

Winston Peters

**TAURANGA CITY COUNCIL (WAIKAREAO ESTUARY  
EXPRESSWAY) EMPOWERING**

[LOCAL]

ANALYSIS

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A BILL INTITULED

**An Act to empower the Tauranga City Council to  
reclaim land and to provide for the construction of a  
road generally along the eastern foreshore of the  
5 Waikareao Estuary within the bounds of the Tauranga  
Harbour**

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

**1. Short Title**—This Act may be cited as the Tauranga City  
Council (Waikareao Estuary Expressway) Empowering Act  
10 1989.

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

15 “City Council” means the Tauranga City Council, a duly  
constituted local authority under the Local  
Government Act 1974 or any succeeding authority,  
which shall include any authority assuming the  
responsibilities of the Tauranga City Council under  
any reorganisation of local government:

20 “Foreshore” means such parts of the bed, shore, or banks  
of the Waikareao Estuary in the Tauranga Harbour

No. 159—1

Price  
incl. GST \$2.00

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- alongside the road as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides after completion of the road pursuant to this Act:
- “Harbour Board” means the Bay of Plenty Harbour Board or any succeeding authority: 5
- “Minister of Conservation” means the Minister for the time being responsible for the administration of the Conservation Act 1987 or any statute passed in substitution therefor:
- “Minister of Transport” means the Minister for the time 10  
being responsible for the administration of the Harbours Act 1950 or any statute passed in substitution therefor:
- “Road” means the expressway to be constructed generally 15  
along the eastern foreshore of the Waikareao Estuary in the Tauranga harbour in accordance with this Act; and includes all the necessary approaches, buildings, erections and other works.

**3. Special Act and authority to construct, maintain, manage, and control road**—(1) This Act shall be a special 20  
Act for the purposes of the Harbours Act 1950.

(2) The City Council shall have all such powers as are necessary to give effect to the purposes of this Act.

**4. Authority to construct the road and to reclaim, take, or utilise land**—(1) Subject to the provisions of section 178 of 25  
the Harbours Act 1950, the City Council is hereby authorised and empowered to construct the road and for that purpose to:

- (a) Pursuant to section 175 of the Harbours Act 1950 and subject to the Water and Soil Conservation Act 1967 30  
and the Conservation Act 1987 enclose, fill up, and reclaim from the sea the land described in the First Schedule to this Act (hereinafter referred to as “the land”) which includes part of the foreshore vested in the Harbour Board at the date of this Act:
- (b) Take in the manner provided by the Public Works Act 35  
1981, or purchase, or otherwise acquire any land or buildings in or near the road provided that any compensation payable shall be calculated in accordance with section 6 of this Act:
- (c) Utilise any land or buildings that may lawfully be 40  
appropriated for the purpose:

(d) Erect any structure necessary or conveniently to be used in or about the execution of the objects and powers contained or implied in this Act:

5 (e) By resolution revoke the reservation of the whole or any part of any land described in the **Second** Schedule to this Act (hereinafter called the “the Reserves”) that is, at the commencement of this Act, a reserve subject to the provisions of the Reserves Act 1977 and is required for the purposes of this Act.

10 (2) All land acquired under this section shall vest in the City Council.

**5. Vesting of land**—(1) Upon being given written notice of the reclamation of any part of the land pursuant to **section 4 (1) (a)** of this Act and being satisfied that the land described in the  
15 notice has been so reclaimed, the Minister shall thereupon, by notice in the *Gazette*, vest that land in the City Council in one of the estates as provided in **subsection (2)** of this section.

(2) All land vested in the City Council pursuant to **subsection (1)** of this section and taken, purchased or acquired pursuant to  
20 **section 4 (1) (b)** of this Act shall be vested in the City Council—

(a) For an estate in fee simple; or

(b) For an estate in fee simple as a road; or

(c) As a reserve subject to the Reserves Act 1977 for such  
25 purpose or purposes as shall be deemed appropriate by the City Council,—

as is appropriate to comply with this Act.

(3) Upon the revocation of the reservation of the Reserves pursuant to **section 4 (1) (e)** of this Act, the Reserves shall vest in the City Council for an estate in fee simple as road and the  
30 Minister of Conservation shall give notice in the *Gazette* pursuant to section 24 of the Reserves Act 1977.

(4) Where any land is vested in the City Council pursuant to **subsection (1)** of this section, so much of that land as is subject to the provisions of the Tauranga Foreshore Vesting and  
35 Empowering Act 1915 shall cease to be subject to the provisions of that Act, and every such notice in the *Gazette* shall be deemed to be an enactment within the meaning of section 99A of the Land Transfer Act 1952 and the provisions of that section shall apply accordingly.

40 (5) The foreshore that exists following the construction of the road and the vesting of all land under this section in the City Council shall vest in the Harbour Board and be deemed part of

the foreshore for the purposes of the Tauranga Foreshore Vesting and Empowering Act 1915.

**6. Compensation for injury**—(1) The City Council shall be liable to pay compensation to the owner of land adjoining the land in respect of any loss or injury suffered by such owner by reason of the construction (but not the maintenance or operation) of the road in accordance with the Public Works Act 1981. 5

(2) The amount of such compensation shall, in the absence of agreement between the parties, be determined in the manner provided by the Public Works Act 1981. 10

**7. Rights preserved**—Except as provided hereunder, nothing in this Act shall deprive any person of any right or remedy otherwise available to that person in respect of any loss caused by any reclamation carried out under this Act or by the vesting of land in the City Council pursuant to section 5 of this Act; but nothing in this Act shall entitle the Crown or the Harbour Board to payment or compensation for any land belonging to the Crown or the Harbour Board which is reclaimed or vested in the City Council pursuant to this Act. 15 20

**8. Application of other Acts**—Except as expressly provided in this Act, nothing in this Act shall be construed as limiting the application of the Public Works Act 1981, the Reserves Act 1977, the Harbours Act 1950, and the Town and Country Planning Act 1977. 25

**9. Cost of road**—(1) The costs of constructing, maintaining and operating the road including the amount of all sinking funds, interest, and other debt charges payable in respect of money borrowed shall be paid from any money received by the City Council and lawfully able to be appropriated for that purpose. 30

(2) The City Council may from time to time, under and subject to the provisions of the Local Authorities Loans Act 1956, by special order raise a special loan or special loans for the purpose of any of the works, matters, or things which the City Council is by this Act authorised to undertake. 35

(3) For the purpose of paying costs, charges, and expenses incurred under this Act, the City Council may collect tolls in accordance with the provisions of this Act in respect of the use of the road. 40

(4) For the purpose of collecting tolls, the City Council may construct such toll gates, toll houses, and other works as it considers necessary.

5 (5) Tolls payable under this Act shall be at such rate or rates and shall be payable in respect of such persons and vehicles as may from time to time be prescribed by bylaws under this Act.

(6) The scale of tolls for the time being in force shall be clearly exhibited in a conspicuous place at or near the place where the toll is payable.

10 (7) Every person who is in charge or control of any vehicle in respect of which a toll is payable shall be liable for the payment of the tolls, and, if any person refuses or neglects to pay a toll payable under this Act, the City Council may refuse to allow that person to travel or enter on to the road or may recover as  
15 a debt from that person the amount of the toll, together with all expenses involved in the collection of the toll.

(8) No toll shall be payable by or in respect of any of the following persons or in respect of any vehicle engaged solely in carrying any such person, namely,—

20 (a) The Governor-General and every person in attendance on the Governor-General:

(b) Every member of any of the armed forces of Her Majesty when on duty or going to or returning from duty and in the uniform of that member's corps:

25 (c) Every constable on duty, and every prisoner in the custody of a constable, and every traffic officer on duty:

(d) Any Minister or any officer or servant of the Crown whilst engaged on business connected with the road or with  
30 the administration of this Act:

(e) Such other persons as may be prescribed in bylaws made under this Act.

(9) Tolls shall not be payable in respect of fire engines and  
35 vehicles used for the extinction of fires, or in respect of ambulances, or in respect of the drivers or occupants of any such vehicles.

**10. Bylaws**—The City Council may from time to time make such bylaws, not inconsistent with this Act or with any other Act, as it thinks fit for all or any of the following purposes:

40 (a) Protecting any property belonging to the City Council:

(b) Conserving public health, safety, and convenience, and preventing and abating nuisances on the road:

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- (c) Regulating and preventing the taking on to or over the road any noxious or dangerous goods or anything which may cause pollution in the Tauranga Harbour:
- (d) Regulating the speed of traffic using the road:
- (e) Regulating the weights of vehicles which may use the road: 5
- (f) Fixing the amounts of, and levying and collecting, tolls in respect of the use of the road in respect of one or both directions of travel:
- (g) Regulating or prohibiting the passage of loose horses, cattle, sheep, pigs, or other animals over the road: 10
- (h) Generally for regulating the travelling upon, the using of, and the proper and efficient control and management of the road.

**11. Power to dispose of surplus land**—Any land vested in the City Council pursuant to this Act may be sold, leased, or otherwise disposed of if the City Council determines that such land is no longer required for the purposes of the road and money realised from such sale, lease, or disposal shall be appropriated to the general funds of the City Council and put to the general purposes thereof. 15 20

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**SCHEDULES**

**FIRST SCHEDULE** **Section 4 (1) (a)**  
**LAND TO BE RECLAIMED**

That portion of the eastern side of the Waikareao Estuary in the Tauranga Harbour lying between Marsh Street to the northernmost extremity, being grid reference NZMS 260 Sheet U14 894 869 and Waihi Road Judea, to the southernmost extremity, being grid reference NZMS 260 Sheet U14 884 848, and generally to be that portion of the Tauranga Harbour recommended by the Proposed Waikareao Estuary Expressway—Route P Environmental Impact Assessment, as adopted by the City Council and approved by the Harbour Board, the Minister of Conservation, and the Minister of Transport.

**SECOND SCHEDULE** **Section 4 (1) (e)**  
**THE RESERVES**

All those pieces of land in the South Auckland Land District, Tauranga City, being:

- (a) Lot 3, DPS.18341, *Gazette*, 1974, Page 2991 (Esplanade Reserve):
- (b) Part Lot 4, DPS.8326, Block X, Tauranga Survey District, Part certificate of title, 23C/744, *Gazette*, 12 February 1981, No. 13, page 273, Local Purpose (Youth Hostel and Clubrooms) Reserve:
- (c) Lot 9, DPS.12803, being Part Block 26, Church Mission Reserve, Section 2, Town of Tauranga, Esplanade Reserve:
- (d) Lot 1, DP.28114, being Part Block 27, Church Mission Reserve, Section 2, Town of Tauranga, certificate of title, 707/83, recreation reserve:
- (e) Allotment 897, Section 2, Town of Tauranga, Part Lots 1 and 2, DPS.2290, and Part Lot 1, DPS.6195, situated in Block X, Tauranga Survey District, all certificates of title, 10B/745 and 24A/599, all *Gazette*, 1969, page 234, S.O. 49464, Recreation Reserve, *Gazette*, 21 January 1982, No. 5, page 191:
- (f) Part *Gazette*, 1957, page 9, Wildlife Refuge:
- (g) Allotment 664, 670, 671, 672, Te Papa Parish, Block X, Tauranga Survey District, Local Purposes (Municipal Depot), *Gazette*, 30 April 1981, No. 51, page 1206:
- (h) Lot 7 and Part Lot 8, D.P.36546, and Allotments 673, 674, 675, 667, 668, and 669, Te Papa Parish, Block X, Tauranga Survey District, certificate of title, 746/225, Part certificate of title, 746/225, *Gazette*, 21 January 1982, No. 5, page 191, Local Purpose (Esplanade) Reserve.