protection for wildlife in the lagoon under the Wildlife Act 1953. It was intended in the deed that only the wildlife refuge provisions of the Wildlife Act 1953 will cease to apply. We recommend that clause 5 be amended to reflect this.

### **Conservation Act 1987**

Under the Deed of 'On Account' Settlement the Tūtaepatu Lagoon is to be vested in Te Rūnanga o Ngāi Tahu free from the marginal strip requirements in Part IVA of the Conservation Act 1987. We recommend an amendment to clause 6 to provide for this.

### **Drafting amendments to clause 7**

We have recommended minor drafting changes.

### **Minority view**

The Labour Party members reserved their position on the bill because of their concerns regarding the public access provisions to the Tūtaepatu Lagoon.

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## KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Majority)*

Subject to this Act,

Text struck out by a majority

*New (Majority)*

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

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Hon D A M Graham

## NGĀI TAHU (TŪTAEPATU LAGOON VESTING)

### ANALYSIS

Title	<i>New Reserve</i>
Preamble	11. Declaration of recreation reserve
1. Short Title and commencement	12. Management plan
	13. Application of Reserves Act 1977
<i>Preliminary</i>	<i>Miscellaneous</i>
2. Interpretation	14. Extension of time limits
3. Act to bind the Crown	15. Amendment to Conservation Act 1987
<i>Tūtaepatu Lagoon</i>	
4. Reservation of Tūtaepatu Lagoon as reserve revoked	
5. Declaration of Tūtaepatu Lagoon as wildlife refuge revoked	
6. Vesting of Tūtaepatu Lagoon in Te Rūnanga o Ngāi Tahu	
7. Management of Tūtaepatu Lagoon	
8. Tūtaepatu Lagoon subject to walkway	
9. Issue of certificate of title for Tūtaepatu Lagoon	
<i>Establishment of Trust</i>	
10. Establishment of trust	

### A BILL INTITULED

- An Act to give effect to certain provisions of the Deed of 'On Account' Settlement, signed on 14 June 1996 by the Crown and by Te Rūnanga o Ngāi Tahu as representative of Ngāi Tahu,—**
- 5 (a) By vesting Tūtaepatu Lagoon in Te Rūnanga o Ngāi Tahu; and
- (b) By providing for the establishment of a recreation reserve at Woodend
- 10 WHEREAS—
- A. Ngāi Tahu made claims against the Crown under the Treaty of Waitangi Act 1975, and those claims have been the subject of 2 reports of the Waitangi Tribunal, the 1991 Ngāi Tahu Report and the 1995 Ancillary Claims Report:

- B. Since 1991 there have been a number of attempts by Ngāi Tahu and the Crown to reach a negotiated settlement of Ngāi Tahu's claims and to remove the sense of grievance felt by Ngāi Tahu:
- C. The Crown and Ngāi Tahu, wishing to recommence negotiations towards a comprehensive settlement of all claims made by or on behalf of Ngāi Tahu or hāpu, whānau, or individuals within Ngāi Tahu Whānui against the Crown pursuant to the Treaty of Waitangi Act 1975, have agreed to negotiate in good faith to achieve a settlement of all Ngāi Tahu's historical claims under the Treaty of Waitangi and Ngāi Tahu has agreed to an indefinite adjournment of certain litigation relating to the claims to allow those negotiations to take place: 5 10
- D. As a sign of good faith and as a demonstration of the Crown's goodwill, and in recognition of the long process of negotiation that has already taken place between the parties, the Crown has agreed to renew and modify an offer it made to Ngāi Tahu in 1994 to provide certain redress to Ngāi Tahu on an 'on account' basis, and Ngāi Tahu has accepted that modified offer: 15 20
- E. Accordingly, on 14 June 1996, the Crown and Te Rūnanga o Ngāi Tahu as representative of Ngāi Tahu signed a Deed of 'On Account' Settlement, in which the Crown agreed that it would present for the consideration of Parliament legislation to provide for— 25
- (a) The revocation of the classification of the Tūtaepatu Lagoon as a Government purpose (wildlife management) reserve; and
  - (b) The vesting of the Tūtaepatu Lagoon in Te Rūnanga o Ngāi Tahu in fee simple free of any existing encumbrance, subject only to a public walkway under the New Zealand Walkways Act 1990 over the south-eastern corner of the lagoon and exempted from the marginal strip requirements of Part IVA of the Conservation Act 1987, such vesting to be by way of gift from the Crown; and 30 35
  - (c) The revocation of certain existing reserves and for the declaration, classification and vesting of a new recreation reserve conditional on the fulfilment of certain conditions; and 40

- (d) The inclusion of the Tūtaepatu Lagoon in the management plan for the new reserve:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

- 5     **1. Short Title and commencement**—(1) This Act may be cited as the Ngāi Tahu (Tūtaepatu Lagoon Vesting) Act 1997.  
      (2) This Act comes into force on 1 April 1998.

*Preliminary*

- 10    **2. Interpretation**—In this Act, unless the context otherwise requires,—

      “Council” means the Waimakariri District Council constituted under the Local Government Act 1974:

- 15       “Deed of ‘On Account’ Settlement” means the deed signed on 14 June 1996 by the Crown and by Te Rūnanga o Ngāi Tahu as representative of Ngāi Tahu:

      “Minister” means the Minister of Conservation:

      “New reserve” means the land described in **Schedule 2**:

- 20       “Te Rūnanga o Ngāi Tahu” means Te Rūnanga o Ngāi Tahu as established by section 6 of Te Runanga o Ngai Tahu Act 1996:

      “Trust” means the trust established under **section 10**:

      “Tūtaepatu Lagoon” means the land described in **Schedule 1**.

- 25    **3. Act to bind the Crown**—This Act binds the Crown.

*Tūtaepatu Lagoon*

**4. Reservation of Tūtaepatu Lagoon as reserve revoked**—(1) The reservation of the Tūtaepatu Lagoon as a reserve under the Reserves Act 1977 is revoked.

- 30    (2) The Reserves Act 1977 ceases to apply to the Tūtaepatu Lagoon on and from the commencement of this Act.

- 5. Declaration of Tūtaepatu Lagoon as wildlife refuge revoked**—(1) Those parts of the Second and Third Schedules that relate to the Woodend Lagoon published in the *New Zealand Gazette* (1957, Vol. I, p.10) under the heading “*Amending Declaration of Land, North Canterbury Acclimatisation District, as a Wildlife Refuge*” are revoked.
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*Struck Out (Majority)*

(2) The Wildlife Act 1953 ceases to apply to the Tūtaepatu Lagoon on and from the commencement of this Act.

*New (Majority)*

(2) The provisions of the Wildlife Act 1953 relating to wildlife refuges cease to apply to the Tūtaepatu Lagoon on and from the commencement of this Act. 5

**6. Vesting of Tūtaepatu Lagoon in Te Rūnanga o Ngāi Tahu**—(1) The Tūtaepatu Lagoon is vested, by way of gift, in Te Rūnanga o Ngāi Tahu for an estate in fee simple free of any encumbrances existing immediately before the commencement of this Act. 10

*New (Majority)*

(2) For the avoidance of doubt, the vesting of the Tūtaepatu Lagoon in Te Rūnanga o Ngāi Tahu by **subsection (1)** is not a disposition of land by the Crown for the purposes of Part IVA of the Conservation Act 1987. 15

**7. Management of Tūtaepatu Lagoon**—(1) As recorded in clause 4.6 of the *<deed>*, *<Deed of 'On Account' Settlement>*, Te Rūnanga o Ngāi Tahu intends that the future management of Tūtaepatu Lagoon will be undertaken in accordance with the objectives set out in Appendix 3 of *<the Deed of 'On Account' Settlement>* *<that deed>* or objectives substantially similar to them. 20

(2) The objectives are included in **Schedule 3**. 25

(3) **Subsection (1)** and the inclusion of the objectives in **Schedule 3** do not give the objectives any greater status or force than they have in the Deed of 'On Account' Settlement.

**8. Tūtaepatu Lagoon subject to walkway**—(1) Te Rūnanga o Ngāi Tahu must grant to the Crown a walkway over the south-eastern corner of the Tūtaepatu Lagoon. 30



(2) The New Zealand Walkways Act 1990 (except sections 5, 6, 7, 8 (1), 8 (2), 8 (8) (b), 11, 18, 20, 30, 31, and 32) applies to the walkway, including its establishment.

5 (3) For the purposes of the New Zealand Walkways Act 1990, Te Rūnanga o Ngāi Tahu is the controlling authority of the walkway.

10 (4) For the purposes of **subsection (2)**, section 8 (3) of the New Zealand Walkways Act 1990 must be read as if the words “For the purposes of subsection (1) of this Act” were omitted, and the words “For the purposes of **section 8** of the Ngāi Tahu (Tūtaepatu Lagoon Vesting) Act 1997” were substituted.

**9. Issue of certificate of title for Tūtaepatu Lagoon—**  
The District Land Registrar of the Canterbury Land Registration District must (after completion of such survey, if  
15 any, as may be necessary) issue a certificate of title under the Land Transfer Act 1952 to Te Rūnanga o Ngāi Tahu as registered proprietor of the Tūtaepatu Lagoon.

*Establishment of Trust*

20 **10. Establishment of trust—**(1) The Council and Te Rūnanga o Ngāi Tahu must, not later than 3 months after the commencement of this Act, establish by deed a trust—

- (a) The name of which is Te Kohaka o Tuhaitara Trust; and
- (b) The object of which is the management and administration of the new reserve.

25 (2) The deed establishing the trust must authorise the trustees of the trust to—

- (a) Hold, manage, and administer the new reserve; and
- (b) Expend money on the new reserve, the Tūtaepatu Lagoon, and the preparation and administration of  
30 the management plan for the new reserve.

(3) As soon as the trust is established, the Council and Te Rūnanga o Ngāi Tahu must give to the Minister—

- (a) Notice of the establishment of the trust; and
- (b) A certified copy of the deed establishing the trust.

35 *New Reserve*

**11. Declaration of recreation reserve—**(1) The Council and Te Rūnanga o Ngāi Tahu must, not later than 3 months after the commencement of this Act,—

- (a) Agree on the boundaries of the new reserve; and
- 40 (b) Notify the Minister of the boundaries as agreed.

(2) The Minister must, not later than 6 months after the commencement of this Act, do the things specified in **subsection (3)** if the Minister—

(a) Has been notified of the establishment of the trust under **section 10 (3)**; and 5

(b) Is satisfied that the deed establishing the trust complies with **section 10 (2)**; and

(c) Has been notified of the boundaries of the new reserve under **subsection (1)**.

(3) Those things are—

(a) Declare, by notice in the *Gazette*, that the new reserve is a recreation reserve for the purposes of the Reserves Act 1977 with such name as the Minister determines; and 10

(b) Appoint the trustees of the trust to be the administering body of the new reserve; and 15

(c) Vest the new reserve in the trustees of the trust to hold and administer as a recreation reserve, and, subject to **sections 12 and 13**, to expend money in relation to the new reserve for the purposes specified in section 17 of the Reserves Act 1977. 20

(4) The things done under **subsection (3)** have effect as if they had been done under the Reserves Act 1977.

**12. Management plan**—(1) The management plan prepared for the new reserve pursuant to section 41 of the Reserves Act 1977— 25

(a) Must include the Tūtaepatu Lagoon; and

(b) May include such other land as the Council and Te Rūnanga o Ngāi Tahu agree on from time to time.

(2) The Minister must consult with and have particular regard to the views of Te Rūnanga o Ngāi Tahu before approving that part of the management plan that relates to the Tūtaepatu Lagoon. 30

**13. Application of Reserves Act 1977**—Except as provided in this Act, the Reserves Act 1977 applies to the new reserve. 35

#### *Miscellaneous*

**14. Extension of time limits**—(1) The time within which anything must be done under **section 10** or **section 11** may be extended (before or after the time has expired) by the Governor-General by Order in Council. 40

(2) The power in **subsection (1)** may be exercised more than once in respect of the same time limit.

5     **15. Amendment to Conservation Act 1987**—The First Schedule of the Conservation Act 1987 is amended by inserting, in its appropriate alphabetical order, the following item:

“The Ngāi Tahu (Tūtaepatu Lagoon Vesting) Act **1997**”.

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**SCHEDULES****Section 2****SCHEDULE 1****DESCRIPTION OF TŪTAEPATU LAGOON**

The piece of land containing 49.2357 hectares, more or less, being Rural Section 40464 in Block XII, Rangiora Survey District, on S.O. 13696, and being part of the land comprised and described in certificate of title No. 9A/1226 (Canterbury Land Registry).

**Section 2****SCHEDULE 2****DESCRIPTION OF NEW RESERVE**

The pieces of land in the following recreation reserves:

- (a) Kairaki Recreation Reserve—containing 106.4693 hectares, more or less, being all the land in Reserves 4059, 4472, 4482, and 5186, and Rural Section 41097:
- (b) Waikuku Recreation Reserve—containing—
  - First, 52.4441 hectares, more or less, being all the land in areas A and B on S.O. 19762 in Blocks VIII and XII, Rangiora Survey District, and being part of the land comprised and described in certificate of title 9A/1225 Limited (Canterbury Land Registry): and
  - Second, 62.3786 hectares, more or less, being all the land in areas C, D, E, F, and G on S.O. 19763 in Block VIII, Rangiora Survey District, and being part of the land comprised and described in certificate of title 9A/1225 Limited and in Gazette Notice 471870.1 (Canterbury Land Registry):
- (c) Woodend Recreation Reserve—containing 172.9478 hectares, more or less, being all the land in Reserve 5281, and Rural Sections 39897, 41088, 41089, and 41090:
- (d) Recreation Reserve—containing 33.8468 hectares, more or less, being all the land in Part Reserve 4058 on S.O. 5813.

**Section 7****SCHEDULE 3****APPENDIX 3 OF THE DEED OF 'ON ACCOUNT' SETTLEMENT****“Proposal for the Future Management of the Tūtaepatu Lagoon**

1. The Lagoon/wetlands will be included in the management plan for the new reserve. The Lagoon/wetlands will be appropriately restored and maintained for the benefit of present and future generations.

2. Appropriate public access to the Lagoon/wetlands will be allowed except for those times when, after notification in the local newspaper, a rāhui is applied.

3. Scientific research and observation of the flora and fauna will be actively encouraged by Te Rūnanga, with a particular emphasis on Ngāi Tahu's philosophy of sustainable management.

4. The North Canterbury Fish and Game Council will have the opportunity to contribute its expertise.

SCHEDULE 3—*continued*

APPENDIX 3 OF THE DEED OF 'ON ACCOUNT' SETTLEMENT—*continued*

5. There will be no harvesting or taking or killing of native and introduced birds or their eggs in a manner which would be inconsistent with the role of the Lagoon in the management and maintenance of waterfowl and other birds in North Canterbury. Dogs will be prohibited.”