The Mounting Crisis at Ihumaatao: A High Cost Special Housing Area or a Cultural Heritage Landscape for Future Generations?

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A recent Environment Court decision[1] adds to more than 150 years of Court, Crown, and Council decision-making that alienates mana whenua from land they occupied for centuries and now puts Ihumaatao, a rare cultural heritage landscape near Auckland International Airport, at risk of permanent destruction.[2] This latest Court decision gives transnational corporation Fletcher Building Limited, the current 'landowners', the green light to progress its inappropriately sited, low-density, high-cost housing development at Ihumaatao. Fletcher plans to build 480 dwellings on 32 hectares, using the fast-track, developer-friendly provisions of the Housing Accords and Special Housing Areas Act 2013 (HASHA Act) to sideline mana whenua and community interests, as well as diminishing protections for our cultural and natural heritage.

One of the oldest continuously occupied settlements in Aotearoa New Zealand, Ihumaatao represents an unfolding

1 Environment Court decision 214, *King, Newton, Nga Kaitiaki 0 Ihumaatao Charitable Trust & Soul Ihumaatao v Heritage New Zealand Pouhere Taonga*, ENV-2017-AKL-000160, 7 November 2018.

2 UNESCO define a cultural heritage landscape, or cultural landscape, as a property or defined geographical area of cultural heritage significance that has been modified by human activities and is valued by a community. See UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, 2008.

travesty of social, economic, and environmental justice, which reminds us that for Indigenous peoples, colonisation is unremitting. Mana whenua, who were expelled from Ihumaatao by force in 1863, made landless and impoverished, are now further threatened by this commercial development of their confiscated land.

Around 800 years ago, at the very beginning of human settlement of Aotearoa, Pasifika voyagers arrived on this small peninsula in the eastern Manukau Harbour. Across 1,000 acres of elite volcanic soils in this bountiful landscape, they cleared land, raised families, and prospered. For more than 20 generations Māori lived here, gardening, hunting, gathering seasonal foods from nearby forests, moving rock to create stonewalls, and harvesting kaimoana from the estuaries.

When the settlers began to arrive in the fledgling town of Auckland in the 1840s, mana whenua increased commercial production of livestock, potatoes, wheat, and maize to meet the burgeoning market. Strong, stable Māori communities at Ihumaatao, elsewhere in the Manukau district, and throughout Auckland, provided food, land, and security for the Pākehā settlements. However, settler demands for control and ownership of land and resources quickly escalated into jealousies, tensions, and conflict with Māori, as the newcomers sought to impose their vision of what historian James Belich has referred to as a 'better Britain' in the south seas.[3] In 1852, despite the promises of the Treaty of Waitangi, Britain passed the New Zealand Constitution Act, passing 'responsible settler government' to the colonial enterprise. Settler control fomented agitation over land, war in Taranaki in 1860, and three years later the invasion of the Waikato.

Vincent O'Malley, in his accounts of these wars, suggests a watershed of aggression that radically disrupted the peaceful, productive Māori communities of Manukau.[4] On 9 July 1863 Governor George Grey issued a proclamation requiring 'Manukau Maoris' to swear allegiance to the Crown or retire south beyond the Waikato boundary.[5] The freshly-minted New Zealand Settlements Act 1863 legitimised the confiscation

3 James Belich, *Making Peoples: A History of the New Zealanders from Polynesia* (Auckland: Penguin, 2002).

4 Vincent O'Malley, *The Great War for New Zealand: Waikato, 1800–2000* (Wellington: Bridget Williams Books, 2016).

5 Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8), 1985.

of their lands and other possessions and then, through the so-called 'Compensation Court' provisions of the Act, claimed them for the Crown to grant in farmable parcels to settlers. In 1867, on the Ihumaatao peninsular, where 1,100 acres were confiscated, Gavin Struthers Wallace, from County Argyle in Scotland, was 'granted' 81 acres of prime Māori horticultural land, complete with permanent spring and Māori stonewall garden infrastructure. His descendants remained on the land until 2016.

Mana whenua returned from the Waikato from 1864 to eke out a subsistence existence on a 50-acre reservation, as labourers on their former estates, while the settlers and the colonial state prospered. As Auckland grew after the Second World War, their sacred maunga were quarried for roading, urban sprawl encroached, the city sewage treatment plant established nearby polluted their fishing grounds, and the great 100-metre-high ancestral cone, Maungataketake, was levelled to make way for airport runways. Despite ongoing mana whenua-led resistance, protest, and inquiries dating from 1865, these injustices have never been formally addressed by the Crown.[6]

This bare sketch cannot convey the anguish, loss, and harms endured by mana whenua. Te Ākitai, Te Ahiwaru, Te Wai-o-Hua, Te Kawerau a Maki, Waikato-Tainui, Ngāti Whātua, and other iwi all have enduring relationships with Ihumaatao.

The 1985 Waitangi Tribunal report on the Manukau Harbour claim provides a glimpse of the injustices suffered by mana whenua. The report states that 'at Ihumaatao . . . the inhabitants [were] attacked, their homes and property destroyed, and their cattle and horses stolen, but then they were punished by confiscation of their lands for a rebellion that never took place'.[7] Successive generations continue to experience the traumatic intergenerational effects of this assault.

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6 For example, in 1926 the Royal Commission on Māori Land Confiscations, chaired by Supreme Court Judge William Sim, found that 'the confiscation of lands from tribes driven from their kainga north of the Mangataawhiri before its crossing by General Cameron in July 1863 was a "grave injustice"'. *Waikato-Tainui Deed of Settlement*, 1995, 3.

7 *Report of the Waitangi Tribunal on the Manukau Claim*, 18.

According to archaeologist Dave Veart the contested land is an inseparable part of 'our Stonehenge'—the adjacent Ōtuataua Stonefields Historic Reserve, which was legally protected in 2001. It is of special significance, he argues, because here the ancient and more recent gardens stand next to each other. These places are even rarer than the stonefields were at the time of the creation of the Historic Reserve because so few still exist. The former Manukau City Council tried to purchase the contested land and make it part of the Historic Reserve, but the landowner rejected the offer. Then, in 2012, an Environment Court decision rezoned the land 'future urban', clearing the way for development.

In March 2014, Fletcher entered into a conditional agreement with Wallace's descendants, the Blackwells, to purchase the land in question. In May, Auckland Council recommended to the Minister of Housing that the land be designated as a Special Housing Area (SHA62) under the HASHA Act, bypassing the more rigorous consultation requirements of the Resource Management Act 1991 (RMA). The HASHA legislation was introduced under urgency the previous year and at the time politicians argued it would fast-track development needed to address Auckland's housing crisis; however, Fletcher's low-density plan for Ihumaatao will make little difference.[8] The HASHA Act locked Māori and community concerns out of the decision-making process, as well as positioning heritage and other environmental values as 'informing elements'[9] rather than matters of national significance, as they are in the RMA. The SHA62 designation and subsequent consenting processes further dispossessed mana whenua and left them without safe, fair access to legal redress.

Despite the advantages conferred by the HASHA Act, Fletcher had a final hurdle to cross after gaining the necessary Auckland Council consents to develop the land. It needed archaeological authority from Heritage New Zealand Pouhere Taonga (HNZPT) to modify or destroy archaeological sites on the contested land. Despite the archaeological and historical significance

8 By comparison, the proposed government-led Mt Albert housing development announced by the Labour-led coalition government in March 2018 is expected to yield up to 4,000 units on 29 hectares.

9 Auckland Council presentation, Housing Project Office, 2014.

of this unique cultural heritage landscape,[10] the authority was granted on 27 September 2017. The matter was appealed in the Environment Court and the HNZPT decision upheld on 7 November 2018.

Established in 2014, HNZPT is charged with ensuring the 'identification, protection, preservation, and conservation of . . . historical and cultural heritage'.[11] However, up to March 2017, it granted almost 97 percent (877 of 907) of applications for developments affecting Māori archaeological sites.[12] HNZPT claims pre-application discussions can result in protective measures, but the Ihumaatao decision suggests the HNZPT Act 2014 almost exclusively favours private property rights and developer interests over protecting the values and benefits of our oldest cultural heritage places.

The recent Environment Court decision shows that the policy aspects of the Act have no statutory teeth, effectively ensuring the outcome we now have. The Court acknowledged the narrow scope of its evaluation: it focussed on individual archaeological remains[13] (such as middens) but excluded any assessment of the significant cultural heritage landscape values.[14] The Court also recognised mana whenua have been 'adversely affected for a very long time' and 'the present situation is not what tangata whenua would have wanted'.[15]

Serious questions also remain about the effects of infrastructure and a population rise at Ihumaatao from SHA62. Auckland Council stormwater consents, for example, allow for the untreated discharge of rainfall and other likely contaminated surface water into the Oruarangi River. This will cause flooding, erosion, and pollution of this treasured estuarine waterway, both in the construction phases and eventually from the paved surfaces of the

10 Ian Lawlor, 'Review of Oruarangi SHA Archaeology for Te Akitai Waiohua,' 2016; Dave Veart, 'Statement of Evidence in the Matter of Appeal Heritage New Zealand Pouhere Tāonga Decision to Grant Archaeological Authority to Modify or Destroy Archaeological Sites at 545–561 Oruarangi Rd,' ENV-2017-AKL-000160, 2018.

11 *Heritage New Zealand Pouhere Taonga Act 2014*, 6.

12 Heritage New Zealand Pouhere Tāonga, 2017. Official information request: granting archaeological authorities, 2014–2017.

13 Environment Court decision 214, 10.

14 Environment Court decision 214, 10.

15 Environment Court decision 214, 24.

development, at a time when the Minister of Conservation is specifically calling for the protection of the precious remnants of Auckland's devastated wetlands.[16]

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Formed in 2015 to stop the development, the mana whenua-led, community-supported campaign Save Our Unique Landscape (SOUL) is calling on the Government to ensure all affected Māori are properly consulted and to protect the land for future generations. Guided by a group of mana whenua cousins and community leaders, others including local community groups, academics, conservationists, local politicians, unions, and citizens from all over Auckland and beyond, have united under the banner *#ProtectIhumātao*. SOUL supporters are deeply concerned about the longstanding injustices and impacts arising from the original land confiscation, the threat of destruction to this special cultural heritage landscape, damage to its volcanic formations, loss of open space, and the inadequacy of infrastructure to support a development proposal that should have been rejected at first application.

SOUL is working to protect the land for future generations through a kaupapa of respect grounded in evidence-based discussion, debate, demonstration, and action. SOUL has presented its case to local and special-interest groups as well as to the Māngere-Ōtāhuhu Local Board and Auckland Council Governing Body, among others. A 4,000-signature petition was presented to the Government in November 2015.

In December 2015 the mana whenua cousins made a claim to the Waitangi Tribunal on behalf of Te Ahiwaru/Makaurau Marae that challenges both the creation of SHA62 and the mechanisms and application of the legislation.[17] The claim, still waiting to be heard, argues that the Crown

16 Jamie Morton, 'New Zealand's wetland wipe-out: "We must protect the last 10%,"' *New Zealand Herald*, February 2, 2018, https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11986182.

17 Statement of Claim: In the Matter of: 'An Application for an Urgent Inquiry into the Crown's actions concerning the Housing Accords and Special Housing Areas Act 2013 and the development of the Ihumātao Special Housing Area by Haki Wilson, Bobbi-Jo Pihema, Qiane Matata-Sipu, Pania Newton, Waimarie McFarland, and Moana Waa on behalf of Makaurau Marae and Ngāti Te Ahiwaru (the Claimants),' (Wai 2547), 2015.

breached the principles of the Treaty of Waitangi, in particular the principle of partnership, by failing to consult with Māori, and the principle of active protection, by disrupting the ability of mana whenua to exercise kaitiaki responsibilities in relation to the area.

In March 2016, SOUL representatives made submissions to Parliament's Social Services Select Committee, and later more than 4,000 supporters joined an online 'virtual occupation' of the land.[18] Ongoing actions on the land drew hundreds of supporters, and in November 2016 Kaitiaki Village was established, beginning a now two-year occupation that demonstrates respect for the tūpuna and future generations.

It is extraordinary that a campaign that operates on a shoe-string budget has sent representatives to the United Nations three times in two years. But over the past 200 years Māori have made many appeals to international authorities in pursuit of justice. In 2017, with crowdfunding and other support, SOUL representatives first addressed the UN Permanent Forum on Indigenous Issues and then the Committee on the Elimination of Racism and Discrimination (CERD).[19] Here, SOUL cited the CERD Convention, in particular General Recommendation 23, paragraph five, for its resonance with the situation at Ihumaatao:

> The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.

SOUL also argued that the development is in breach of the Declaration of the Rights of Indigenous Peoples, which explicitly criticises land

18 *Submission to Social Services Committee on Special Housing Area 62 as Background to Petition no. 2014/31*, presented by Waimarie McFarland on behalf of Save Our Unique Landscape Campaign (SOUL), 5 February 2015.

19 *Shadow Report to the Committee on the Elimination of All Forms of Racial Discrimination on Special Housing Area 62 in Ihumātao, Mangere, Aotearoa*, presented by Pania Newton on behalf of Save Our Unique Landscape Campaign SOUL, 6 July 2017.

confiscation, and that it also breaches Te Tiriti o Waitangi, Aotearoa New Zealand's founding document.[20] CERD issued strong recommendations to the New Zealand Government in August 2017 concerning the failure of proper consultation and absence of redress for mana whenua at Ihumaatao.[21] SOUL returned to the UN in March 2018 to address the 63rd session of the International Committee on Economic, Cultural, and Social Rights, concerning Crown and Fletcher breaches of mana whenua economic, social, and cultural rights enshrined in this convention.

The campaign has drawn thousands of visitors, now up to 300 each week, including school and university groups, who come to learn about the significance of this place through guided tours that include the Ōtuataua Stonefields Historic Reserve, which borders the contested land. Arguably, the place deserves well-planned, world-class, mana whenua-led education, research, and visitor opportunities. Mana whenua not only lost their lands in 1863, but also the development potential. The land could yet provide mana whenua-led educational, ecotourism, and other income-generating opportunities, without forsaking possibilities to recreate some of its original uses (such as gardens) and the natural and cultural heritage values of this wāhi tapu (a place sacred to Māori). Mana whenua should be given the opportunity to consider the future they want for the land that was once theirs and benefit as a consequence. SOUL has called for the Crown to intervene to resolve what is now a mounting crisis.[22] Having exhausted legal processes, SOUL supporters are willing to face down the bulldozers, but are continuing to do everything possible to prevent this from happening.

In another case, the long-running Porotī water dispute in Northland, the Government stepped in and bought the land and water consents that were a major concern for mana whenua and 'banked' those resources for

20 *Shadow Report to the Committee.*

21 Committee on the Elimination of Racial Discrimination (CERD), 'Concluding Observations on the Combined Twenty-first and Twenty-second Periodic Reports of New Zealand,' 2017.

22 Frances Hancock, Pania Newton, and Nicola Short, 'The cost of our nation's cultural heritage too high?' *Newsroom*, 19 November 2018, https://www.newsroom.co.nz/@future-learning/2018/11/18/322757/the-cost-of-our-nations-cultural-heritage-too-high.

future Treaty settlements.[23] A simple solution. One that comes at a cost certainly, but what price justice?

The Crown policy on Treaty settlements, Fletcher frequently points out, does not include privately held land. But our nation has been doing the difficult business of Treaty settlements for some decades now and, surely, we can accept that some cases involving private land will always sit outside existing policy frameworks. Do we simply ignore those cases? Do we turn away from the people most affected and, in the case of Ihumaatao, again by default endorse the 1863 confiscation? Do we allow foreign capital to exploit weaknesses in our statutes to profit at the expense of mana whenua and our society at large?

The Ihumaatao cultural heritage landscape is currently on the United Nations International Council on Monuments and Sites (ICOMOS) at -risk register. As a nation, we ought to now ask, what do we value more *in this case*: a special housing area or a cultural heritage landscape? Fletcher is not unaware of the significance of the area and has indicated that it is a likely seller of the land. In a letter to the United Nations, Steve Evans, chief executive officer of Fletcher, wrote:

> As part of its inclusive approach to its new communities, Fletcher Building has approached local and central Government to discuss extending the 100ha Stonefields park to include the farmland, but was told they have no need or wish for additional reserve space in this area.[24]

The Government could buy the land and hold it in Crown ownership until it is clear how best to guard its future. If that were to happen then proper engagement with all the mana whenua groups could occur and community interests could be heard. At the moment, an iwi representative

23 Paul Hamer, *Porotī Springs and the Resource Management Act, 1991–2015: A Report Commissioned by the Waitangi Tribunal for the Te Paparahi o Te Raki Inquiry* (Wai 1040), 2016. See also 'Poroti Springs water battle over as company sells water rights and land to Crown,' *New Zealand Herald,* 10 April 2018, https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12029780.

24 Correspondence from Steve Evans, chief executive officer Fletcher Building Limited, to the Chair of UN International Committee on Economic Social and Cultural Rights, 21 March 2018.

of Te Kawerau-a-Maki has negotiated a compromise with Fletcher, a strategic move, but the route of mitigation is never the same as free and informed consent. The creation of SOUL shows that members of mana whenua groups feel excluded. The UN pointed out that consultation does not imply consent.[25]

Thousands of New Zealanders now want the contested land at Ihumaatao protected for all New Zealanders and for future generations.[26] If this development goes ahead, it will redouble the injustice of the original confiscation. SHA62 not only threatens the existence of one of our nation's oldest continuously occupied settlements, it also raises serious questions about how our country does democracy and protects our cultural heritage and identity.

It is not too late to undo the damage and rebuild our collective futures in relation to this land. People need places to dream, to breathe, to connect to ancestors, history, and the earth itself. Ihumaatao, with its undulating cultural heritage landscape, its sweeping views over the Manukau Harbour, its insights into the tragic effects of colonisation, its ancient historical associations, and its strategic location as the gateway to Auckland, is one such place. Visit Kaitiaki Village; take a guided walk there with mana whenua to warm the land; engage with SOUL on social media; get your networks talking about the place and the issues; join the campaign to *#ProtectIhumātao*. Very Soon, without support, it may be gone forever.

25 CERD, 'Concluding Observations,' 4–5.

26 The SOUL Facebook page has over 5000 followers.