



Cultural heritage landscapes, ontological challenges and environmental justice in Aotearoa 1990-2020

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ABSTRACT

This paper summarises legal and planning statutes as they relate to cultural heritage landscapes and indigenous heritage. Since the mid 1990's government agencies and heritage groups have attempted to develop structures and drafted policies for better protection of Māori heritage and cultural heritage landscapes. They have covered a wide and complex range of needs and values but, to date, have failed to embed better protective laws and policies with more effective outcomes. Through a socio-political critique of heritage law, planning and policy development in Aotearoa over the last 40 years the power relationships between different heritage *ontologies* in Aotearoa is explored.

Further, this paper offers insights into Te Tiriti o Waitangi obligations, particularly principles of *kāwanatanga* (governance) and *kaitiakitanga* (guardianship). Expanding on the work of Huhana Smith (2013) shows how a cultural heritage landscape approach, if applied, would better address Te Tiriti obligations.

Finally, the paper will highlight elements of the #protectihumātao campaign in Auckland that demonstrates the current weaknesses of heritage planning regimes and environmental regimes in Aotearoa.

Keywords: *heritage; landscapes, law, planning, social justice*

GLOSSARY

Te Reo (Māori language)	English
ahi kā	burning fires of occupation, continuous occupation
Aotearoa	New Zealand
hapū	kinship group, clan, tribe, subtribe
iwi	extended kinship group, tribe, nation, people, nationality, race
kaitiaki	trustee, minder, guard, custodian, guardian, caregiver, keeper, steward
kaitiakitanga	guardianship or management.
kaupapa	topic, policy, matter for discussion, plan, purpose, scheme, proposal, agenda, subject, programme, theme, issue, initiative.
kāwanatanga	governorship; the authority of a governor or government.
mana motuhake	separate identity, autonomy, self-government, self-determination, independence, sovereignty, authority - mana through self-determination and control over one's own destiny.
mana whenua	territorial rights, power from the land, authority over land or territory, jurisdiction over land or territory
Pākehā	New Zealander of European descent
Pouhere Taonga	Heritage New Zealand
rangatiratanga	chieftainship, right to exercise authority, chiefly autonomy, chiefly authority, ownership, leadership of a social group
Te Ao Māori	Māori world view
Te Mana o te Taiao	prestige/ authority of the natural environment
Te Mana o te Tai	prestige/ authority of the sea
tangata whenua	local people, hosts, indigenous people - people born of the whenua
Te Tiriti o Waitangi/ Te Tiriti	The Treaty of Waitangi
tikanga Māori	Māori customary system of values and practices that have developed over time and are deeply embedded in the social context
wāhi tapu	sacred place, sacred site
wāhi tupuna	a place important to Māori for its ancestral significance and associated cultural and traditional values (HNZPT Act 2014)
whenua	land

*Definitions from <https://maoridictionary.co.nz/> - accessed 15/11/20

Acronym	Full term
UNESCO	United Nations Educational, Scientific and Cultural Organization
HNZPT	Heritage New Zealand Pouhere Taonga
ICOMOS	International Council on Monuments and Sites - an international non-governmental organisation of heritage professionals
RMA	Resource Management Act
HPT	Historic Places Trust (Replaced by Heritage New Zealand in 2014)



Figure 1 – Cultural heritage landscape -Hiaroa to Stonefields 1959. Photo credit: Whites Aviation National Library collection

INTRODUCTION

The terminology 'cultural landscapes', 'heritage landscapes' and their amalgam 'cultural heritage landscapes' have become codified in national and international heritage doctrines to address the entanglements of cultural, natural, western and indigenous values. They represent important shifts from conceptualising place-based heritage as singular objects, historic buildings, monuments, and historic gardens as well as growing tensions between concepts of universality and diversity, vernacular heritage and authenticity. The term 'cultural landscapes' was defined and became part of global heritage practice in 1992, at the 20th anniversary of the organisation, with the inclusion of definitions into the 1972 United Nations Education, Scientific and Cultural Organisation (UNESCO) World Heritage Convention. In Article 1 the Convention defines cultural landscapes as "cultural properties [that] represent the combined works of nature and of man (sic)"(UNESCO 2019 (Annex 3) Operational Guidelines for the Implementation of the World Heritage Convention. Paris p14).

A framework of different cultural landscape typologies addressing both cultural and natural values (although the term was categorised by the World Heritage Committee as a sub-set of 'cultural site') were also included at this time. These being places which are:

- A clearly defined landscape designed and created intentionally by people (Ibid)
- An organically evolved landscape which may be a relict (or fossil) landscape or a continuing or living landscape (Ibid)

- An associative cultural landscape which is valued because of its religious, artistic or cultural associations of the natural element (Ibid)

The shift from *sites* to *landscape* was in large part an acknowledgement that heritage places may not be ‘precisely delineated’, as had previously been required.

The first place to be inscribed on the UNESCO World Heritage list as a cultural landscape was Tongariro National Park in 1993, a year after the inclusion of the cultural landscape typology. This represented a recalibration of natural values and a greater emphasis on the cultural values, particularly of tangata whenua (Kawheru 2009, Brown 2015).

OVERVIEW OF THE AOTEAROA CONTEXT

The term ‘heritage landscapes’ grew out of the ‘protected landscapes’ concept with the intention of creating a platform to bring together natural and cultural heritage values in order to better identify and protect those “Unique places that are the prime expression of the richness of the world and the diversity of its culture” (Natchitoches Declaration on Heritage Landscapes, 27 March 2004). Within the context of Aotearoa’s heritage landscapes conceptually evolved through the work of Janet Stephenson and Anne Salmond in the early 2000s culminating in a Think Tank led by the Historic Places Trust in 2003.

An outcome from this Think Tank was a proposed definition for the term ‘heritage landscape’, as distinct from ‘cultural landscape’ as a place that “encompass(es) the physical structures and changes made to the environment by people, natural landforms modified by human action, the meanings given to places and the stories told about them” (HPT, Heritage Landscapes Think Tank, report on proceedings, 1 April 2003, p.1).

For the purposes of this paper the term ‘cultural heritage landscapes’ will be used to encompass both the international codification of the typology through reference to the ICOMOS term and the more targeted heritage application embodied in the term ‘heritage landscape’. It should be noted that the use of ‘cultural heritage’ is not to emphasise the cultural over the natural, which for my purposes is implicit in the term, with the central element being ‘landscape’ and all the values associated with landscape. There is also alignment between the Eurocentric ‘cultural heritage terminology and a Te Ao Māori view of important places. “Value [for Māori] comes from the nature of that link and the way in which interaction continues over time. As part of a unique landscape that provides not only material resources but also sustenance, access, and distinctiveness, heritage is especially valued when it is in harmony with the natural environment...” (Durie., 2010, p.245)

Despite the early acknowledgement of cultural landscapes in the international arena, the identification and application of heritage status and associated protections in Aotearoa for land-based heritage with respect to cultural landscapes has a number of challenges and is yet to have any specific formal or legal protections. Many of the challenges that exist in meaningfully applying the cultural heritage landscape approach to heritage identification and protection in Aotearoa exist across colonised states (where obligations to indigenous rights, including the right to self-determination and cultural access, sit uncomfortably with European legal and planning frameworks). Furthermore, cultural heritage landscapes provide challenges to a legal system which is based on concepts of “land as a physical reality with reasonably clear and identifiable boundaries of delimitation” (Fisher D. E., 2005, p.2). This system sits in contrast to a Te Ao Māori view of whenua/land and cultural heritage landscapes which places importance on the connections or links between valued sites and surrounding features.

“There is no specific recognition of how whakapapa as a genealogical reference system relates people to lands, waterways, ecosystems and areas of spiritual importance. If a heritage landscape concept recognised and emphasised these intricacies, then laws might better reflect and respect the multiple narratives of iwi and hapū interaction with place, natural resources and other influential events or experiences that remain embedded within landscape” (Smith H., 2010, p 308)

Many of the challenges with cultural heritage landscape values have been primarily around the identification and assessment of cultural and social values. The application of a more holistic and spatial approach to protection inherent in a cultural heritage landscape approach, particularly in the establishment of boundaries, has proved challenging for planners and the Courts. Additionally, cultural and social dimensions, both tangible and intangible, have provided heritage law and planning with challenges that are centred in ontological issues and the ability of a Eurocentric process to take account of the significance of values emanating from other worldviews. The tensions arising from these differing world views and associated processes are what is meant in this paper by the term ‘heritage ontologies’.

Shifting the focus from European heritage places, largely individual sites to one that adequately protects Māori heritage sites and acknowledges interrelated values has been a discussion in Aotearoa’s heritage profession since the 1990s.

In *Māori and the Environment: Kaitiaki* (2010), Dr Huhana Smith critically examines environmental and heritage law in Aotearoa. In this text the author addresses both cultural and heritage landscapes identifying key policy moves towards accepting and applying these concepts to improve heritage identification and protection. The author provides context and overviews of relevant reviews and recommendations including: the *1996 Parliamentary Commission for the Environments Review* of cultural and historic management and the ensuing *Historic Heritage Management Review of 1998*; the *Taonga Maori Review 1999-2000*; and the *Historic Places Trust’s Heritage Think Tank in 2003* including recommendations for the establishment of a Maori Heritage Agency within the Ministry of Culture and Heritage. Smith notes that despite the weight of recommendations and scholarship in support of the inclusion of the concept and terminology of cultural landscapes, ancestral landscapes and heritage landscapes, the government has consistently avoided the inclusion or strengthening of the approach. This includes the deletion of the terminology from the definition of ‘historic heritage’ in Section 2 RMA matters of national importance in the *2004 RMA Amendment Bill* as the result of a Supplementary Order Paper. The effect of this withdrawal was justified on the basis that the amenity values and the maintenance and enhancement of the quality of the environment covered the same values. Likewise, the recommendation to establish an agency with overarching responsibility for advising and supporting the Ministers of Culture and Heritage and Māori Affairs on Māori heritage needs and issues, including those that related to Māori heritage values within the landscape, was never implemented.

In addition to the concerns above the findings from the Parliamentary Commission enquiry into historic and cultural resources in environmental management highlighted lack of coordination between agencies with heritage responsibilities, a lack of resourcing, and inadequacies in the protection of Māori heritage including cultural heritage landscapes. As a result, a specific review into *Historic Heritage Management (1998)* was undertaken by the New Zealand Department of Conservation Ministerial Advisory Committee who identified a lack of national direction and inadequate provision for Māori cultural landscapes.

In 2011 the Minister for Culture and Heritage introduced the *Heritage New Zealand Pouhere Taonga Act* (HNZPT Act) to replace the *New Zealand Historic Places Trust Pouhere Taonga Act* (NZHPT Act) 1993. The HNZPT Act came into effect in 2014. The purpose of the repeal of the NZHPT Act was aligned to a suite of legislative changes targeted at ‘streamlining and simplifying’ environmental legislation in Aotearoa. The HNZPT Act changed the timing and requirements for applying and gaining an ‘archaeological authority’ (permit) to modify and/or destroy archaeological remains, aligning these with the shortened maximum amount of processing time for an authority with new provisions, as well as removing interim protection for places that were being considered for listing as heritage places on the HNZPT list. Additionally, it added reference to provisions in the case of civil emergencies. It also strengthened private property rights and the rights of owners in respect to heritage listing. It added two new categories of heritage places, one being wāhi tapu areas and the other National Heritage Historic Landmarks. The HNZPT Act retained the Māori Heritage Council, heritage covenants and orders and the Heritage Register (but changed its name to the Heritage List). From a structural perspective the new Act dissolved the local branches of the HPT and strengthened the alignment between HNZPT and the *Crown Entities Act 2004*. The most salient features of the changes for the purposes of this paper is the weakening of the archaeological authorities, as the vast majority of archaeological material is Māori in nature, the inclusion of wāhi tapu areas as this has potential landscape applications, and the move away from the local to a more centralised approach. The latter has significant ontological implications from a Te Ao Māori perspective which is iwi and hapū based and not centralised. Additionally, in the process of determining the protection provisions in the NZHPT Act submissions were made that focussed on concerns that archaeological material was too limited in its ability to sufficiently represent values associated with wāhi tapu and wāhi tupuna. The linkages and values associated with intangible heritage could not be taken into account by the proposed provisions and this in effect significantly diminishes the Act’s ability to take account of, identify, and protect important Māori heritage, including cultural heritage landscapes. Despite these concerns the HNZPT Act implemented the changes, in effect limiting the archaeological provisions to material evidence only.

A number of targeted studies and symposiums have found significant inequalities in both listings and processes for protection of cultural heritage landscapes and Māori heritage sites. These inequalities have largely been reported through analysis of the quantum of European heritage sites compared to Māori heritage sites. For example, the HNZPT list currently has over 80% European heritage places (largely buildings) with less than 10% specifically identified as Māori heritage. It is arguable therefore that the current heritage law and planning policy in Aotearoa privileges Western ontological notions of heritage, as is evidenced in the HNZPT List, local government schedules, and related policy, and as a result is not consistent with the co-governance envisioned in the Te Tiriti.

More recently the 2020 review of the RMA conducted by the Independent Resource Management Review Panel chaired by retired Court of Appeal Judge, Hon Tony Randerson, QC, *New Directions for Resource Management in New Zealand* (referred to as the Randerson Report), has found that there is a “need for a significantly greater role for Māori in the resource management system.” (Resource Management Review Panel., 2020, p4). It also supports a change from ‘taking account’ of the principles of Te Tiriti to ‘giving effect’ to those principles. Additionally, and of significance to this paper, the reports’ recommendations include in its first two key recommendations, (Section Three) Te Tiriti o Waitangi me te ao Māori that:

1. The concept of ‘Te Mana o te Taiao’, should be introduced into the purpose of the Natural and Built Environments Act to recognise our shared environmental ethic.

2. Specific outcomes should be provided for 'tikanga Māori', including for the relationships of mana whenua with cultural landscapes (Ibid p85).

Additionally, in the Heritage recommendations (Chapter 10) it states:

63. This work [Ministry of Culture and Heritage project Strengthening Heritage Protection] should also investigate the interface between the Natural and Built Environments Act and the Heritage New Zealand Pouhere Taonga Act 2014 to provide greater clarity about which agency has primary responsibility for which aspects of heritage protection (Ibid., p302)

The combination of the recognition in the report of the special place of cultural landscapes for Māori and the need to review existing heritage legislation is a positive step. Also, advocacy for tikanga Māori in respect of heritage has the ability to address some of the existing statutory gaps. From a structural perspective the Report advocates for reform to the legislative architecture and proposes a new framework in the introduction of a Natural and Built Environments Act. This framework would be based on the concept of Te Mana o te Tai providing a positive focus on better outcomes for "natural and built environments, rural areas, tikanaga Māori, historic heritage, natural hazard and climate change" (ibid., p23)

These recommendations and proposals, as they relate to cultural heritage landscapes, echo those made in the late 1990's and 2000's. What is different this time is that they are largely based on a tikanga Māori view. The alignment between the heritage and landscape concepts and Te Ao Māori is not new but has not, until this report, been so grounded in tikanga Māori or so ontologically specific. However how this conceptual framework would operate within a Westminster system of law is where the tensions and awkwardness lie. In the past this has proven too politically difficult and complex.

The decision making and planning processes regarding the identification and management of cultural heritage landscapes will be of critical importance in any changes to environmental law and will signal the level of commitment to Te Tiriti obligations, especially those of rangatiratanga (or mana motuhake for those iwi who were not Te Tiriti signatories) and kaitiakitanga. The treatment of cultural heritage landscapes in the revised framework provides an important test of RMA reform.

CASE STUDY

In the case of the #protectihumātao (figure 2), a campaign to protect land in South Auckland from building development that is currently live, the current weaknesses of the HNZPT Act and the RMA to address indigenous ontologies and cultural heritage landscapes are starkly illuminated. Systemic bias privileges Pākehā values and supports discriminatory policies and processes that, arguably, breach Te Tiriti and human rights obligations.

Ihumātao is a rare cultural heritage landscape. This area has national and international significance as one of the earliest Māori settlements, natural heritage as well as values associated with early Pākehā settlement, land acquisition and management.

Within Ihumātao, there is 32 hectares of highly contested, privately-owned land which is known to ahi kā (local Māori) as Puketaapapa. It is also known as the "Wallace Block" after the Pākehā settler family that was granted the land following Crown confiscation in 1863 as well as SHA62 (Special Housing Area 62). The land has become a source of controversy because the current legal owner, Fletcher Building Limited, plans to build 480 dwellings there. Locally, the land is considered a sacred place and integral to the adjoining Ōtuataua Stonefields Historic Reserve. This landscape contains evidence of continuous Māori and settler occupation over the last 700+ years.

In the current planning and policy regime, it is not possible to demonstrate that Ihumātao meets the threshold of national significance. The lack of a national strategy or framework, as noted in the 1998 report, in conjunction with the strongest planning and protection instrument being at the local or regional level, has created perverse outcomes. In particular this is so where nationally significant cultural heritage places can be more at risk than locally significant ones. This is the case at Ihumātao.



Figure 2- #protectihumātao campaign August 2019. Photo credit Assorted Collective 2019

A comparative understanding of heritage sites on the basis of their national, regional or local significance can't be established by looking at Aotearoa's heritage lists and schedules. This makes determining the commensurate level of protection for these places difficult and at times flawed.

The ability of HNZPT to prevent the destruction of Māori heritage was significantly weakened by the passing of the HNZPT Act. The strengthening of private property rights and putting the emphasis on advocacy and mitigation over protection has resulted in a developer friendly regime that is reflected in poor heritage outcomes. This can also be seen in the development of events in the #protectihumātao campaign. Critical evidence of the effects of this regime is demonstrated in the success rate of developers to get archaeological authorities to modify or destroy archaeological (Māori) heritage sites. From 2014 to March 2017, HNZPT granted over 97% (877 of 907) applications for the modification or destruction of archaeological sites (HNZPT 2017 Official Information Request, granting archaeological authorities 2014-2017). The impact on Māori heritage, the oldest and rarest heritage in Aotearoa, both in terms of the destruction of tangible material evidence of Maori culture and the erosion of the intangible linkages that provide cohesion to important landscapes, has been devastating.

In 2017 HNZPT granted an archaeological authority to Fletcher Building to modify and destroy archaeology at Ihumātao to enable the housing development. The #protectihumātao campaign challenged the granting of the authority through the Environment Court (case #214). The Court found in favour of the development despite detailed archaeological arguments for its protection [Dave Vert and Ian Lawlor in evidence: Environment Court Appeal (2018) ENV-2017-AKL-000160]. The Environment Court appeal failed for two main reasons. First, at the RMA local level, Auckland

Council's planning provisions offered no protections for Māori heritage on private land. Second, Heritage New Zealand's policies for finding alternatives to modifying or destroying cultural heritage landscapes are not, according to the Environment Court, legally enforceable due to an exclusive focus on archaeological sites in the statutory provisions. This focus on material remains and site-specific values is ontologically and systematically biased in favour of a Eurocentric approach to heritage.

As stated earlier the #protectihumātao campaign is live at the time of writing. The campaign to protect this rare cultural heritage landscape is continuing a legacy of resistance to Crown Tiriti breaches, such as the Bastion Point campaign in the 1970's. The #protectihumātao campaign has carved its own path to Māori land rights and cultural heritage landscape protection, galvanising public support and spurring national conversations. One of these national conversations is around the role of heritage agencies and mechanisms and how 'heritage' is conceptualised by different communities. To date the campaign has successfully stopped the development, advocated for the upgrading of the heritage status through the inclusion of the at risk land on the Heritage New Zealand list as Category 1 (the highest category) and is supporting kaitiaki in their rangatiratanga exercised in the current land management practices which are based on the campaign kaupapa.

"Only history will tell what this kaupapa, this campaign, has entailed. But for us, we just hope that it encourages other people to stand up against injustice, to stand up against environmental degradation and to stand up for cultural heritage landscapes, and our wāhi tapu and our history. And we hope to heal some of the heartache that lays across this whenua" (Newton. P., January 22nd, 2020).

CONCLUSION

The cultural heritage landscape of Ihumātao, and the campaign to protect it, has wide reaching consequences for how Aotearoa understands, identifies, and protects heritage and significant values in its landscapes. The failure to incorporate the concept and ontological diversity embedded in cultural heritage landscapes into the statutory and planning frameworks over the last 40+ years has given rise to systemic inequalities, which are now being challenged and rejected.

The transformational opportunities that have resulted as we grapple with Covid-19 responses should include meaningful recalibrations to environmental and social statutes and planning frameworks. This might be the taking up of the Randerson Reports recommendations. However, there are challenges and difficulties, including Te Tiriti and governance implications, in applying ontologically different approaches within the one system.

Our cultural heritage landscapes, with all the moving parts and values associated with them, sit at the heart of the country's history and identity. So too does the approach we take to understanding, planning for and protecting them. The choices that are made in this transformation will directly impact the futures that are possible post Covid 19.

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