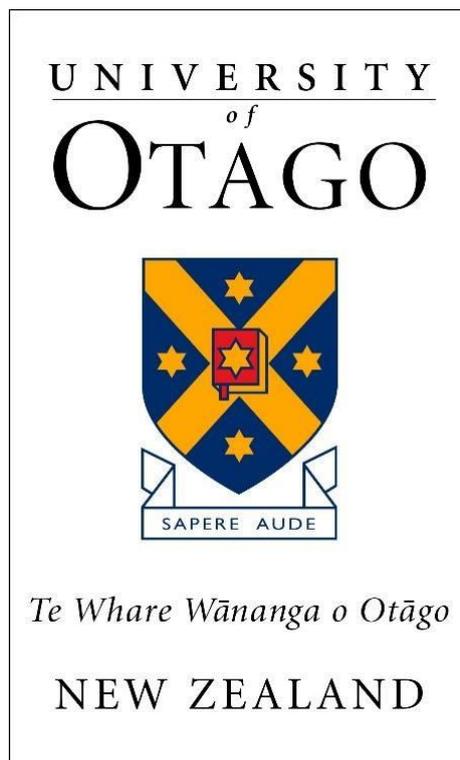


# RESISTANCE IS NEVER WASTED

Defending Māori Cultural Heritage with Radical Planning



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## ABSTRACT

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This thesis investigates the extent to which Māori (New Zealand's indigenous people) are enabled to protect their cultural heritage within the existing heritage management regime. Current evidence suggests that there are deficits in the current heritage regime which results in the loss of Māori heritage. This research attempts to inform planning practice by evaluating the deficits within the regime. Further evaluation of conventional and radical approaches to Māori cultural heritage protection will also form part of the research.

The theoretical framework that underpins the research is based on critical planning theory, participation theory, and cultural heritage theory. Evaluation of these theories is supported by empirical research in the form of a statutory analysis of heritage provisions and analysis of provisions that provide for Māori participation, and an analysis of two current case studies where Māori ancestral landscapes and heritage are under threat. Themes of power, empowerment and social learning permeate the core theories and consequently inform the analytical structure of the two case studies.

The research finds that social transformation can result from adopting either a conventional or a radical participatory approach. However, transformative outcomes were found to be context specific, although realisable at different scales. Specifically, empowerment can be observed through the disruption of power imbalances in governance, inter cultural transfer of knowledge at community scale, or at an individual scale through a strengthening of cultural identity. However, despite transformative outcomes, neither the conventional nor radical participatory approaches were observed to definitively protect Māori cultural heritage.

The research concludes by suggesting that iwi focus on building capacity in strategic areas, as well as adopt a programme to enhance protection of Māori heritage. Regulatory adjustments are recommended for the Crown whereas recommendations for local councils relate to cultural and technical capacity building initiatives. Further research needs are identified relating to the mapping of ancestral landscapes as a mechanism for protection of heritage. Also recommended is research to evaluate the extent to which the authorised heritage discourse constrains the use of the concept of cultural or ancestral landscapes.

## ACKNOWLEDGMENTS

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In the world that I was raised in there is a word staunch (and egg or wonk...but those are different stories). Staunch is used to convey an attitude of loyalty and commitment to a cause, of robustness and strength in the face of adversity. I mention this notion because I want to acknowledge the staunch and steadfast support I have had over the last couple of years.

Firstly, I want to thank you Katja for many things, large and small that have enabled me to fulfil this chapter of my life. Thanks for looking after our home life, including doing the hard yards at mahi will I cruised around Uni. Thanks also for giving me the chance to grow with my girl Muriwai, at this stage of her life. Basic stuff, like school drop offs and pickups meant more time with her, and I feel blessed for this time. To my kids, Tamatea and Muriwai, know that I have sacrificed time with you both over the last years for something bigger. I hope that now I can start to make up for this lost time.

To my bones up north, Mum and Dad, believe it or not you both figure highly in my daily life, even though I'm miles away. We each apply ourselves to our lives in different ways, but there's a common thread, and I hope that the completion of this thesis shows that the fire and the fight in you, also resides in me. It's just that the arenas of expression are different. To my sisters and our next generation, in the words of a wise Fijian 7's player "if you want it, you can go and got's it".

Many thanks are extended to you Professor Michelle Thompson- Fawcett for your mahi behind the scenes to keep me going. At times I felt I went too large and that my wheels, and those of my thesis were going to fall off, so thanks for keeping things real and guiding me through. Also, Clare and Ros, thanks for giving me a love for planning, as well as the technical upskilling. To Pete and my fellow 'writing retreat' friends. These events made me feel part of a bigger shift towards advancing our peoples. So, thanks. I always came away with a full belly and mind and inspired to make a contribution. Thanks, is also extended to each and every one from my MPlan class; good luck out there. And finally, I want to acknowledge my Kaiāwhina for gifting me your perspectives and experiences. I hope in some small way I have done justice to your korero and conveyed your accounts of the lived experiences of Māori in these planning and heritage frameworks. Ngā mihi mahana ki a koutou.

## GLOSSARY OF MĀORI TERMS

Māori	English
awa	river
īnanga	whitebait
karakia	prayer
kaupapa	strategy/philosophy
kauri	<i>Agathis australis</i> , tree species
kete	basket, kit
koha	donation, gift
kōiwi tangata	human remains
kōrero	narrative
mahinga kai	food gathering / cultivation
mamae	pain, ache, sour
mana whenua	ownership
manaakitanga	care
Māori	ordinary, native people, fresh
māra	cultivation , garden, orchard
marae	meeting area of whānau/iwi, focal point of settlement
mātauranga Māori	Māori knowledge, education, information
mātāwaka	original canoes, founding settlers, kinsfolk from ancestral canoe

mauri	life principle, special character
maunga	mountain
moana	ocean
ngahere	forest
papakāinga	original home,home base
pataka	larder, pantry, storehouse
Pōhutukawa	<i>Metrosideros excelsa</i> tree species
rāhui	embargo, [exclusion to let resource recover]
rangatira	chief, landlord
raupatu	seize land, confiscate land
rua kumara	storage pit
Tāmaki Makaurau	Auckland isthmus
tangata whenua	local people, native
taonga	property, treasure
tikanga	meaning, custom
tupuna	ancestor
urupā	cemetery, tomb [burial grounds]
whakapapa	genealogy, cultural identity
whanga	harbour

Definitions taken from: English (Ryan, P.M. (2004) *The Reed Dictionary of Modern Māori*. 2nd Ed., reprint 2004, Reed Books Ltd, Auckland, NZ) except for those in [ ] which are mine due to Ryan translations being inadequate

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# 1 INTRODUCTION CHAPTER

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## 1.1 RESEARCH PROBLEM

The complexities and relentless demands of urban growth in Tāmaki Makaurau (Auckland City) combined with institutional and archaeological bias in associated decision-making frameworks has led to significant ancestral landscapes being ‘eaten alive’ (Kaiāwhina H). To provide some sense of scale it has been suggested that ‘it took over 800 plus years to create the heritage in Auckland and it’s taken less than 150 to destroy about 70% of it’ (Kaiāwhina H). The remnants of these ancestral landscapes have a personal connection, in that they were the same places I would retreat to during dark days; days where the dichotomy of claustrophobia and isolation of urban life clouded my senses and threatened to smother my wellbeing. As mataawaka, I would retreat to the remnants of ancient pa upon Maungakiekie (One Tree Hill) and Maungarei (Mt Wellington) or walk the trails around Piha or Whatipu for time out, to find quiet space to dwell in my own being and soak in the broad horizons that these pā and trails stood sentinel over.

Within these ancestral landscapes, I would reflect upon the tangible marks of the mana whenua on the natural landscape, visualise the palisades and pathways, the mara and rua kūmara (kūmara gardens and storage pits), the likely escape routes and safe places. I would gaze towards the Tamaki River, or the Manukau and Waitemata Harbours, and ponder upon past generations lifestyles and cultural practices. These simple experiences helped to alleviate the deep longing of being disassociated from my cultural roots, language and tribal territories through raupatu and the inevitable urban drift of my grandparents. Without realising it, these brief reconnections on the maunga were empowering experiences which had intrinsic benefits in that they strengthened my identity as a Māori, and therefore my sense of whakapapa, my ancestral connection to Aotearoa. I was experiencing first-hand some of the holistic benefits of maintaining a relationship with the ancestral landscapes and cultural heritage of Aotearoa New Zealand.

Regrettably, the destruction of Māori cultural heritage in Tāmaki Makaurau continues, often in the interests of Crown/ Council and non-governmental urban infrastructure developments and upgrades. This is despite having statutory provisions and mechanisms that enable the protection of such sites of significance, Māori values, associations and heritage. Current examples of developments that are likely to destroy Māori cultural heritage are the Auckland

Airport Runway upgrade, the Special Housing Area 62 development at Ihumātao and the Tāmaki River overbridge widening. In consideration of these threats and as detailed in the following section, this research will explore the statutory and social context within which this incremental loss occurs. The research will consider key themes in cultural heritage, indigenous participation and radical planning theory to offer a lens against which to compare two distinct contact zones in Tāmaki Makaurau, the cultural landscapes of Ngā Tapuwae o Mataoho, the Ihumātao Peninsula on the banks of the Manukau Harbour and Te Wao Nui o Tiwira, the Waitākere Forest.

## **1.2 RESEARCH AIMS AND OBJECTIVES**

The overall aim of this research is to identify and evaluate constraints to effective Māori participation in the protection of their cultural heritage and to evaluate alternative approaches that may counter or mitigate these limitations to some degree.

As such, the overarching question which sets the structure for the above objective is:

***To what extent does Aotearoa New Zealand's Heritage Management Regime recognise and provide for the protection of Māori Cultural Heritage?***

The framework for considering the above is summarised in the following:

- An evaluation of the characteristics of Aotearoa New Zealand's Heritage Management Regime that impact upon Māori heritage protection
- What are the most common participatory mechanisms that are utilised and to what extent are they currently effective in the protection of Māori Heritage?
- What alternative participatory responses and mechanisms have been adopted by Māori in order to protect their cultural heritage and how effective have these alternative approaches been in realising change?
- What alternative approaches can be adopted to best enhance the potential for expression of Māori rights in the management of their heritage?

### 1.3 RESEARCH PARADIGM

This body of research adopts a critical social science paradigm which serves to ‘critique and transform social relations by revealing the underlying sources of social control, power relations, and inequality’ (Neuman, 2014:111). In this regard, Kincheloe and McLaren (1994:140) specify that:

*Critical research can be best understood in the context of empowerment of individuals. Inquiry that aspires to the name critical must be connected to an attempt to confront the injustice of a particular society or sphere within the society. Research thus becomes a transformative endeavour [sic] unembarrassed by the label “political” and unafraid to consummate a relationship with an emancipatory consciousness.*

A critical social science paradigm acknowledges that social change and conflict are not always readily observable and that this can enable powerful elites to maintain power imbalances and thus exploit others in society. This research references the authorised heritage discourse, which it will be argued, enables the status quo and supports inequity within the heritage management regime. Subsequently a critical paradigm is considered appropriate. The authorised heritage discourse maintains the existing hegemony of the dominant classes. This excludes difference through cultivation and manipulation of wider societies conceptualisation of heritage, in effect influencing what form of heritage is prioritised and valued. Karl Marx, a proponent of Critical Social Science, cited in (Neuman, 2014:112) alludes to this type of hidden hegemony in the statement that:

*The ideas of the ruling class are in every epoch the ruling ideas; ... The class which has the means for material production at its disposal, has control at the same time over the means of mental production...the ideas of those who lack the means of mental production are subject to it*

Therefore, this research is well positioned within the Critical Social Science paradigm as it deals with the predominant discourses that influence decision making regarding Māori Cultural Heritage. Furthermore, it seeks to understand the underlying position of power in the practice of implementing statutory frameworks and ultimately aspires to emancipation and empowerment of Māori, not least to be consistent with the principles of the Treaty of Waitangi.

## **1.4 RESEARCH APPROACH**

A qualitative approach was selected based on its ability to allow for an interpretative lens to apply to statutory processes and mechanisms and as an ideal means to characterise participant perspectives and experiences. Qualitative research methods also provide the potential to learn of the perspectives of the participants and apply interpretative methods to complex situations and social processes such as the heritage management regime.

The research design utilises three main methods as elaborated upon below. In brief, the methods used involves primary and secondary research methodologies by way of semi structured interviews and a comprehensive literature review as well as a review of various statutory and legal documents respectively. Furthermore, two case studies were selected as ‘contact zones’ (Porter and Barry, 2015:23) being a ‘space of interaction between groups marked by difference, but one that is deeply constructed through and by historical asymmetrical relations of power’, where divergent paradigms are evident. The first relates to a cultural landscape subjected to incremental and cumulative adverse effects upon the mana whenua’s cultural heritage. The second case study relates to the exclusion of mana whenua from decision making structures in relation to an ancestral landscape under threat, as discussed in chapter four.

## **1.5 PRIMARY RESEARCH METHODS**

### ***1.5.1 KAIĀWHINA INTERVIEWS***

Interviews as a qualitative research method provide the opportunity to discuss the experiences of the interviewees through their context informed viewpoints. Subsequently this provides a means to identify common experiences and themes with which to capture and discover meaning. Of particular value in conducting interviews was the ability to be able to explore the Kaiāwhina ’s answers, in a manner that tried to uncover what they interpreted to be of priority. Thus, one of the main advantages of this method was the flexibility to shift the line of questioning when necessary as well as observe non-verbal behaviour (Sarantakos, 2005). The questions I asked were merely to prompt initial discussion points, which subsequently evolved as the interviews progressed.

A total of eight Kaiāwhina interviews were undertaken to inform part of the data collection phase of this research. The main matters that set the structure for the interviews related to the following:

- What interviewees thought were the main issues facing Māori in the heritage management regime, particularly with regard to the statutory provisions and governance
- What were the main participatory mechanisms utilised in the heritage regime by Māori, and how effective they considered them to be.
- Where there any examples of innovative mechanisms for participating in the heritage protection space, and how effective were they?
- Where there any positive social outcomes as a result of interacting with cultural heritage?

The organisations or sectors that each of these participants operated in are identified in Table 1-1 below, although the participants themselves remain anonymous, as per the agreed university research ethics form.

*Table 1-1 Interview Kaiāwhina details*

<b>KAIĀWHINA IDENTIFIER</b>	<b>KAIĀWHINA ROLE</b>	<b>INTERVIEW DATE &amp; LOCATION</b>
Kaiāwhina A	Auckland Council Research Unit	4 <sup>th</sup> July 2018, Auckland
Kaiāwhina B	Iwi Authority Planner	11 <sup>th</sup> July 2018, Auckland
Kaiāwhina C	Community Group Representative	13 <sup>th</sup> July 2018, Auckland
Kaiāwhina D	NZ Heritage Planner	30 <sup>th</sup> July 2018, Dunedin

Kaiāwhina E	Māori Heritage Consultant	16 <sup>th</sup> August 2018, Queenstown
Kaiāwhina F	Independent Māori Statutory Board	5 <sup>th</sup> September 2018, Auckland
Kaiāwhina G	Iwi Authority Heritage Planner	6 <sup>th</sup> September 2018, Auckland
Kaiāwhina H	Iwi Authority Heritage Planner and Archaeologist	7 <sup>th</sup> September 2018, Auckland
Kaiāwhina I	Iwi Authority Upoko	7 <sup>th</sup> September 2018, Auckland

Participants were selected based on their roles and professional experiences operating within the current Aotearoa New Zealand heritage management regime, with the intent to get a range of participants from a range of agencies. Consequently, all participants signed the research ethics form which elaborated upon the nature of the research objectives, indicative lines of questioning and some rules of engagement. A single participant specified that they did not mind being named within the research, however for consistency, no names are presented. During two interviews, participants expressed ‘off the record’ views on certain matters and these interactions have been honoured through exclusion of any ‘off the record’ quotes from within the results section. However, such matters have nevertheless informed my research therefore have organically been integrated into the research outcomes without specifically referencing such quotations.

Audio recordings of the interviews were collected and subsequently transcribed in full. One of the key reasons for deciding to transcribe in full was to allow participants the opportunity to review the interviews in text format, thereby providing them with the opportunity to clarify any potential matters of concern, if any. This approach was requested from one specific participant but led to full transcriptions being prepared for each interview.

Upon reflecting upon the interview process it was interesting to note the dynamics of information transfer, and how my role as an interviewer influenced this. Being new to interviewing and going into the interviews with limited depth of knowledge regarding the heritage sector and the statutory context, meant that I was often unable to capture (and

capitalise on) the depth contained in some participants responses to an extent. However, solid insights were derived from the transcribed data during the analysis phase which was structured around common themes exposed during the interviews, and those derived from the literature review.

### ***1.5.2 DESCRIPTIVE CASE STUDY METHOD***

A case study is defined as ‘an empirical enquiry that investigates a contemporary phenomenon within its real-life context when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used’ (Yin, 1991) cited in (Sarantakos, 2005:211). Hence, a descriptive case study methodology was utilised as the research is largely concerned with understanding the place of wider heritage issues within localised contexts. This method provided the opportunity to draw on various sources of material as well as focus on ‘direct and verifiable life experiences’ (Sarantakos, 2005:216). Te Ihu o Mataoho was selected as one case study as it is a current landscape where policy directives are leading to direct, sustained and irreversible damage to recognised Māori cultural heritage. This prompted me to wonder how all the statutory provisions, including a Treaty partnership, can be superseded to facilitate development in the way that it has? Originally, I intended to focus on just the Special Housing Area at Ihumātao, however during interviews the scope widened in response to information that revealed the concept of a cultural landscape and its relevance at Ihumātao.

In a similar manner, the second case study of Te Wao Nui a Tiriwa was not originally anticipated, however when this kaupapa was raised during an interview, I recognised what I will argue are the characteristics of a radical/insurgent approach to participating in order to protect Māori cultural heritage. Subsequently, the scope of my research increased, and I consider that the value in this will be evident in the following chapter 7.

## **1.6 SECONDARY RESOURCES**

The process of secondary data collection comprised of sourcing various textual data sets. Reference was made to legislative provisions and associated commentaries, planning instruments including provisions of the Auckland Unitary Plan, Auckland Council research publications, jurisprudence, Auckland Council planning decisions, published and digital media reports, academic papers and theses. Further reference was made to participatory mechanisms that function within the planning framework such as Cultural Impact

Assessments, Cultural Values Reports, Iwi Management Plans and Treaty Settlement provisions. This broad range of reference material provided a wide scope of perspectives and material with which to analyse the mechanisms and protective provisions of the Heritage Management Regime. Significantly, these documents contributed to providing details as to the statutory and planning context of my selected case studies.

### ***1.6.1 DOCUMENT AND STATUTORY CONTENT ANALYSIS***

Content analysis can describe the diverse techniques associated with exploration and description of qualitative information and data (Crano et al., 2014). This method has been adopted as an analytical tool to apply in this instance to the statutory framework for cultural heritage management in Aotearoa New Zealand and various documents described above. Application of this method provides the mechanism to undertake analysis of the latent context of various texts, that is, identifying the ‘hidden meanings...and the underlying cultural patterns, attitudes, prejudices, norms and standards that are encoded in the message’ (Sarantakos, 2005:300).

Analysis of the data was undertaken to identify reoccurring themes and patterns derived from within the literature and reflected within the semi structured interviews to provide the basis for descriptive content analysis. This method was valuable as a means to position this body of research within the context of wider international experiences. It was obvious throughout the research process that interview participants had reasonably consistent insights into the functioning of the heritage management regime, however less consistency was demonstrated when discussing the potential efficacy of various participatory mechanisms. Content analysis was undertaken of each of the transcribed interviews as well as the literature which identified the prevalence of the following themes:

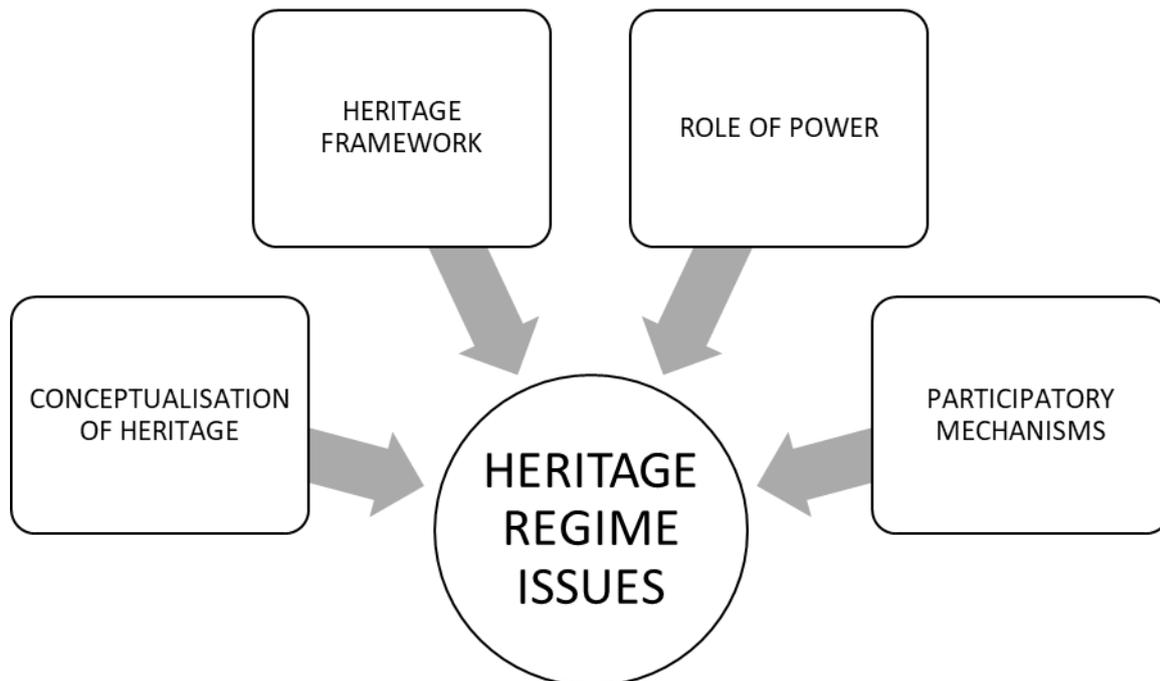
- Power
- Cultural Competence
- Cultural Landscapes and alternative concepts
- Resourcing limitations of Territorial and Iwi Authorities
- Treaty Partnership
- Archaeological dominance
- Conceptualisation of Heritage
- Expressions of Kaitiakitanga

- Insurgency
- Views on discrete heritage mapping

## 1.7 THEORETICAL FRAMEWORK

The literature review informed the development of an overarching theoretical framework against which I assessed the interview and case study data. As detailed below, the structure of the literature review comprises communicative planning theory, participation theory and cultural heritage theory.

With respect to analysing the broader issues and context pertaining to the wider heritage regime, I chose to order my analysis and discussion as represented below in Figure 1-A. These themes correspond to the general clusters of topics discussed during the interviews as well as broadly evident within the literature review. Subsequently, they provide a good structure for a wide-ranging base of data to evaluate.



*Figure 1-A Heritage regime themes of analysis*

Furthermore, reference to Figure 1-B below identifies that themes of Power, Transformation, Empowerment and Social learning were commonly evident across the theories.

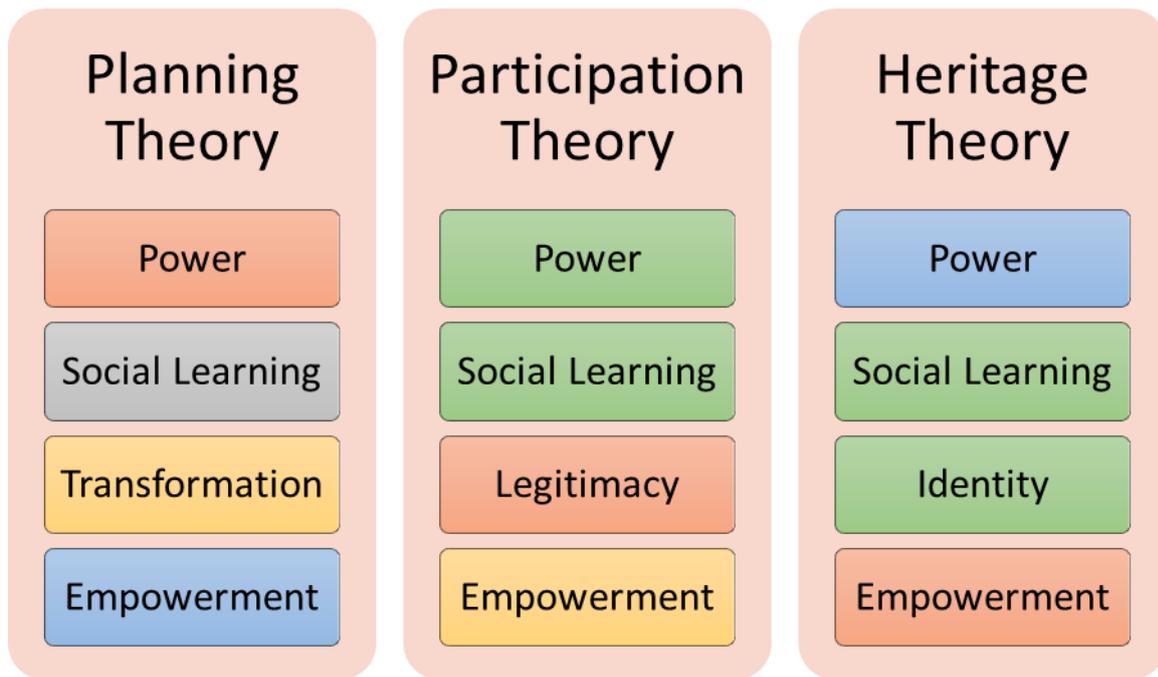


Figure 1-B Literature review themes of significance

Consequently, the approach I used for analysis of the case studies was to analyse the nature of Māori participation in each case whilst also considering the role of power, decision making influence and empowerment and then social learning. A visual representation of this case study analysis framework is provided below in Figure 1-C:

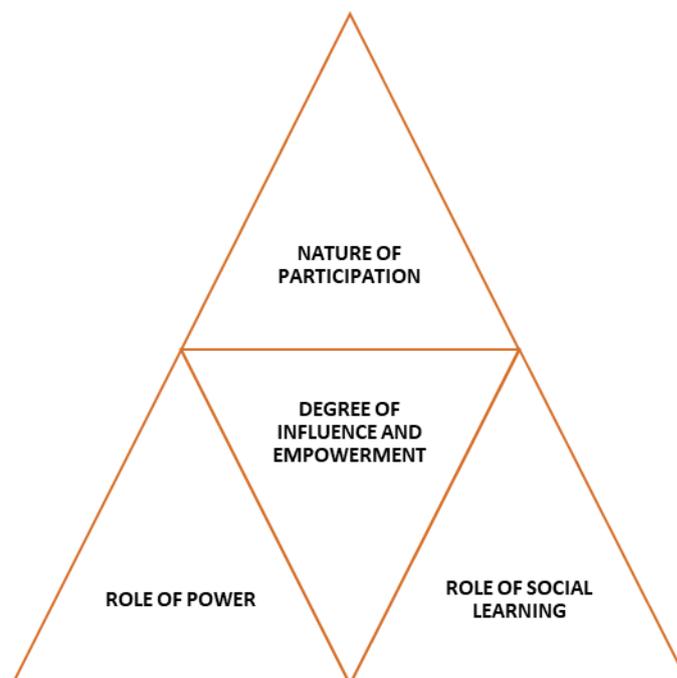


Figure 1-C Theoretical framework for case studies

The framework will initially analyse the nature of the participation being used, whether it be mechanisms such as cultural impact assessments or joint management plans or deeds of acknowledgement. This situates the relationship of the mana whenua within the decision-making framework, but most importantly, allows for analysis of the type of participation using participation typologies of Arnstein (1969) and Pretty (1995). This overview lends itself to analysing specific details, such as the role of power, the degree of empowerment and social learning. The characteristics of each of these criteria are detailed in the following literature review chapter. Therefore, adoption of this framework provided a means to assess each context specific case study systematically in a standardised way, whilst also providing insight into the main themes that were reflected in the literature review. It provides a structure against which to hang context specific details off, which then allows for comparison. These findings are presented in joint results and discussion chapters provided in chapters 6 and 7.

## **1.8 REFLECTION AND LIMITATIONS ON RESEARCH PROCESS**

This research evolved incrementally as more information was referenced and as new information was made available during the interviews. As mentioned above, what started out as an intent to focus on a single and specific case study developed into a broader reflection upon the heritage planning system per se as well as an additional case study. This was dictated in part by limitations in gaining access to technical information regarding the originally proposed case study, but was also influenced by the sensitive nature and the timing of the statutory processes that the original case study is still involved in. As referred to in the results sections, there were inter-whanau dynamics at play regarding mandate, tribal governance structures and boundaries for example, which is not uncommon within Māori matters. However, these dynamics require an established and longitudinal relationship, more suitably based on whakapapa, as a basis for gaining some level of understanding. Accordingly, it is not my place to make any comment on such matters beyond acknowledging its presence within the wider context of the research.

Despite the nature of such limitations influencing the research process, I consider that a broader approach was in fact more valuable from a research perspective, as it allowed me to consider the wider cultural landscape within which the original case study was located. Furthermore, in considering the wider cultural landscape, I was enabled to consider previously unanticipated elements and lenses of analysis.

Of significance is the fact that I do not whakapapa to the areas discussed in this research. Therefore, I propose one caveat over the details as to the whakapapa and characters and kōrero of the selected cultural landscapes. That caveat is that I have done my best to keep names and connections consistent with those presented to me either in interviews, personal communications or published documentation, including documentations such as cultural impact assessments. However, if there are errors or mis-representations they are without doubt unintentional on my part and I apologise here in advance.

A further limiting factor for my research approach was my own lack of cultural competence in operating and researching within Te Ao Māori, despite identifying as a Māori. If I had been more competent then I should have promoted tikanga Māori protocol by at least initiating and ending the interviews with an appropriate karakia. A further limitation was my lack of appreciation of the significance of a koha, which I neglected a couple of times more through a lack of being organised as opposed to anything else. This significance was evidenced by a subtle and positive shift in dynamics in the instances where I did present a koha, even if it was only in the form of paying for a cup of coffee or some kai. Doing so seemed to assist in demonstrating in a material sense my appreciation for their participation and viewpoints. In those cases where I had unfortunately forgotten to take a koha, I always came away feeling like I had (to some degree) disrespected the principle of reciprocity identified within discussions regarding tikanga (Lyver et al., 2017). I was reminded of this during one interview where the participants brought me a sandwich, and the Chief Executive of a Tribal Authority made me a cup of tea, an expression of manakitanga, whereas unfortunately I had left my homemade jam at home that I had taken expressly for offering as koha.

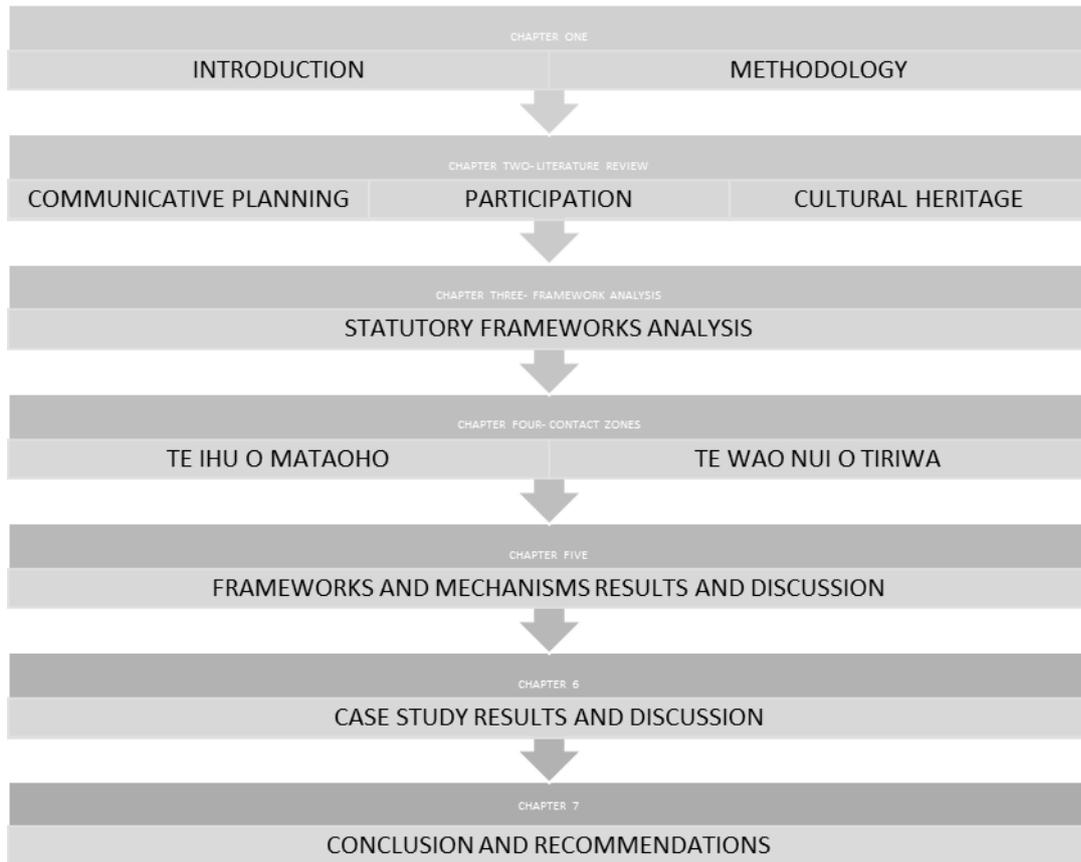
## **1.9 POSITIONALITY**

Immediately following my presentation at our postgraduate symposium, I was pulled aside by a senior (science based) academic who politely stated: “I can sense your frustration, but how are you going to make sure your research stays objective?”. I have pondered this question since and have concluded that my research topic and writing reflect my own personal subjective analysis of the contact zones I am referring to. As such, I recognise that I am intrinsically sympathetic to the proactive protection, enhancement and preservation of all of Aotearoa New Zealand’s cultural heritage, not just Māori Heritage. This positionality does not exclude development, rather my position is that I believe development and the economic

outcomes of society should also be accommodated, however fundamentally, such initiatives should be sympathetic and respectful of our heritage, for after all, it is a finite resource. Thus, given that I am operating within a critical social science paradigm my intention is to empower and emancipate and if that is through contributing to the disruption of the status-quo then actually, so be it.

## **1.10 THESIS STRUCTURE**

The thesis will follow a structure as represented below in Figure 1-D, although the research has not been undertaken in the order that it is presented. In brief, chapter one introduces the overarching research objectives and incorporates the research methodology to be employed. Chapter two comprises of the literature review of communicative planning theory, participation and radical planning theory, and cultural heritage theory. Chapters three and four introduce the baseline information pertaining to the statutory framework including analysis, as well as the geographical context regarding the two case studies. Chapter five comprises of a combined results and discussion chapter relating to the wider heritage regime, whereas chapters six and seven includes combined results and discussion relating to the two case studies. The concluding chapter eight provides some concluding comments including the potential for further research as well as the research recommendations.



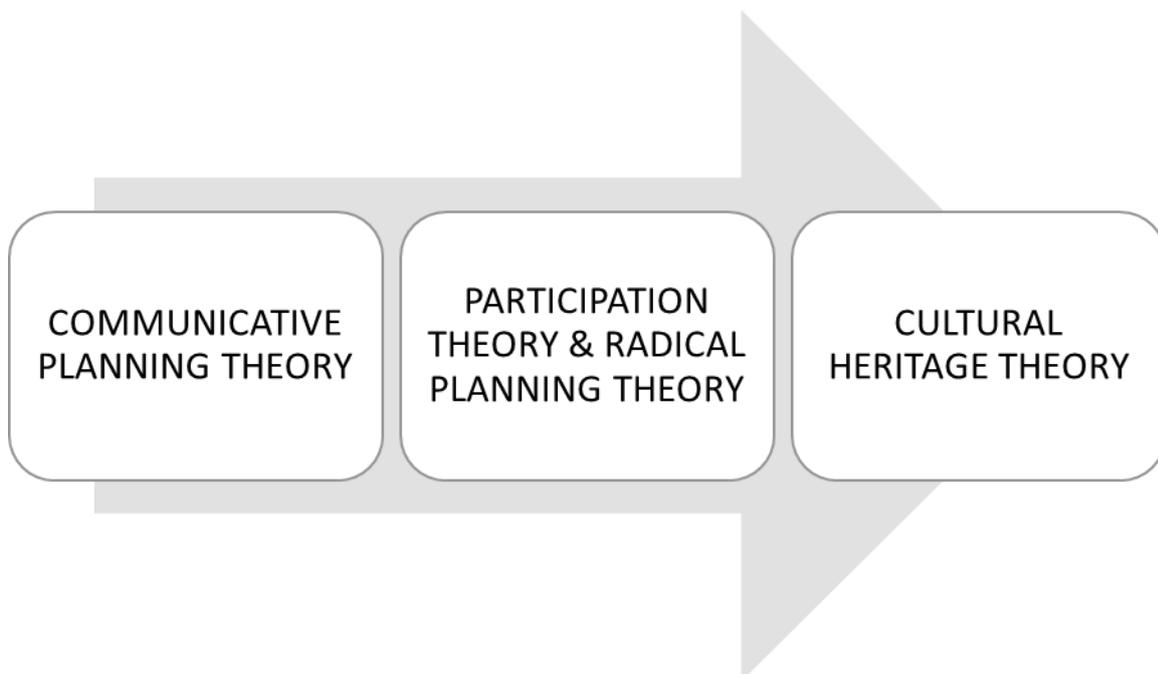
*Figure 1-D Thesis structure*

Now that the framework for the research has been identified, I will shift focus to a review of the literature in order to gain familiarisation with the key themes permeating the research. Furthermore, the literature review is of value as it informed the research methodology and the theoretical framework.

## 2 LITERATURE REVIEW

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The value in undertaking a literature review is to appraise existing research and knowledge and use this information to build on and inform research methodologies and identify appropriate theoretical frameworks. As such, the literature review is a primary element of this thesis and will comprise three strands of theory of relevance to the research objectives. First, the review will briefly consider the evolution of planning theory with reference to how this evolution has built the foundations for the planning system and the role of a planning practitioner within it. An overview of participation theory will then be discussed, with a view to understanding its place in post-modern governance regimes. Subsequent to this I will discuss the concept of radical planning, as an ‘epistemological break’ (Sandercock, 1998:98), a transformative planning theory to achieve emancipatory outcomes outside of the conventional planning system. And finally, this chapter will discuss cultural heritage as a concept, in order to identify the benefits and tensions associated with indigenous efforts to protect and retain it.



*Figure 2-A: Literature Review Chapter structure*

As a result of reviewing the literature relating to these three main themes, I intend to derive a suitable theoretical framework that will be used to inform my assessment criteria and

methodology for contemplating my two case studies, Te Ihu o Mataoho and Te Waonui a Tiriwa.

## **2.1 EVOLUTION OF PLANNING THEORY**

In her significant 'Towards Cosmopolis' book Leonie Sandercock (1998:85) cites Micheal Zinzun, a black civil rights activist, who provided a unique perspective into justifying the value of theory:

*Theory is necessary to figure out what's really going on. People always want to be saviors [sic] for their community. It's like they see a baby coming down the river and want to jump in and save it. We need to stop being so reactive to the situation that confronts us. Saving babies is fine for them, but we want to know who's throwing the goddam babies in the water in the first place.*

This quote alludes to a function of theory being to critically question circumstances and provide space to challenge the status quo. However, establishing a definition of planning is a significant conceptual challenge (Healey, 2010) which speaks to the breadth of theoretical coverage by planning academics. Patsy Healey's (2008) attempt describes planning as 'collective place-shaping efforts aimed to improve the qualities and connectivities of places into the future for the benefit of the present and future publics and their potential values'. The future orientation within this definition is clear however what is most revealing is the use of the phrase 'collective place shaping efforts' which alludes to the value of public participation in establishing future priorities. Yet, participation of the public in decision making was not always encouraged, as it was the role of the elite, educated technocrats to decide on what was in the public interest or not. (Sandercock, 1998:85) describes the 'counter hegemonic' response to the inadequacies of this dominant perspective by way of detailing six theoretical shifts in planning thought starting from the 1960s onwards. In a western world context (Sandercock, 1998:5) describes an evolution away from the rational comprehensive paradigm towards theories of advocacy planning, then to the Marxist political economy model, equity planning to communicative action and finally radical planning. Key elements of these shifts are described below.

### **2.1.1 RATIONAL COMPREHENSIVE THEORY**

Post 1945 modernist planning doctrine was informed by the Chicago Model, whereby planners were the knowledge experts who utilised logic, science and their procedural skillsets within a hierarchical system that supposedly encompassed a 'benign state', above

politics'(Sandercock and Bridgman, 1999:88). A planner's education privileged them as an expert and therefore qualified them to 'discern and implement the public interest' (Ibid, 88) all the while without engaging with the public to discern such interests.

Subsequently, spurred on by agitations of wider social movements a questioning of the status quo arose within planning practice, theory and marginalised communities. Such questions focused on the structural roots of urban inequality and the observed lack of democratic participation in the planning process. As a result, the rational model was directly challenged on the grounds that it was observed to aggregate the public interest and impose a 'superficial pluralism with the effective exclusion of the poor and minorities' (Clavel, 1994:146).

Sandercock (1998:90) referred to rationalist planners as being the 'soft cops' and 'agents of social control' when referencing the lack of political impartiality within the rationalist model. In effect, the rational planning model was being exposed for its 'inequitable and unjust results' (Bond and Thompson-Fawcett, 2007:449) at a time when civic society was also stirring in response to discriminatory policies on ethnic, gender and social class grounds.

These themes of critique laid the foundation for a seismic shift in planning theory and signalled a distinct and overwhelming challenge to the rational comprehensive paradigm. This shift considered a planner's role in assisting and facilitating community aspirations through participatory democracy and eventually developed into the communicative planning theory.

### ***2.1.2 COMMUNICATIVE PLANNING THEORY***

The 'dominatory power relations of instrumental rationality'(McGuirk, 2001:195) were a significant hurdle for early planners. Public engagement was limited, and therefore the policies and plans inevitably represented the interests and priorities of the state. Thus the 'communicative turn' in planning came about in response to a growing frustration with the rational comprehensive paradigm whereby experts produced the knowledge which then preceded action independent of public involvement (Machler and Milz, 2015).

Consequently, the core aim of the communicative planning as suggested by McGuirk (2001:195) was the 'democratisation of planning practice and the empowerment of discourse communities, forms of reasoning and value systems heretofore excluded from planning practice'. Communicative planning theorists observed and critiqued the imbalances within society and discourse, including imbalances in gaining access to information, adequate

representation and the inability for the wider community's views to be heard (Sandercock and Bridgman, 1999). Jurgen Habermas's theories of discourse ethics and communicative rationality provided the theoretical cornerstones of communicative planning and associated theories of communicative action (Flyvbjerg, 1998);(Innes, 1995).

Innes (1995:184) describes communicative action theorists as seeking to achieve their aims through focussing their conceptualisations and discourse around 'what planners do' in a practical sense to achieve the stated aims. A fundamental component of what planners do is to communicate within the decision-making process. Tellingly, Habermas identified that within such communication and discourse a reality exists, but that reality can be hidden under socially constructed understandings, language and actions (Innes, 1995); (Machler and Milz, 2015). Significantly, these social constructions could be manipulated and expressed to cause systematic distortions within communication forums, resulting in exclusion and skewed discourse and outcomes, most often in favour of those retaining political power (McGuirk, 2001). Importantly, attempts to control decision making, pursuing instrumental interests, manipulating opinion, excluding participants and making unfounded public assertions were precisely the types of distortions that communicative theory sought to overcome (Hillier, 1993); (Phelps and Tewdwr-Jones, 2000). Thus, Habermas's theories were oriented towards removing these distortions from within the communication process by considering the development of critical or emancipatory ways of knowing that are designed to get past the embedded power relations in a society (Innes, 1995:186). The resultant principles for emancipatory knowing were summarized by Innes as self-reflection to understand an individual's own rationalisations, emancipatory knowing comes from discourse, practical know-how is a valid part of knowledge (as is theory) and finally this knowledge can lead to action (Innes, 1995).

However, theorists such as Flyvbjerg criticised communicative planning as being weak for its inadequate account of the role of power in planning, and therefore weak as a foundation for action and change (Flyvbjerg and Richardson, 2002). Huxley (2000) also conveys a similar criticism of the way communicative planning maintains an inability to disrupt the 'state and formal economy' structures it operates within therefore identifying a powerlessness to achieve transformative action. Fainstein (2000:458) insightfully stated in reference to the Habermasian concept of the ideal speech situation, '[e]ven if perceptions of interest are biased or misdirected by distorted speech and even if structures are socially constructed, changing speech alone does not transform structures'.

What is clear is that there has been a struggle to effectively address the pervasive role of power relations throughout the evolution of these planning theories. Friedmann (1998) recognises theorist's ambivalence about power as one of the key problems in planning theory. The top down rationalist approach that dominated the theoretical, educational and physical landscapes for decades, had to give way in the face of frustration and lack of engagement with the marginalised communities. Thus, a broadening spectrum of theory developed, which situated at one end the top down societal guidance approach and the other social transformation, aimed at emancipatory and transformative action (Friedmann, 1987). Below I will elaborate upon two of the transformative theories, participatory planning and radical planning each developed as a response to exclusionary practices and the subsequent power imbalances that previously permeated the rationalist, advocacy and equity planning theories mentioned above.

### ***2.1.3 PARTICIPATORY PLANNING THEORY***

Participatory planning evolved through the communicative planning paradigm, which aspired to realising decision making processes that enabled a wider public discourse to achieve enhanced democratic outcomes (Fainstein, 2000); (Healey, 1996). Public participation has been described as having an 'inherent desirability' in that it exposes planning processes to democratic scrutiny and so expands the scope of public involvement as an integral part of improvements in policy delivery (Rydin and Pennington, 2000:153). Thus, a communicative approach to planning justifies a significant role for public participation as it broadens the range of actors involved and therefore has the potential to contribute to enhanced decision-making legitimacy (Lane and Corbett, 2005). Given the potential significance of participation for empowering communities, the following section will now consider what different commentators mean by the term participation, and review some of its main characteristics, benefits and criticisms. In doing so it is intended to demonstrate the value of citizen and Māori participation in heritage decision making frameworks.

### ***2.1.4 DIFFERENT TYPOLOGIES OF PARTICIPATION***

Participation is an 'infinitely malleable concept' (Cornwall, 2008:270) which speaks to the difficulty in ascertaining a singular all-encompassing definition. Consistent with this conceptualisation, Innes and Booher (2004:421) suggest that wider participation theory is also 'dominated by dilemmas, paradoxes and ambivalence' which indicates why academic

research in the field continues to be contested (Hilbrandt, 2017). This collision of ideas is reflected in the range of typologies that have evolved within participatory theory, a selection of which are conveyed now.

Arguably the most prominent typology of public participation is that of Arnstein (1969) and the enduring “Citizens ladder of participation” which still ‘retains considerable contemporary relevance’ (Cornwall, 2008:270), not least for its engagement with governance power structures (Arnstein, 1969); (Berman, 2017). Arnstein (1969:216) describes participation as ‘the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future. As demonstrated in Figure 2-B the ladder metaphor positions citizen control on the top rung, symbolic of citizens asserting decision making power. The middle rungs represent tokenistic participation, whereby citizens lack any ‘muscle’ to change the status quo of power transfer (Arnstein, 1969:217). Critically, Cornwall (2008:270) refers to Arnstein’s concept of consultation being represented by:

*a means of legitimating already-taken decisions, providing a thin veneer of participation to lend the process moral authority. Its outcomes are open to being selectively read and used by those with the power to decide. Rarely are there any guarantees that what is said will be responded to or taken into account.*

The lower rungs effectively describe the purposeful exclusion of citizens. Hence, the graduations in effect represent varying degrees of citizen power, power transfer between citizens and those with decision making authority. Interestingly, Arnstein also points out that ‘neither the have-nots nor the powerholders are homogenous blocs’ thus alluding to the divergent points of view, competing interests and tensions that can exist within citizen groups in participatory processes (Arnstein, 1969:251). As will be established in subsequent sections, the lack of a homogenous community lends itself to issues associated with contested mandate, uncertainty for decision-makers and could enable predefined policy intentions under the guise of legitimate participatory spaces. Furthermore, the characteristics of consultation as defined by Cornwall above are recognisable in interactions between competing paradigms of Māori and Western values, as will be demonstrated in chapter four.

Arnstein’s typology has led to the continuum idea being subject to further adaption by theorists such as Pretty (1995), with alternative and occasionally additional terms being adopted.

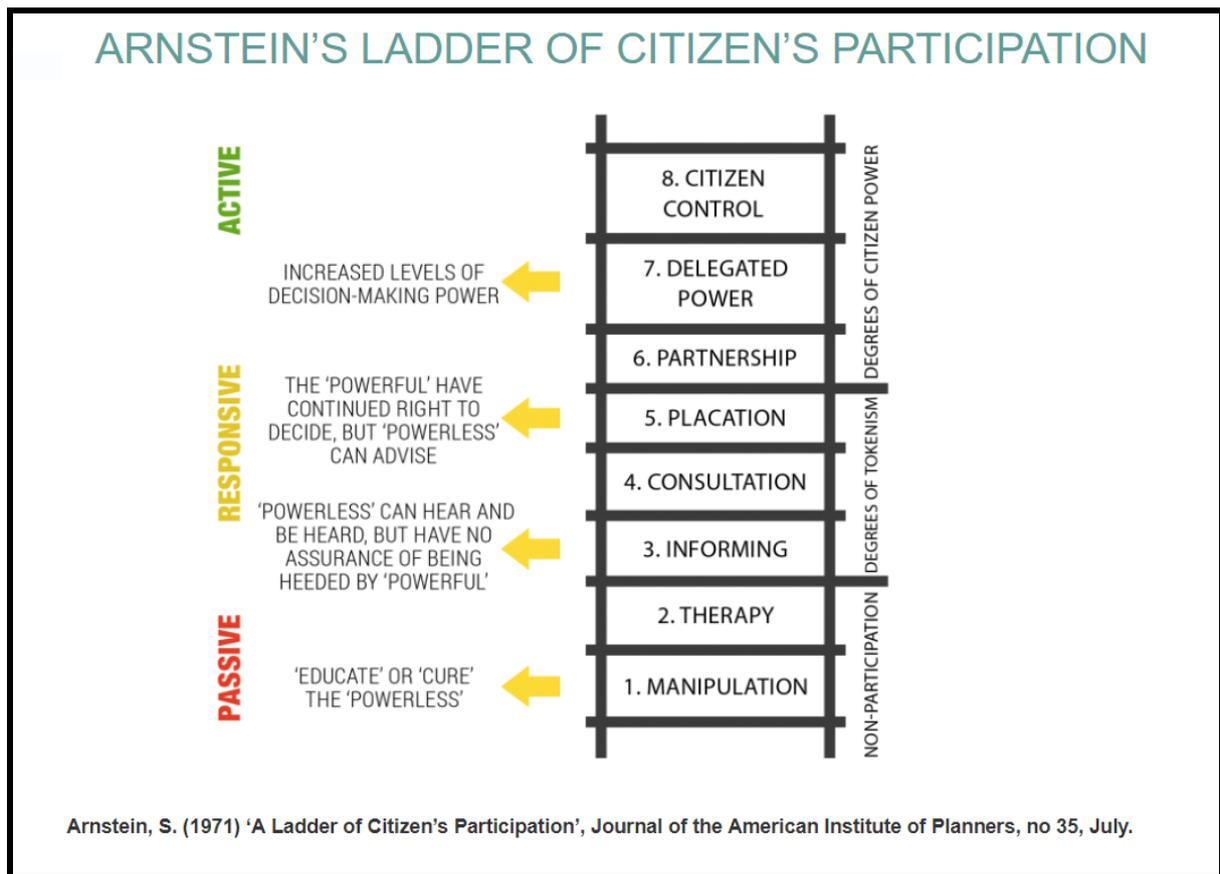
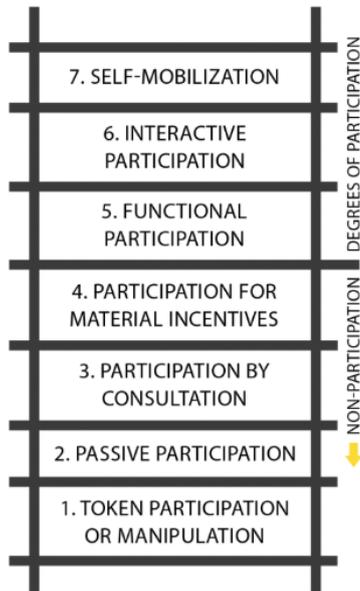


Figure 2-B: Arnstein's Ladder of Participation. Adapted from (Arnstein, 1969:217)

Pretty (1995) utilised the hierarchical typology although focussed more on the user of participatory approaches (Cornwall, 2008). This participatory spectrum begins with the lower order 'manipulative participation' then progresses in ascending order through passive, consultation, participation for material incentives, functional, interactive and culminating in self-mobilisation as shown in Figure 2-C. The 'functional participation' is said to situate the form of participation most often associated with participation for the sake of efficiency, such as to meet project deliverables and reduce costs after a predetermined decision has been made, akin to a tokenistic tick box exercise (Cornwall, 2008). Of further note is the reference to the highest form of participation being defined as 'self- mobilisation' which promotes independence from external institutions in order to change decision making systems. Pretty (1995) suggests that this independence is achieved through the development of contacts with institutions external to the traditional decision-making framework, which potentially enables the transfer of authority and responsibility for the resources in question.

## PRETTY'S TYPOLOGY OF PARTICIPATION



Pretty, J.N. (1995) 'Participatory Learning for Sustainable Agriculture', *World Development*, Vol. 23 (8), 1247 – 1265.

Figure 2-C: *Pretty's Typology of Participation adapted from (Pretty, 1995)*

Therefore, as has been demonstrated, Arnstein, and Pretty's offerings both consider the changing power relations embedded within each graduation, and thus confirms that the 'key variable, implicitly or explicitly, is empowerment' (Lawrence, 2006). Hence, with respect to Arnstein's lower order 'manipulation' the power structures remain unchallenged and subsequently they accommodate no transformative or emancipatory potential. This may well be appropriate in instances where anticipated effects will be minimal upon external parties or resources, and the scale of the proposal does not warrant a wide-ranging participatory strategy. Conversely, the other end of the continuum explicitly provides for power structures to be transformed, therefore empowering citizens, although this does not always equate to a redistribution of existing wealth and power (Pretty, 1995).

### **2.1.5 PURPOSES AND BENEFITS OF PARTICIPATION**

Innes (2004:42) suggests that effective participation is that which is collaborative, 'where multiple interests participate in a common framework where all are interacting and influencing one another, and all are acting independently in the world as well'. Effective participation realises a number of benefits, beyond the transfer of power, as discussed below.

Effective participation has been noted to improve decisions by incorporating citizens' knowledge into the equation (O'Faircheallaigh, 2010). Citizens' knowledge may be of increased significance when proposals are of a complex and sensitive nature involving multiple interests. In the case of indigenous peoples, project proponents drawing upon traditional sources of knowledge can enhance their ability to evaluate tangible and intangible values and associations. This inclusion of citizens knowledge can also facilitate the 'co-generation' of knowledge, which can support the building of knowledge capacity and empowerment of the stakeholders (Innes and Booher, 2004) whilst also promoting the growth of social learning (Reed, 2008).

### **2.1.6 SOCIAL LEARNING**

Social learning is referred to by Webler et al. (1995:445) as the:

*process by which changes in the social condition occur particularly changes in popular awareness and changes how individuals see their private interests linked with the shared interests of their fellow citizens.*

Social learning is asserted to have two general components: cognitive enhancement and moral development (Webler et al., 1995). Cognitive enhancement refers to wider learning related to the problems, possible solutions and their consequences, other groups interests and values, personal reflection and strategies for communication within the decision-making process. Moral development is described by Webler et al. (1995:446) as something that 'highlights how individuals come to be able to make judgments about right and wrong' whereby they prioritise the greater good over their own 'egoistic demands'. In public participation, moral development can be observed through being able to adopt the perspective of others, development of skills for moral reasoning and problem solving to enable conflict resolution (Webler et al., 1995). Furthermore, moral development can be recognised in the development of a sense of group solidarity through gaining the ability to integrate new cognitive knowledge into one's own decision-making framework whilst being able to cooperate with others in order to solve collective problems (Webler et al., 1995). Thus, social learning can be realised through shared learnings and experiences, establishment of new relationships and networks and building depth to existing relationships. Shared social learning can also be the result of 'groups of people developing more creative solutions through reflective deliberation' (Reed, 2008:2420). However, social learning is not always guaranteed to enhance the ability to influence the decision-making process (Diduck and

Mitchell, 2003) and therefore ‘achieve a more equitable distribution of political power and change existing decision structures’ (O’Faircheallaigh, 2010:23).

### ***2.1.7 LEGITIMACY***

A further justification of participation is for the decision-making authority to enhance legitimacy for decisions involving the public. Elements of legitimacy have been defined as the relative adequacy of participation or representation, the practicalities of policy implementation and the fairness of the process (Quick and Bryson, 2016). Newig (2007:56) suggests that the most important argument for legitimacy is the ‘strengthening of democracy’. Hence, political or governance decisions gain stronger legitimacy when the public are given the opportunity to make submissions as to their position on a proposal, and in doing so potentially influence the outcome. (Webler et al., 1995).

When public participation lacks transparency and as a result the legitimacy is questioned, it has the potential to alienate sectors of society, potentially leading to a lack of subsequent engagement by the marginalised parties, increasing risks of legal challenges (or other disruptions) prior to implementation of the policy (Newig, 2007); (Rydin and Pennington, 2000); (Quick and Bryson, 2016). The legitimacy of policy directives can also be defined by whether the adopted policies actually address the issues and public needs to which the policy is intended to respond (Fung, 2006). Quick and Bryson (2016:4) refers to procedural justice as a further and comparatively fuller theoretical lens for understanding legitimacy as it considers whether ‘the process embodies democratic values such as fairness, transparency, attentiveness to stakeholders’ concerns and openness to public input’.

In terms of this research, the legitimacy of various participatory processes and policy directives have been directly questioned by Kaiāwhina due to a misalignment with the elements mentioned above. As will be identified in chapter four, the legitimacy has been directly questioned on the grounds of a lack of transparency, exclusion of public input and questions as to whether the policies meet the stated objectives. One outcome of this questioning of legitimacy has been the challenging of decisions through both formal and informal means by disaffected community members.

### **2.1.8 EMPOWERMENT AND POWER RELATIONS**

Empowerment can be perceived as a process of removing structural impediments within political, social and economic systems so that marginalised communities can maintain greater control over their destinies (Friedmann, 1992). Similarly, Monno and Khakee (2012:90) suggest that empowerment is represented through the enhancement of the ‘capacity of individuals or groups to transform their claims and concerns into ability to make choices and to transform those choices into desired actions and outcomes’. However, the concepts and definitions of empowerment are also noted to ‘vary with context and over time’ (Lyons et al., 2001:1234). Lyons et al. (2001:1234) identifies that this variability is evident in the ‘unit of empowerment’, that is, how empowerment is characterised and recognised. For example, empowerment may be concerned with increasing rights to participate, or an enhanced ability of communities to operate in commercial and consumer markets, or perhaps empowerment as the ability to influence and control resources. The purpose of empowerment is also noted to vary and is evident at different scales. World Bank (1996) for example implies the purpose of empowerment to be capacity building in the form of a community gaining independence from dependency on external agencies in managing their affairs. At a different scale empowerment can be evident on an individual level whereby participation by individuals in social movement serves to empower them psychologically, give them a greater sense of purpose and build personal capacity to grow (Friedmann, 1992). Thus, empowerment is inextricably related to power, not Foucault’s power to ‘coerce, constrain and control’, but the power to enable, emancipate and transform (Friedmann, 2011:141).

Gaventa (2004:34) defines power as ‘the network of social boundaries that delimit the fields of possible action’ whereas in a community context power can be perceived as ‘the ability to exercise influence in a decision-making process’ (Jordan et al., 2013:276). Discussions of power in participation theory are often oppositional, such as considering the ‘powerful and the powerless; hegemony and resistance; inclusion and exclusion’ (Gaventa, 2004:35). Speer and Hughey (1995:731) consider that power in communities is manifested in three main ways. Firstly, power is observed through the control of resources being used to reward or punish various parties. Second, power holders can create or eliminate barriers to participation for those individuals not in power and finally, power is demonstrated through the control of information flow, either keeping important information in the hands of those in power or distributing it widely to shape consciousness. Hence, the role of power within communities is

complex, dynamic, susceptible to change on an issue by issue basis, and not always obvious to discern.

Correspondingly, a particular focus of theorists of relevance to this research has been the analysis of the role of power relations to ‘shape the boundaries of participatory spaces’ (Gaventa, 2004:34). This focus is critical to understanding how participatory spaces can be ‘used for transformative engagement, or whether they are more likely to be instruments for reinforcing domination and control’(Ibid.34). The place of power in participatory theory has been described as existing on three differing continuums of power in relation to transformative potential. These include (i) how participatory spaces are created; (ii) the places and levels of engagement; (iii) the degree of visibility of power within them (Ibid,34).

One question asked of the spaces for participation relates to the extent to which those who create spaces for participation affect who has power within them. Spaces for participation are again characterised by a continuum as detailed below in Table 2-1.

*Table 2-1: Participatory Spaces (table adapted from (Gaventa, 2004:35))*

<b><i>Definition</i></b>	<b><i>Description</i></b>
<i>Closed spaces</i>	<i>Many spaces for participation are in fact closed; that is, there is no ability for participants to influence the decision, which are made by ‘a set of actors behind closed doors, without any pretence of broadening the boundaries for inclusion’</i>
<i>Invited Spaces</i>	<i>Efforts to participate involve the creation of ‘invited spaces’ where participants are invited to participate by those decision-making authorities. Invited spaces may be institutional, such as membership on committees or management boards for example</i>
<i>Claimed/Created spaces</i>	<i>Claimed spaces are those which are ‘claimed by less powerful actors from or against the power holders, or created more autonomously by them’. They may be referred to as organic spaces that ‘may come into</i>

	<p><i>being as a result of popular mobilisation, such as around identity or issue-based concerns, or may consist of spaces in which like-minded people join together in common pursuits' Cornwall (2002) cited by (Gaventa, 2004:35)</i></p>
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This continuum of participatory spaces is deemed by Gaventa (2004:35) to be in a 'dynamic relationship to one another and are constantly opening and closing through struggles for legitimacy and resistance, co-optation and transformation'.

The places of participation are noted to be the local, national and global arenas of power and governance within which power is expressed. Within participatory spaces there are often boundaries imposed on participation, which can exclude various stakeholders and points of view from entering such participatory arenas. In order for stakeholders to participate effectively an awareness of any entrenched bias, constraints and an individual's 'right to claim rights or express opinions' within these participatory spaces and places is necessary. (Ibid:37). As Gaventa (2004:38) suggests 'much depends on navigating the intersection of the relationships, which in turn creates new boundaries of possibility for action and engagement'. The above provides evidence that participation can be manipulated in subversive ways, through expressions of power that constrain participatory spaces and control information. Such manifestations can be observed in the following case studies contained within chapters four to six, whereby the spaces to participate are shaped to control the nature of engagement as well as the ability to influence decisions.

### **2.1.9 CRITICISMS OF PARTICIPATORY PLANNING**

Moote et al. (1997) suggests that criticisms of the typical public participation process can be categorised by issues of efficacy, representation and access, information exchange and learning, continuity of participation and decision-making authority. The concept of efficacy relates to the extent to which the public supports a proposal, and therefore affects the efficiency with which a proposal is implemented. Representation and access are contested areas in participation theory (Ibid) which relates to the 'notorious problem' of the difficulty of achieving effective participation (when invited) by all sections of society affected by a proposal (Rydin and Pennington, 2000:154). This is partly because those who show a propensity to participate are typically reflective of the more organised, well resourced, well-

educated citizen's (Carpenter and Brownill, 2008). Often minorities and those groups and individuals on the margins may not have the financial or technical capacity to operate and communicate within the decision-making process (Moote et al., 1997). Correspondingly, because of their lack of inclusion or involvement, the non-mobilised communities tend to be those that disproportionately suffer the 'costs of policy failure' (Rydin and Pennington, 2000:154). An interesting counter perspective to this assertion is offered by Cooke and Kothari (2001) who suggest that the link between inclusion and possible subordination should not be overlooked, as does (Xu, 2007) when referring to indigenous participation in a heritage management sense.

A further limitation is that continuity of public participation can be lacking (Moote et al., 1997). Participation should occur at relevant and appropriate milestones to allow for incremental adjustments and should 'not be a one-shot affair but a continuing network of interaction with others' (Bachrach and Botwinick, 1992), cited in (Moote et al., 1997:880). Exclusion until after decisive commitments have been made is not representative of genuine participation and therefore is akin to non-participation as defined by the typologies of both Arnstein (1969) and Pretty (1995).

Various scholars express the concern that participatory planning either fails to achieve the aspirational purposes it promotes, or in fact is akin to 'tyranny' or a pacifying tool of capitalism and neoliberalism (Flyvbjerg, 1998);(Cooke and Kothari, 2001);(Purcell, 2009). Thus, the ability of participatory planning to be a practice that transforms, empowers and emancipates has been questioned (Miraftab, 2009). Hilbrandt (2017:540) asserts that participation can be used to 'legitimize politics, re-inscribe (unequal) power relations and stabilize the neoliberal project. Moreover, by avoiding conflict, depoliticizing planning, and co-opting contestation, it complicates resisting hegemonic neoliberal ideals'. Reference is also made to participation being used to both 'offload public responsibilities and as a means to legitimize undemocratic mechanisms of decision making' (Hilbrandt, 2017:541).

What is apparent from the above section is that power is the defining element in participation theory, for if power is not shared, transferred (or taken), there is arguably limited ability to achieve transformative outcomes in accordance with community defined aspirations. This centrality of power is represented in the typologies and insights of Arnstein and Pretty, although it is interesting to also note the underlying socially transformative aspirations and qualities of social learning and empowerment that are prevalent within the theory.

Regarding this research, the above review of elements of participation theory suggests that the locale of power will define the extent to which participatory spaces are available for Māori interests. As such, an awareness of such power bases will be of benefit in order to effect change within formal participatory spaces. However, when power imbalances dominate to such an extent that communities are marginalised and oppressed, then other transformative theories can provide some insights as to how best to achieve socially transformative outcomes. Radical Planning theory is one such approach to disrupting power imbalances and it is this theory with its foundations in transformative theory that is detailed below.

#### ***2.1.10 RADICAL PLANNING AS A MECHANISM FOR DISRUPTION***

For marginalised, disenfranchised and excluded communities, access to invited, or even closed participatory spaces for that matter may be limited. Thus, a radical approach may be necessary to claim such participatory spaces, one in which communities can pursue change beyond the conventional constraints of closed and invited spaces as shown in Table 2-1. As will be detailed below, one such approach to achieve enhanced participation is radical planning. Radical planning leverages knowledge and action ‘to challenge powerful elites, enlarge the democratic action space and advance citizens’ rights.’ (Monno and Khakee, 2012:89). There are a small selection of prominent theorists who have developed this transformative theory, including (Friedmann, 1987, Friedmann, 2003, Friedmann, 1989, Friedmann, 1992, Friedmann, 2011) and (Sandercock, 1998, Sandercock, 2003) with other commentators such as (Hilbrandt, 2017, Miraftab, 2009, Beard, 2003), being drawn upon for this research. As will be demonstrated there is potential for radical practices to be utilised to participate in decision making frameworks for protection of indigenous heritage and taonga.

#### ***2.1.11 DEFINITION OF RADICAL PLANNING***

In terms of the origins of radical planning theory, John Friedmann was at the forefront of identifying and developing the theory during the late 1980s. Friedmann challenged the traditional ideas of only professional trained planners undertaking planning by introducing the notion of a broad conceptualisation’ of what constitutes planning and practitioners (Beard, 2003:15). In this regard Friedmann (1987) identified that overall two main strands of planning theory were evident, being societal guidance theories as represented by the state centric rational comprehensive paradigm and in contrast, social transformation theories premised on the notion of social mobilisation.

He represented these two foundational theories as being situated at different ends of a spectrum. This idea provided justification for considering others who may be ‘working either in collaboration with, opposition to, or completely beyond the purview of state sanctioned, formal planning processes’ (Beard, 2003:15) such as community organisers, activists and engaged citizens as planners as well. He defined this particular ‘amalgam of ideas and social movements, inspired by visions of a more just, democratic, ecologically sustainable, and emancipated society, the social mobilisation tradition of planning’ (Friedmann, 1987:60).

Correspondingly, radical planning with its social mobilisation tradition represents an ‘epistemological break’ (Friedmann, 1987:391); (Sandercock, 1998:98) with its distinct lineage to civil rights movements, advocacy planning, feminist critiques, poverty and exclusion (Sandercock, 1998). Thus, radical planning inherits a lineage and ‘perspective of agonistic democracy and social mobilisation’ (Monno and Khakee, 2012:86). Sandercock (1998:104) confirms the significance of radical planning in the statement that it is the only model that has ‘looked to a social transformation beyond modernism and it is the only model which can accommodate the full (multi) cultural implications of the postmodern world’. As such, it is the socially transformative aspiration that best characterises the landscape that radical planning occupies within wider planning theory and practices.

### ***2.1.12 RADICAL PLANNING PRACTICE***

Several characteristics have emerged that define a normative model of radical planning, the most comprehensive, being Friedmanns (1987) model as suggested by Beard (2003). The normative aim of radical planning practice is ‘the structural transformation of industrial capitalism toward the self-production of life, the recovery of political community, and the achievement of collective self-reliance in the context of common global concerns’ and therefore is ‘dedicated to changing existing relations of power, whether exercised by the state or global corporations’ (Friedmann, 1987:61,81). Although Sandercock uses the terminology of insurgent planning, she also describes a similar characteristic whereby this model adopts ‘something oppositional, a mobilising against one of the many faces of the state, the market or both’ (1999, 41). The term insurgent ‘emphasizes the counter-hegemonic potential of radical planning practice as well as citizens’ right to dissent, rebel and determine their own terms of engagement and participation’ (Monno and Khakee, 2012:90). Thus, in simple terms the overarching aim of radical planning is to ‘work for structural transformation of systematic

inequalities and, in the process to empower those who have been systematically disempowered'(Sandercock, 1998:97).

In practice, radical planners do not necessarily constrain themselves to the invited participatory spaces of the state, or controlling authorities (Miraftab, 2009). Radical planning practitioners perform a mediation role, whereby they mediate between transformative theory and action, often in created participatory spaces, drawing on the traditions of social learning (Friedmann, 1987). Social learning can be recognised where changes extend beyond the individual 'to become situated within the wider social units or communities of practice within society' (Reed et al., 2010). These learnings occur as a result of social interactions and in a radical planning context via social movements, mobilisations and arenas of participatory action. Hence, the planner as mediator utilises their technical skillsets and knowledge drawn from these 'myriad struggles at the base' to challenge the status quo in order to contribute to transformative outcomes such as a 'more self-reliant, politically active community' (Friedmann, 2011:67). Amongst other factors, social transformation can be directly attributed to discursive knowledge 'embedded as it is in transformative theory' and informed by specific social and context specific values. (Ibid.67). However, it is recognised that radical planning actions must have structural transformational theory as its foundation, for Friedman warns that without it 'radical practice has no staying power: it becomes visceral, opportunistic and reactive', (Ibid. 62). Friedmann also notes that it is 'those who stand in the front line of action- households, local communities, social movements' as the users of 'knowledge-in-practice who are the final arbiters of knowledge-in-theory' (Ibid.66). Thus, the role of the radical planner is clearly to navigate the technocratic landscape whilst mediating between grass roots, context specific but discursive knowledge and experiences and the oppression of an overarching state or economic system.

### ***2.1.13 CRITICAL DISTANCE***

Whilst the radical planner's role is 'emancipatory practices' (Friedmann, 1987:64) the place from where planners achieve this is the subject of some debate. As mentioned, a radical planner's role is as a mediator; a mediator between theory and practice, and discursive knowledge and action. Sandercock (1998) broadly suggests that the planner immerse themselves in the community of struggle as a means to experience the struggles at the base. As one anonymous commentator suggests 'a person needs to wear the shoes to understand where they pinch'. Sandercock (1998:100) describes a radical planner as someone 'who has,

essentially, gone AWOL from the profession, has ‘crossed over to the other side’, to work in opposition to the state and corporate economy’. In contrast, Friedmann considers that the planner needs to maintain a ‘critical distance’. The basis for this he suggests is that whilst a planner needs to be committed to the community’s actions and ‘to the global project of emancipation’ if they get too close to the action ‘the less useful are their mediations likely to be’ (Friedmann, 1987:74). Radical theorists have considered that the ‘state can only be an adversary’ (Sandercock, 1998:101) whereas Friedmann (1987) considers a more pragmatic and less agnostic position. Friedmann considers that transformative outcomes as a result of radical planning cannot occur without the engagement of the state to some degree. Thus, this notion embodies the radical planning principle of considering new realities, through the collective creativity and innovation that may occur due to social learning (Ibid). Thus by ‘maintaining a productive tension between state-driven planning and the insurgent practices of mobilised communities’ (Sandercock, 1998:102) transformation through social learning and empowerment can occur. However, the key to facilitating transformation is to find fluid participatory spaces and structures that can work with conflict to achieve productive outcomes (Monno and Khakee, 2012).

So far this literature review has covered ground over the evolution of planning theory to recognise two identifiable planning traditions, societal guidance and social transformation. Focussing more on the transformative potential of planning we shifted focus to participation theory, covering the benefits of participation as well as some of the perceived limitations. In doing so theorists identified the potential for participation to be manipulated to an extent that participation can legitimise predetermined decision-making that, whilst technically inclusive, it does not always enable any substantive ability of the public to influence the decision. In recognising this limitation, radical planning as another strand of socially transformative theory was detailed as a potential means to disrupt this imbalance in power. The effectiveness of this approach appears to be relative to the ability of the radical planning practitioners to work productively with conflict, and their ability to mobilise within fluid participatory spaces. Subsequently, the final part of this literature review will shift focus to look at a particular arena of participation, that of heritage and cultural heritage, with a view to understanding the key parameters of heritage and then considering some examples of the participatory mechanisms utilised within the heritage arena. Doing so will then provide for insights to be gained when considering the case studies to follow in chapters 6 & 7.

As has been established above, planning theory has evolved as a result of civil unrest towards participatory approaches to decision making. However, still central to the ability of communities to determine and implement their own priorities is the position of power; that is, the power to control resources and the agency to define such priorities. Participation has the potential to make space for expression of these community values, yet the ability for these interactions to influence outcomes is not always assured. To begin with then, this review of literature will focus on understanding how heritage has been conceptualised, including a focus on cultural heritage. In understanding heritage as a concept, we can then ascertain the values and associated concepts including the role of memory, identity and cultural landscapes in heritage theory. The final element of this chapter will look at examples of mechanisms for participation in heritage. These potentially enable transfer in authority to control such resources.

## **2.2 HERITAGE AND CULTURAL HERITAGE**

Heritage discourse is clear in identifying dissonance and that even ‘within a single society, pasts, heritages and identities should be considered as plurals’ (Howard, 2012:1). There are multiple forms of heritage, with multiple uses, producers, spatial and cultural contexts that complicates forming a standardised conceptualisation of heritage, hence the dissonance and multiplicity of heritage (Loulanski, 2006). Howard (2012:2) adopts a ‘constructionist perspective’ which regards the concept of heritage as ‘referring to the ways in which very selective past material artefacts, natural landscapes, mythologies, memories and traditions become cultural, political and economic resources for the present’. This research focusses more heavily on cultural heritage given the cultural dimension involved in the case studies, however, given the interweaving nature of some of the concepts, there may be some interchanging amongst terms depending on how theorists have identified their concepts.

Cultural heritage is equally difficult to define, mainly due to the wide-ranging application of the term and the multiple spatial, temporal and value associated variances (Loulanski, 2006);(Alberti and Giusti, 2012);(Tweed and Sutherland, 2007). Others claim that the concept of cultural heritage is best described as existing on an evolving spectrum, characterised by ‘dynamism and elasticity’ (Ahmad, 2006, Loulanski, 2006, Vecco, 2010). This uncertainty speaks to the fact that cultural heritage is subjective, human centred and socially constructed (Loulanski, 2006). For indigenous community’s cultural heritage

*covers traditional indigenous practices such as language, art, music, dance and song, as well as claims to ancestral human remains; however, for indigenous peoples, the preservation of heritage is also deeply embedded in, and requires the protection of, traditional territory and its sacred sites.*

This alludes to the assertion by Silverman that cultural heritage requires memory, in that cultural heritage needs to be remembered and interpreted, and hence cultural heritage is always to an extent intangible. For cultural heritage to retain ‘meaning and potency’ it must be ‘active, dynamic, used and performed, rather than existing inert and static’ (Silverman and Ruggles, 2007:12). She also identifies that cultural heritage ‘may be positive and pleasant, or negative and painful, or it can be both, even to the same group of stakeholders’ thus alluding to the dynamism, complexity and potential dissonance in establishing a definition (Ibid, 12).

Functionalist views suggest that heritage as a ‘purely human construction’ cannot exist independent of social values and thus heritage is ‘socially constructed and so are the meanings and functions that are assigned to objects’ (Loulanski, 2006:216). Heritage is, as suggested by (Harrison, 2012:14), ‘not a ‘thing’ ...but refers to a set of attitudes to, and relationships with, the past’. Thus, heritage is ‘value laden’ (Tweed and Sutherland, 2007);(Monika and Jarosław, 2013) and it is explicitly cultural values that makes an element cultural heritage (Gonzalez-Perez and Parcero-Oubiña, 2011). Cultural values are assigned to the heritage features by those who value them, and as such these values are fluid. Jones (2017:22), refers to these values as social values, defined as ‘a collective attachment to place that embodies meanings and values that are important to a community or communities...embedded in experience and practice. Jones (2017:22) suggests that conceptually a social value:

*encompasses the ways in which the historic environment provides a basis for identity, distinctiveness, belonging and social interaction. It also accommodates forms of memory, oral history, symbolism and cultural practice associated with the historic environment.*

Significantly though, the nature of these social/cultural values does not always correspond to those officially ascribed to by the state or governing regime, and therein lies a significant tension. For indigenous peoples, the extent to which their cultural heritage values aligns with the official state sanctioned heritage values is central to their ability to protect their cultural heritage. Thus, one objective of this research is to evaluate the impacts of this potential divergence in a localised context, and then seek opportunities to mitigate such impacts.

### **2.2.1 HERITAGE, MEMORY AND IDENTITY**

Heritage by designation and heritage by appropriation are two methods by which heritage features become recognised as cultural heritage (Tweed and Sutherland, 2007). Heritage by appropriation is heritage that is created through public behaviours attaching value and status to a feature or area, in effect creating ‘de facto heritage’ (Ibid,63). This form of heritage creation represents an expression of a growing ‘democratisation of culture’(Ibid,63) whereby citizens decide what forms to attribute status and worth to. One example of appropriated heritage is arguably represented by Nelson Mandela’s former high security prison cell on Robben Island in South Africa which has been gazetted as a South African National Monument and National Museum as well as being listed as a World Heritage Site in 1999 (Harrison, 2012).

The designation of heritage is through a traditional, although top down expert driven process of applying an ‘honorific label to sites, buildings and other cultural objects by experts’[sp] (Tweed and Sutherland, 2007:63). This method is said to have little scope for public participation and as a result, the designations seem to adopt a familiar and predictable, if not limited form. In this respect (Tweed and Sutherland, 2007:63), suggests that in the absence of public participation in designating heritage ‘charges of elitism are inevitable’ and the ‘careful mix of aesthetics, assumptions of innate value, age and authenticity’ prevails,’ (Smith, 2009:28). This type of heritage can be representative of ‘official heritage’ that supports a ‘national memory’ in that it emanates from the state and its governing institutions, often representing the hegemonic values of the majority (Howard, 2012, Fritzsche and Koshar, 1999). This national memory is one that is ‘not only driven by the official or national groups, but also by the media, academics, heritage institutions and local community organisations’(Howard, 2012:40). This national memory supports a collective identity, whereby heritage that represents a certain set of ideas presented by the state informs such an identity.

As alluded to above, heritage informs a collective and individuals identity, and thus there are social outcomes associated with heritage, that impact upon identity on various scales (Labadi, 2011); (Murzyn-Kupisz, 2013). Cultural heritage has been observed to ‘fulfil a local community’s leisure, cultural and aesthetic needs (Murzyn-Kupisz, 2013:157) through the

realisation of ‘non-material benefits’ such as ‘spiritual enrichment; emotional and social development’ (Tengberg et al., 2012:16). Whilst acknowledging that a community is unlikely to be a homogeneous entity, Dümcke and Gnedovsky (2013) suggest that communities can be empowered, with enhanced social inclusion, intercultural communication, and social capacity building through the various interactions with and the protection of cultural heritage. However, within such community’s cultural heritage can also be a source of dispute identifying the lack of a cohesive community and singular voice. (Butterly, 2017) describes this concept by way of a question ‘who speaks for country?’ as in who has the legitimate mandate or authority to act in the interests of the wider group, and therefore confirm, define or even destroy the heritage values of a community. The significance of this point will be apparent in subsequent chapters five, six and seven.

As mentioned above identity can be strengthened by social enrichment which is evident whereby cultural heritage performs a role of conduit for ‘inter-intra generational communication’ and knowledge transmission (Monika and Jarosław, 2013). Therefore, significant to this research is the notion that cultural heritage can facilitate a means to communicate and thus strengthen Māori identity via an appreciation of genealogical associations and interactions with:

*special or historic features within a landscape that remind us of our collective and individual roots, providing a sense of continuity and understanding of our place in our natural and cultural environment’ (Tengberg et al., 2012:16).*

This statement conveys the sense of attachment many indigenous peoples maintain to their traditional territories, irrespective of legal ownership or not. Consequently, for many indigenous people cultural heritage represents a dynamic living expression of the foundation of their cultural practices, associations and values. Correspondingly, indigenous connections to their cultural heritage, whether tangible or intangible are deep and multi-faceted. However, as is common in post-colonial nations, the maintenance of a physical association with cultural heritage is often vulnerable to the will of private property right holders and prevailing governing body imperatives. As such, this tension between private ownership and indigenous/public good illustrates why many interactions in the cultural heritage space between governing bodies and indigenous people are contested, fraught with competing interests, power imbalances and potential flashpoints (Lee, 2016b).

### **2.2.2 HERITAGE AND POWER**

Whilst cultural heritage can be a unifying force that emphasises a nation's shared identity (Logan, 2012:237) it can also be the catalyst for conflict and oppression through the imposition of power imbalances. One concept describing the inherent position of power in heritage is identified by Smith (2009) as the authorised heritage discourse (AHD). This conceptualisation adopts a critical discourse of the object-centric focus predominant in western cultures around ideas of 'grand, tangible, and aesthetically pleasing buildings 'conserved as found' (Waterton, 2009). Importantly, it is said to revolve around notions of 'the nation, a fetishization of the physical survivals of the past, and a belief in the privileged position of the expert' (Ibid). In adopting this approach heritage management lends itself to reinforcing the cultural values of the dominant majority, the national memory, thus normalising the cultural preferences of a particular social group defined by class and ethnicity; and in a post-colonial context often 'the White, male, middle- and upper classes' as suggested by (Waterton, 2009:39). Thus, this notion exposes a particular version of what heritage is, who informs this type of heritage, what is valued and to what extent. In a western world context the dominant concept of heritage is typically represented by ideas of 'materiality, tangibility, aesthetics and history' (Waterton, 2009:48). It is also observed to privilege the retention of wilderness and natural values and character over cultural values (Lee, 2016b). Therefore, this approach provides an instrument for dominating and excluding other realisations of heritage (Waterton, 2009), such as those often represented by minorities, the marginalised, the indigenous. Consequently, this dominance is a clear manifestation of hegemonic although latent power in heritage.

Hall (1999:4) suggests that 'those who cannot see themselves reflected in its mirror cannot properly belong'. Thus, the western expert-centred and 'reductionist' idea of privileging the dominant heritage discourse is arguably an extension of 'post-colonial repression' (Butterly, 2017). It positions 'others' as the mediators of indigenous heritage as opposed to providing emancipatory opportunities for indigenous peoples to interact with heritage in culturally meaningful ways (Baird, 2013). Therefore, the authorised heritage discourse devalues an indigenous perspective and discredits attempts by indigenous peoples to have a role in heritage management. Consequently, this reinforces the notion that indigenous peoples have limited opportunity to participate in processes to protect heritage given the 'overt focus on 'wilderness' and natural values in exclusion of cultural values' (Lee, 2016c). However, as

will be seen, indigenous efforts to find alternative ways to participate in heritage management identifies how the preservation of cultural heritage is a significant priority for indigenous peoples are to ensure their people's cultural survival.

### ***2.2.3 INDIGENOUS ROLE IN CULTURAL HERITAGE***

As has been suggested above, the 'epistemological bias towards scientific materialism' (Winter, 2013:533) in conjunction with an authorised heritage discourse is detrimental to a wider appreciation of the social benefits of cultural heritage. In trying to address this deficit, indigenous peoples have often sought to challenge the prevailing hegemony, demonstrating the notion that 'heritage becomes a political resource around which archaeologists, indigenous peoples and other interests negotiate and play out struggles for political recognition (Smith, 2007:159).

A contributing factor that is often evident in the decision-making process is a perception that indigenous cultural heritage only exists in the past thereby failing to recognise that indigenous heritage is a dynamic living entity. This situation has been expressed by Lee (2016a:325) who states that indigenous heritage is often 'framed within a distant and unreachable past, leaving contemporary people as ticket-holders to the spectacle of their own history'. When this perspective manifests itself in the decision-making process, it reinforces the dominant discourse and serves to invalidate any assertion that cultural values and associations are of relevance in a contemporary context. Relatedly, the nature of indigenous cultural heritage is often deconstructed and compartmentalised, in direct contrast to an indigenous perspective whereby cultural heritage is regarded more holistically as an integrated and interdependent whole. This notion lends itself to the concept of a cultural landscape as a 'fundamental resource for understanding the complex connections between heritage, memory and identity' (Howard, 2012:40). Thus, cultural landscapes give expression to symbols of identity and memories defined by Howard (2012:40) as 'icons of identity and spatializations of history'.

Aplin (2007:430) defines cultural landscapes as having evolved through the interactions of people over time 'expressed through their cultural, economic, and spiritual systems, and nature, through the strength of the human imprint'. Thus, cultural landscapes are comprised of layers from 'economic, political cultural and demographic factors affecting a particular society and are testament to diverse histories and geographies, and as such they can be peeled

away to reveal the cultural aspirations and struggles of society' (McDowell, 2008:38). The notion of cultural landscapes has been adopted by the World Heritage Convention since 1992 with currently 102 properties on the World Heritage list being included as cultural landscapes in their various forms (UNESCO, 2018). The operational guidelines of the World Heritage Convention identify three types of cultural landscape, (i) a landscape designed and created intentionally by man for aesthetic reasons; (ii) an organically evolved landscape such as a relic (fossil) landscape and a continuing (social) landscape; and (iii) an associative cultural landscape, significant for religious, cultural and artistic elements as opposed to material cultural evidence, which may not be evident. Kawharu (2009) suggests that the complementary concept of an ancestral landscape is an important heritage concept for indigenous peoples that can be understood in relation to one or all of the above categories.

When considering the World Heritage Convention categories, Māori pā, papakāinga, marae and rock art sites are clearly indicative of landscapes that have been shaped by man for political or practical reasons. However, they don't necessarily fit well with the aesthetic criteria used by the World Heritage Convention given their function and the fact that these landscapes were/are deeply 'imbued with metaphysical values as well' as represented by oral histories and names embedded into the landscape (Kawharu, 2009:320).

The second category in a Māori worldview can be recognised again in pā, villages, garden sites for example, but the spatial extent of these landscapes could extend over significant areas. Kawharu (2009:320) discusses the example of Maungakiekie, as a 'relict landscape' that could also be considered as a 'continuing landscape' in that the 'intangible values of the pa and surrounding region continue to inform the identity of, for example, Ngāti Whātua'. The final category of 'associative cultural landscapes' is asserted by (Kawharu, 2009) to be the best representation to apply to Māori conceptual understandings of landscapes.

Associative cultural landscapes provide recognition of the relationship between the 'spiritual and cultural values that link people to specific areas' (Ibid.321) and as such they maintain synergies with the concept of ancestral landscapes.

Māori ancestral landscapes acknowledge the importance of history and past generations, and therefore the cultural associations, practices and knowledge systems expressed within those landscapes. Thus, ancestral landscapes also have embedded in them a basis for understanding Māori connection to place and Māori values such as kaitiakitanga and mauri. Accordingly, Kawharu (2009:326) suggests that ancestral landscapes 'are reference points of a cultural

value system’ and therefore ‘reminds living descendants of some parameters for interpreting places’.

As has been indicated in the above discussion on cultural and ancestral landscapes, Māori relationships to their ancestral landscapes are existential. If the landscape is degraded, then the identity and wellbeing of the people is correspondingly degraded. So, when one considers the western paradigm of ownership, and the realisation that many of these landscapes have been segmented into different tenure systems, then there is an obvious tension. This is most obvious in the individualisation of title and subsequent loss of control by Māori over these landscapes. Consequently, this raises the question of how do Māori express their value systems over their ancestral landscapes in a modern-day context? One answer is either through direct ‘ownership’ of title, or participatory mechanisms facilitated by enabling statutory provisions. A number of these mechanism are now discussed below to understand indicative opportunities for Māori to participate in decision making over their traditional ancestral landscapes.

#### ***2.2.4 MECHANISMS FOR INDIGENOUS PARTICIPATION IN CULTURAL HERITAGE MANAGEMENT***

Participation of the public, and indigenous peoples in cultural heritage management is necessary to enable legitimacy gains in decision making frameworks. What inevitably constrains the realisation of this notion is private property rights, land tenure arrangements and political reluctance to share decision making authority. A common theme in discourses about indigenous participation, is reference to the position of power and the imbalances that permeate many nation states. In order to target the power imbalances and achieve enhanced cultural heritage protection, indigenous peoples have sought to influence the decision-making forums through various formal and informal participatory mechanisms. Selected examples of such mechanisms are analysed below.

#### ***2.2.5 ABORIGINAL AGREEMENTS***

In the case of aboriginal peoples of Australia, participation has been achieved through leveraging a rights-based approach, as facilitated by the Mabo case which confirmed that indigenous rights were not fully extinguished upon occupation of the colony of Australia (Lane, 2006). Despite this, the Aboriginal people of Tasmania are noted to have had little

opportunity to participate in heritage protection within their traditional lands due to an ‘overt focus on ‘wilderness’ and natural values in exclusion of cultural values’ (Lee, 2016b:330). This is despite the potential of participatory mechanisms such as joint management agreements being defined as a specific objective for management of reserved lands in accordance with the National Parks and Reserves Management Act 2002 (Tas).

Lee (2016b) references the specific potential for indigenous participation within the Indigenous Protected Area’s (IPA) program which reserves lands returned under the Aboriginal Land Act 1995. Lee (2016b:330) suggests that the participatory mechanisms these programmes afford could be interpreted as tokenistic, given the ‘low levels of capacity within the Aboriginal management bodies and lack of government and non-government engagement in developing beneficial opportunities’. Again, this is despite ‘half the Tasmanian landmass being available for joint management and capacity building for Aboriginal cultural and economic equity’(Ibid,329).

The use of joint management agreements has been employed successfully elsewhere by other indigenous groups (Gooder, 2018). However, this experience reinforces the notion that even when appropriate mechanisms are available in statute, the willingness of controlling authorities to share and support the growth potential to influence decisions appears to be lacking.

Another example of a participatory mechanism adopted by indigenous Australians is the Kungun Ngarrindjeri Yunnan (Listen to Ngarrindjeri People Talking) Agreements, between the Ngarrindjeri Nation and other controlling authorities that relate to environmental management of their tribal territories (Wallis and Gorman, 2010). The agreements establish legally binding agreements as an ‘alternative route’ through which to express and protect their cultural heritage values within the existing environmental planning and management processes (Ibid, 66). A self-produced management plan provides a forum for expression of their own cultural values and relationships, whilst also outlining key issues, strategies and objectives relating to their aspirational visions for their traditional waters and lands.

Reference to the heritage protection and management section resonates a story familiar to the experiences of indigenous peoples in other colonised countries, including for Māori:

*Since the early days of colonisation, our heritage has been threatened by the stealing of our lands and resources, by the removal of our children, by the forced introduction of foreign beliefs and languages, by destructive changes to our environments, by the loss of access to much of our Country, by the spread*

*of settlements and other developments, and by the laws that protect the interests of those who threaten our heritage. (Ngarrindjeri Heritage Committee, 2006:26)*

The management plan then proceeds to the indigenous people's aspirations and objectives regarding the protection of their cultural heritage and landscapes:

*Our overriding objective is to protect all Ngarrindjeri heritage values, places and objects. As we no longer control all of Ngarrindjeri Country, we understand that the protection of Ngarrindjeri heritage will require the negotiation of agreements and partnerships with governments at all levels, as well as nongovernment organisations (Ibid, 27)*

The plan identifies a number of strategic and empowering actions ranging from expansion of cross-cultural education programmes, negotiation of individual heritage agreements with all landowners, negotiating secure burial grounds for 'repatriated Old people', integration of the management plan into relevant planning framework to negotiation of funding and investment resources to protect cultural heritage' (Ibid, 28).

Such initiatives have the potential to enable statutory and non-statutory mechanisms to build tribal and intercultural capacity and allow for expression of cultural practices within their traditional territories. Given the significance of burial sites for indigenous peoples, having a mechanism available which provides for culturally appropriate treatment of disinterred bones is likely to be of significant benefit to rebuilding of damaged relationships, and strengthening of identity values. However, the tension associated with exercising guardianship type functions on land subject to private title is still a key constraint in this context and speaks to the pervasive role of power in heritage management.

## **2.2.6 CANADIAN FIRST NATIONS TREATY AGREEMENTS**

In order to enhance the protection of their cultural heritage First Nations have been utilising participatory mechanisms that take the form of formal and informal agreements, as characterised by treaty-based commitments and memoranda of understandings respectively. Such measures have been noted to attain 'a negotiated synthesis of both state and Indigenous objectives' (Dent, 2017:147) which is promising when considering Friedmann's (1987) reference to the need to involve the state in effecting transformative change.

In some territories not subject to historic treaties, a contemporary treaty process has occurred seeking to better address the relationship between the Canadian nation-state and the indigenous peoples. Such treaties have incorporated specific provisions for heritage and

archaeological management regimes to address their heritage management aspirations and increase indigenous oversight (Dent, 2017). Features of these agreements have been observed to establish law making authority over heritage features on treaty lands, establish new classes of heritage sites with management requirements tailored to the site or feature, and ‘Archaeological artefact disposition and repatriation’ provisions for human remains for example (Ibid,139).

Despite these measures, Dent (2017) notes that no signatory First Nation has created a ‘distinct heritage regulatory apparatus’, despite the power to do so and as such the status quo remains in that the British Columbian government ultimately retains decision making power. However, an innovative approach has been the creation of heritage jurisdictions that are comparable heritage management regimes to the existing ones, thus the treaty-based heritage provisions are:

*functionally about providing direction and clarity with respect to disposition of material heritage as opposed to any changes in authority over how archaeological and other tangible and intangible heritage resources are managed (Dent, 2017:142).*

It is apparent from the mechanisms above that the framework is there for First nations to regulate and manage their heritage although the redistribution of power has not been given effect to date. However, what is unclear is whether this retention of the status quo is due to the states reluctance to redistribute power or perhaps a reluctance of First Nations to assume control due to technical and resourcing constraints, which has been a reoccurring theme in indigenous governance matters (Webster and Cheyne, 2017).

### **2.2.7 AOTEAROA NEW ZEALAND PARTICIPATORY MECHANISMS**

As will be elaborated upon in greater detail in chapter three, the Resource Management Act 1991 is the primary environmental management statute within Aotearoa New Zealand. The Act contains various provisions of relevance to Māori, in that they that provide for recognition of Māori participation and cultural values, as well as separately recognising historical heritage. Operational provisions are also included for the recognition and management of historic heritage as well as acknowledging the relationship to the Pouhere Taonga Heritage New Zealand Act 2014.

However, this section will discuss the value of the treaty settlement process as a means for participation of Māori in the management and protection of their heritage. These settlement

provisions potentially allow for a ‘shift from the conventional bureaucratic models of governance to hybrid governance models’ (Thompson-Fawcett et al., 2017:178).

### **2.2.8 TREATY SETTLEMENT PROCESS**

Treaty settlements have been a means for Māori to have their largely historical grievances redressed by the Crown. Claims are lodged with the Waitangi Tribunal, a body set up to investigate the role of the Crown in its interaction with Māori. Claims to the Waitangi Tribunal are defined as:

*allegations that the Crown has breached the Treaty of Waitangi by particular actions, inactions, laws, or policies and that Māori have suffered prejudice (harmful effects) as a result (Waitangi Tribunal, 2018)*

Outcomes have generally been positive for Māori as a result of these claims with mechanisms such as rights of first refusal, financial redress, cultural recognition of relationships to places of significance as well as Crown apologies (Thompson-Fawcett et al., 2017). Such mechanisms allow for building of capacity, re-establishment of connections with place and statutory protection of various associations. An example of innovative provisions is that of nohoanga, that provide for Ngāi Tahu descendants to utilise traditional rest areas for recreational purposes at certain times of year, thus strengthening connections to place.

The settlements also provide the potential foundation for collaborative governance relationships with controlling authorities, typically territorial authorities or crown entities such as the Department of Conservation. However, it should be noted that whilst the architecture for engagement may be there, there are also instances when the uptake of the commitments within the settlements by controlling authorities has not been implemented in a timely manner and in some instances not at all. This inertia has the potential to discredit the legitimacy of the settlement process and even more so the legitimacy of the Crown and governing parties. An instance of this will be presented in the case study of Te Wao Nui a Tiriwa in chapter seven.

### **2.2.9 CO GOVERNANCE AGREEMENTS**

A further feature of treaty settlements is the ability to pursue co-governance arrangements outside of the statutory frameworks of the RMA. Two versions of these arrangements are joint management and co-governance agreements. Potential benefits of pursuing such

institutional agreements via a settlement process are the ability to circumnavigate the standard procedures of councils such as political jockeying and institutional bias for instance.

One such co-governance arrangement is that of the agreement between Auckland Council and Ngāti Whātua o Ōrākei regarding the ancestral lands of the hapū named as the Whenua Rangatira agreement. The Whenua Rangatira is an area set aside by the Ōrākei Act 1991 and the Ngāti Whātua Ōrākei Claims Settlement Act 2012. In terms of governance, the Ngāti Whātua Ōrākei Reserves Board Administers the land and is comprised of both Ngāti Whātua and Council Board members, with the Chairman being of Ngāti Whātua decent. Whilst Ngāti Whātua o Ōrākei are the legal owners of the whenua there are encumbrances which limit the ability of the tribe to act independently specifically with regards to limitations on the ability to ‘sell...mortgage, charge, or otherwise dispose of any land vested in it by the [Act]’ (Paterson, 2009:136). However, the arrangement does allow for Māori to formulate, express and exercise their kaitiakitanga values. In this instance that is through the production and implementation of a reserves management plan and associated environmental enhancement initiatives that the iwi deem to be priorities. As will be established in a subsequent chapter, there have been less obvious benefits that have been realised from this co-governance arrangement.

#### ***2.2.10 IWI MANAGEMENT PLANS***

Iwi management plans have been a common mechanism whereby iwi and hapū can collate and communicate their own resource management, environmental and conservation values, priorities and policies within planning frameworks. Thus, they have the potential to provide the basis for dialogue and cross-cultural communication at an operational and policy level, provided they are recognised and utilised by decision makers.

For the most part, iwi management plans are the primary instruments utilised by iwi to function within the resource consent process of the RMA, or at the larger strategic or policy scale. The plans take various forms in terms of the composition of their content and can also be tailored to significant resources such as the pounamu management plan for example. Whilst the term iwi management plans are not specifically referenced in the RMA, they meet the criteria of ‘planning documents recognised by an iwi authority’ as specified in section 66 of the RMA for example.

A couple of challenges have been encountered with regards to implementation and uptake of the iwi management plans. Uptake has often been challenging due to a lack of cultural competency of decision makers (Thompson-Fawcett et al., 2017, Majurey et al., 2010). In this regard there have been questions as to the efficacy of the plans which effectively are trying to communicate indigenous values and concepts into a western framework. In this regard, Durie has stated that:

*A problem ...arises when the criteria adopted by one system of knowledge ... are used to decide on the validity of another system that subscribes to different criteria. Further, there might be difficulties in understanding (a culture) if one is not versed in that culture" (Durie 2007: 3).*

Thus, some of the broader meanings to indigenous communities around the terms used may be lost in translation. Terminology has also been raised with regard to the extent to which Council are required within the RMA to ‘take into account’ the iwi management plan’s during the preparation and changing of national, regional and district planning instruments, yet the resource consent process only requires that the decisions makers ‘have regard to’ the plans (Gooder, 2018). The implications of this is that it effectively leaves it to the discretion of Council as to how they interpret and utilise the plans in a resource consent process. Thus, the tension is particularly evident when iwi/hapū have the expectation that Māori values expressed in a Māori instrument should be adhered to as a ‘matter of national importance’, in accordance with the RMA and associated treaty obligations. However, the lesser standard of commitment used in the RMA is less binding on the Council, and therefore less empowering of iwi and hapū.

### **2.2.11 CULTURAL IMPACT ASSESSMENTS**

Impact assessments have the potential to ‘make room for a direct and transparent relation between civil society and urban administrations’ (Hilbrandt, 2017:539). Theorists suggest that participation by way of environmental impact assessment provides a mechanism for marginalised social groups to modify existing decision structures and change the existing social order (O’Faircheallaigh, 2010, Vanclay, 2003). Vanclay (2003:7) for example suggests that the role of impact assessment as a participatory mechanism ‘encompasses empowerment of local people; [and] enhancement of the position of...disadvantaged or marginalised members of society’. O’Faircheallaigh (2010:21), also acknowledges social learning in impact assessment, as a process whereby ‘stakeholders work together, sharing information to identify effective, socially acceptable strategies to mitigate impacts and identify

opportunities'. The reference to social learning in this context recognises the influence of participatory theory in impact assessment.

A more standardised mechanism for indigenous participation in the heritage management space is the use of cultural impact assessments and various iterations. Morgan (2017:16) suggests that CIA are a 'post-colonial approach that ensures indigenous values are considered in decision making'. However, although such values may be considered, or taken into account, there is limited evidence that these values will have influence within the decision-making framework (O'Faircheallaigh, 2010).

Various jurisdictions are observed to adopt different terminologies for the cultural impact assessment process. International iterations relevant to heritage have been noted as archaeological impact assessments, heritage resources impact assessments (e.g. Hong Kong), or historic resources impact assessment (Canada) (Morgan, 2017). In a New Zealand context Cultural Values Assessments (CVA), Cultural Value reports (CVR), Cultural Impact Assessments (CIA) and Māori Values Assessment (MVA) processes are utilised having derived from the wider impact assessment paradigm. A notable difference differentiating CIA from CVR's is that CVR's are unlikely to be project specific, rather they identify and describe overarching values associated with a wider locality or resource (Ministry for the Environment, 2018). As such they are unlikely to include comprehensive analysis of the effects/impacts of development, beyond identifying higher level guidance on how to approach relevant issues.

In an international context, cultural impact assessments define a primary mechanism by which indigenous communities express their values and associations within a development and statutory environment. However, there is limited literature pertaining to cultural heritage impact assessment, although there would be value in adopting this mechanism as a means of participation in the heritage management regime.

Indigenous heritage may not always be adequately protected by legislation or associated planning instruments, which can leave such elements exposed and vulnerable to continued and 'incremental destruction' (Butterly, 2017:1315). A key reason for this lack of protection has been observed in part to relate to 'cross cultural understanding: a failure to understand what indigenous cultural heritage comprises that concomitantly affects how cultural heritage is defined and interpreted' (Ibid, 1315). When considering this statement, it becomes apparent that cultural impact assessments, or cultural heritage impact assessments, are

situated as an important mechanism for the expression of indigenous values, interests and associations within a decision-making context. Thus, impact assessment mechanisms function as the conduit for integration of culturally sourced information and knowledge systems into participatory spaces. However, the effectiveness of cultural impact assessments and their various manifestations is often questioned by indigenous practitioners for a variety of reasons, as now discussed.

### ***2.2.12 CHALLENGES WITH IMPACT ASSESSMENT MECHANISMS***

Despite demonstrating promise criticisms have also been described that question the credibility, legitimacy and efficacy of such a mechanism. Firstly, indigenous practitioners when preparing a cultural impact assessment are often constrained due to pre-determined statutory timeframes that may stretch technical capacity and resources and potentially limit data integrity. The ability to respond to such requests is also limited as it is not uncommon for representative bodies to have multiple and varied development proposals to respond to concurrently, whilst also facing technical skills shortages (Gooder, 2018).

Also, regarding the temporal element, Morgan in (Thompson-Fawcett et al., 2018) highlights the fact that relationships with indigenous communities are fundamentally built on trust accrued over a period of time often greater than the statutory timeframes available. This poses challenges in sourcing appropriate levels of information to inform the decision-making process. In some instances, the oral traditions of indigenous people limit the amount of recorded 'evidence' as to features of significance, leaving such knowledge both at risk of permanent loss, but also unable to be offered in the prevailing 'evidence based' statutory forums. Additional to this is the need for decision makers to account for intangible elements and values within a CIA that are obviously not material culture and thus identifiable or measurable. This leads to challenges for decision makers who need a complementary degree of cultural competence and awareness to do justice to the decision-making process and the aspirations of indigenous participants. However, this appreciation of indigenous values, interests and associations is often lacking leading to poorly informed policy decisions and missed opportunities .

### ***2.2.13 SYSTEMIC ISSUES***

In Aotearoa New Zealand questions have been asked of the ethical dilemma associated with participating in a cultural impact assessment process that prioritises or 'heads straight for'

mitigation measures, as opposed to accommodating the cascading hierarchy of measures to address adverse environmental effects being avoid, remedy or mitigate as promoted in section 17 of the Resource Management Act 1991. The dilemma is evident when the cultural impact(s) of a proposal are deemed by the assessors to be so significant that the Iwi may request that a proposal be declined. However, Cheltham in (Thompson-Fawcett et al., 2018) suggests that the consent process effectively compels the indigenous groups to negotiate a lesser position, regardless of their disagreement, to at least maintain some degree of influence within the process. To seek full decline of a proposal is to risk full exclusion from the process, a complete inability to seek some form of concessions. Again, this dilemma identifies a power distortion that effectively marginalises indigenous voices, even within a participatory process. Cheltham in (Thompson-Fawcett et al., 2018) subsequently asks the question, is the RMA framework for example even capable of accommodating a ‘no go’, no development option? Extending this, does the New Zealand resource management system privilege development and economic outcomes over cultural? In this regard, the current planning system has been said to compartmentalise and therefore constrain the indigenous worldview to fit within the parameters of a Eurocentric planning system. In doing so Matunga in (Thompson-Fawcett et al., 2018) suggests that the cultural impact assessment process further imposes a form of marginalisation and therefore brings into question the legitimacy of the impact assessment process. Gooder (2018:63) cites a 2012 Māori Values Assessment (MVA) discussion that demonstrates this scenario in the statement that: ‘The silo approach of iwi in one corner and the archaeology and heritage building folk in another won’t be able to generate the mature and sophisticated response that everyone can embrace and appreciate’. Thus, it is clear that the compartmentalisation of interests is not conducive to a holistic and interconnected decision-making process. It also demonstrates that the heritage management regime is indeed one participatory arena in which such problems play out.

#### ***2.2.14 CHAPTER SYNTHESIS***

The above sections identify the undeniable significance of understanding, identifying and working with power to this research. What is interesting is that this is not a recent observation, rather the impetus of a shift away from the rationalist planning paradigm in the late 1960’s was also in response to power imbalances, and how that impacted upon them in a social sense. As has been established, the mobilisation of these communities signified a shift towards socially transformative planning and theory, which aspired to emancipation from

dependency, empowerment of communities and transformative outcomes. Recognisable throughout this chapter are these same themes; themes of power, empowerment and transformation through social learning. These same themes are all evident in each of the different theories of communicative, radical planning, participatory and cultural heritage planning. As a result, this research will adopt the themes of power, empowerment and social learning as the primary elements against which to assess my chosen case studies. However, these can only be assessed through first recognising and evaluating the nature of participation in each case study, and then assessing to what extent power, empowerment and social learning are each represented.

So, as referred to in chapter one, the above literature review has prompted some questions as to how Māori interact with governing bodies within the heritage management system. These questions relate to the participatory tools that are used and how they allow for influence in the decision-making processes. Further questions also arise regarding the degree to which power is expressed in the heritage management regime, thus, identifying the influence of the authorised heritage discourse in New Zealand frameworks. This literature review has also alluded to the value of interviews as a potential research methodology, primarily as a means to observe heritage and iwi practitioners' perspectives of the heritage regime, and the subject case studies. Thus, as an outsider unfamiliar with the heritage sector, I can try to discern common themes, enablers and constraints as perceived by the interview participants through this technique.

Given that the methodology chapter has already elaborated upon the research methodology and provided further justification as to the methods and theoretical framework that has been adopted, chapter three will now undertake an analysis of the statutory context for this research.

### 3 HERITAGE FRAMEWORKS

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There are two interconnected focal points to this chapter. The first is to explore the frameworks and issues pertaining to Māori participation and involvement in the wider planning system in New Zealand. This will assist in understanding the overarching themes, including the enabling and constraining provisions in regard to participation. Second, the focus will also be on the heritage management system and some of the main themes, with particular reference to Māori participation and Māori ability to protect their cultural heritage. Interspersed will be critical/reflective/analytical commentary regarding key issues, themes and debates that have developed over time as well as caselaw analysis to identify the prevailing climate for addressing such issues. Correspondingly Webster and Cheyne (2017:150) detail a number of longstanding themes that have been prevalent with regard to the effectiveness of Māori participation in planning and decision-making frameworks:

- *early involvement and supply of information for Māori to participate effectively;*
- *ongoing difficulties experienced by councils in identifying with whom they should consult;*
- *the adequacy of resources (both funding and support) for Māori to participate effectively;*
- *the availability of resources and skills for iwi/hapū to develop iwi resource management plans;*
- *limitations of Māori professional expertise in resource management processes;*
- *and the need for some guidance to councils to develop a better understanding among staff and elected members of Te Ao Māori concepts and the Treaty of Waitangi*

It is necessary to bear these themes in mind whilst reading this chapter, in order to identify these longstanding characteristics within the heritage management regime.

#### 3.1.1 TREATY OF WAITANGI

*Treaties are the basis for a strengthened partnership between indigenous people and the state. (UN Declaration on the Rights of Indigenous Peoples, Preamble (edited))*

The Treaty of Waitangi is the founding document of New Zealand signed between the British Crown and a number of Māori Rangatira [beginning] on 6<sup>th</sup> February 1840. The signing of

the Treaty facilitated the migration and subsequent settlement of Aotearoa New Zealand by British subjects whilst also guaranteeing Māori all the rights of British citizens. The preamble of the Treaty sets out the Treaty purposes being to protect Māori property interests and rights and establish a government to maintain civil order. Three Articles make up the Treaty with Article 1 essentially relating to the Crown, Article 2 referring to Māori and the final Article 3 referencing all citizens and residents including Māori.

The Treaty promised a collaborative partnership between Māori and the Crown although Mutunga suggests that '[w]hat eventuated was a closed and exclusionary colonial discourse which stripped Māori of ownership of their resources and decision processes about their use and management' (Mutunga, 2000:36). The Treaty is a living document in that the principles of its intent are evolving through interpretation within the courts of Law. The pivotal case that established the nature of the relationship between Māori and the Crown is the *New Zealand Māori Council v Attorney- General [1987] 1 NZLR 641 (CA)* (The "Lands Case") within which several 'treaty principles' were expressed in accordance with the 'spirit' of the treaty text. The most prominent of the principles identified within the Lands case were the principles of 'partnership', and the crown's duty to consult and provide 'active protection'. The principle of partnership 'arises from the notions of reciprocity and obligations which each partner has to each other' (O'Sullivan, 2007:25) and this principle was described by Justice Cooke in the lands case, whereby he explained:

*The Treaty signified a Partnership between pākehā and Māori requiring each to act towards each other reasonably and with the utmost good faith. The Relationship between The Treaty partners creates responsibilities analogous to fiduciary duties. The duty of the Crown is not merely passive but extends to active protection of Māori people and their use of their lands and waters to the fullest extent practicable.*

Thus, Mutunga (2000:36) suggests that the framework for a dual planning system in New Zealand is embedded in the Treaty of Waitangi as an environmental statement. Currently though, the Resource Management Act 1991 is the primary framework for New Zealand's planning system and heritage management regime and the extent to which Māori are recognised as partners in practice is variable, as discussed further below.

### **3.1.2 THE RESOURCE MANAGEMENT ACT 1991**

The Resource Management Act 1991 (RMA) is the pre-eminent environmental statute in Aotearoa New Zealand which 'encompasses a holistic, eco-systemic approach to planning

and environmental law, all premised upon the touchstone of sustainable management’ (Warnock, 2015:1). It is also acknowledged as the ‘paramount statute for the protection of historic heritage resources’ (McEwan, 2017:246). Sustainability is the overarching purpose of the act, which adopts an effects-based approach focussing on controlling the effects of an activity, not the activity itself. An important aspect of the effects-based approach is the intention to manage the inherent tension between the public interest and the protection of private property rights (Warnock, 2015).

The RMA adopts a decentralised decision-making approach by way of the policy hierarchy, whereby aspects of central government’s obligations have been transferred to local governing bodies. This shift to decentralisation is framed as a means to increase public participation and involvement in decision making processes (Allison, 2006). However, Purcell (2009:146) is mindful that when ‘authority is ceded by the national state to local authorities or to non-state entities devolution of authority is not in itself necessarily a move towards greater democracy’.

Given the ‘constitutional importance of The Treaty of Waitangi’ (Warnock, 2015:109) Māori as treaty partners are acknowledged within several provisions of the RMA specifically recognising the place of Māori the planning system as described below.

### **3.1.3 MĀORI PROVISIONS**

Part 2 of the RMA contains the Māori provisions which provides the structural framework for Māori participation within the RMA planning system, with the most significant being sections 6, 7 and 8. Of particular relevance to this research are sections 6 (e) & (f) which require as a matter of national importance ‘all persons exercising functions and powers’ under the act to recognise and provide for:

*(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga*

*(f) the protection of historic heritage from inappropriate subdivision, use, and development*

Under the RMA Historic heritage is defined in section two as meaning:

*those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:*

- i. archaeological:*
- ii. architectural:*

- iii. *cultural:*
- iv. *historic:*
- v. *scientific:*
- (vi) *technological; and*
- (b) *includes—*
  - (i) *historic sites, structures, places, and areas; and*
  - (ii) *archaeological sites; and*
  - (iii) *sites of significance to Māori, including wāhi tapu; and*
  - (iv) *surroundings associated with the natural and physical resources*

Case law has established that the criteria for being considered historic heritage is where the historic heritage value of a site needs to be of a ‘sufficient substance to warrant protection as a matter of national importance in the particular circumstances of the case’ *Waiareka Valley Preservation Society Inc v Waitaki District Council EnvC Christchurch C58/2009, 14 August 2009, [232]*. Furthermore, prioritisation of features on the Historic Places Trust Register referenced below is also a mechanism considered sufficient to qualify sites for protection.

It is evident from this definition that cultural heritage does not easily fit within the parameters of a natural or physical resource, although material culture which describes physical artefacts and sites for example does. As described in chapter 2 a wider definition of cultural heritage incorporates intangible elements, such as those that relate to a strengthening of cultural identity, cultural practices such as food harvesting methodologies specific to a locality and ethnic composition. The reference to ‘historic site’ also privileges geographically specific areas as opposed to wider concepts of a landscape. An outcome of this preference is that it privileges a particular type of evidence, one that is tangible, spatially specific and physically identifiable and therefore constrains decision making frameworks.

In terms of recognising tikanga Māori values, *section 7 (a)* requires that decision makers need to ‘have particular regard to’ kaitiakitanga, defined in part 1 section (2) of the Act as:

*Kaitiakitanga means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship*

This ‘guardianship’ ethic can be expressed through operating within the planning system for the benefit of people and the environment through submission writing, trying to protect sites of significance and involvement in policy drafting and implementation processes.

However, there is some concern that embedding cultural terms like kaitiakitanga into legislation has the potential to compromise their full meaning. Indeed, Kawharu (2000:351) suggests that a problem has now developed whereby ‘kaitiakitanga has become almost locked into meaning simply ‘guardianship’ without understanding of (or in the Case of the Crown, providing for) the wider obligations and rights it embraces’.

From a Maori perspective these obligations and rights incorporate a ‘nexus of beliefs that permeates the spiritual, environmental and human spheres: rangatiratanga, mana whenua customary authority over, and of, land', tapu, rāhui, hihiri and mauri 'life principle' (Marsden and Henare 1992) cited in (Kawharu, 2000:351). The concept of rāhui for example, as ‘one of the most potent categories of customary resource management’, could be implemented through an expression of kaitiakitanga as a means to rejuvenate a depleted resources mauri’ assuming that the life force of the resource concerned is not beyond recovery’ (Ibid, 358). Thus, for Maori, kaitiakitanga means much more than guardianship, which as Kawharu suggests was perhaps a definition that was formulated ‘in terms intelligible to the crown’ (Ibid, 351).

Section 8 refers to the need for the principles of the Treaty of Waitangi which have been derived from jurisprudence ‘to be taken into account’ by decision makers. The ‘lands case’ established that it is the spirit of the treaty that should be honoured as opposed to the strict text. In doing so Justice Cooke reinforced the concept that the treaty was a living document and that the principles will evolve over time in conjunction with the relationship of iwi and the Crown.

With respect to planning instruments, the preparation, change and review of policy statements and plans requires the relevant authorities to ‘recognise and provide for’ the matters of national importance. Furthermore, there are requirements to consult with representative Māori when undertaking these functions as provided for in *schedule 1, part 1, clause 2(2)(b) and (c), 3(1)(d) and (e) and 3B*.

### **3.1.4 MĀORI PARTICIPATION AND HERITAGE MANAGEMENT MECHANISMS**

The RMA contains a number of statutory mechanisms that can be used to protect Māori heritage and a number of these are detailed below. However, it should be noted that due to the lack of current uptake, no detailed analysis of section 33 transfer of powers and mana whakahono a rohe arrangements are referenced below.

### **3.1.5 JOINT MANAGEMENT AGREEMENT**

This mechanism is provided for by way of section 36B of the RMA and allows for iwi authorities or other groups representing hapū to jointly perform the local authorities functions in relation to natural and physical resources, including heritage, within the area subject to the agreement. However, similar to section 33 transfer of power provisions, joint management agreements under the RMA have not been well utilised. In fact, evidence suggests that the agreements that have been in place have amounted to tokenistic gestures whereby the power to influence decisions have not been altered at all (Gooder, 2018).

### **3.1.6 HERITAGE ORDERS**

Section 187 defines the meanings of a heritage order (HO) and defines who can be a heritage protection authority (HPA). A heritage order is a district plan provision to give effect to requirements by a heritage protection authority, with the statutory equivalence of a designation. Any Minister of the Crown including the Minister of Conservation and the Minister of Māori Affairs, a local authority, Heritage New Zealand Pouhere Taonga and a body corporate can be approved as a heritage protection authority. In terms of Māori interests, this provision provides a procedural mechanism for an iwi authority to become a heritage protection authority and therefore enable the potential expression of kaitiakitanga and perhaps rangatiratanga over their cultural heritage.

As mentioned above, local authorities are also Heritage Protection Authorities for heritage orders relating to their assets, such as buildings, parks, reserves, infrastructure and archaeological sites and are therefore subject to statutory requirements. **Section 189** provides for heritage orders, thus details that a heritage protection authority can give notice to a territorial authority of its requirement for a heritage order in regard to:

*(a) any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons; and*

*(b) such area of land (if any) surrounding that place as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of that place.*

The practical implications of a heritage order are that it ‘afford[s] a high level of regulatory protection to affected places and structures’ by way of requiring written consent of the HPA before certain activities can be undertaken. (NZHPT, 2007:1). However, critically, the effect

that a heritage order can have on private property can be ‘intrusive...which creates uncertainty for the management of significant heritage’ (Ibid, 1). Although heritage orders can be a useful mechanism to protect threatened special or significant places they have not been widely utilised (Rainbow and Derby, 2000). Vossler (2006) suggests that limitations on their use is potentially linked to likely limitations on future uses of the designated features and the underlying risk of compensation should the order be found to impose an unreasonable burden or the land being subsequently rendered incapable of use should the order be challenged in the Environment Court.

### **3.1.7 ENFORCEMENT MECHANISMS**

The RMA also contains a number of enforcement mechanisms such as abatement notices and enforcement orders under *sections 322 and 314* respectively. The case of *Watercare Services Ltd v Minhinnick* [1998] 1 NZLR 63 (HC); [1998] 1 NZLR 294 (CA) is a relevant case in the context of this research. It relates the use of an enforcement notice to stop the construction of a sewer pipeline over the Matukuturua Stonefields being a recognised wāhi tapu, which was contained within an existing designation. Judge Sheppard found that ‘there is a likelihood that the land contains bones and other remains of Māori interred there many generations ago’ *Watercare Services Ltd v Minhinnick* [1998] CA221/97,5-6. The grounds for the enforcement order as submitted by Ngāneko Minhinnick, was that such works were likely to be ‘noxious, dangerous, offensive or objectionable to such an extent that it is or is likely to have an adverse effect on the environment’. In this case the transmission of sewage over and across a wāhi tapu was considered by Māori to be objectionable and offensive and therefore an adverse environmental effect would transpire upon implementation of the pipeline.

In the environment court decision, the case relied upon the view of whether the proposed works would be objectionable or offensive to an ‘ordinary reasonable person’ who would likely be a person who ‘did not put greater value on wāhi tapu than informed members of the community at large do’ *Watercare Services Ltd v Minhinnick* [1998] CA221/97,8. The judge then summarised that:

*Such a person would regret that wāhi tapu are to be disturbed. In my judgment she or he would consider that because of the public service to be provided, the reasoned route selection, the opportunities for public challenge to it, the consultation with Māori, the cultural blessing ceremony, and the agreed protocols to be followed if wāhi tapu or archaeological remains are encountered, because of all of them what might otherwise have been offensive, or at least objectionable, is regrettable but not offensive or objectionable let*

*alone to such an extent as to have or be likely to have an adverse effect on the environment.*

This judgment was appealed by Ngāneko Minhinnick to the High Court, who held that the Environment Court erred in law. The case was then brought to the Court of Appeal by Watercare Services Ltd. The Court of Appeal overturned the High Court judgement against watercare services Ltd on the grounds that:

*The Court must weigh all the relevant competing considerations and ultimately make a value judgment on behalf of the community as a whole. Such Māori dimension as arises will be important but not decisive even if the subject matter is seen as involving Māori issues. Watercare Services Ltd v Minhinnick [1998] CA221/97,15.*

The judgement referenced the role of section 8 of the RMA being the requirement to take into account the principles of the Treaty of Waitangi. The judgment stated in this regard that:

*s8 in its reference to the principles of the Treaty did not give any individual the right to veto any proposal. We entirely agree. It is an argument which serves only to reduce the effectiveness of the principles of the Treaty rather than to enhance them. Watercare Services Ltd v Minhinnick [1998] CA221/97, 19.*

Consequently, given that there was a designation was in place, and that there was a wider public benefit to be gained through the works the decision went against the need to protect the destruction of Māori and wider societies cultural heritage.

As demonstrated above, there appears to be sufficient architecture within the RMA to facilitate participation of Māori in a wider sense, as well as to manage and influence decisions pertaining to Māori heritage. However, it is evident that such potential is contained within an overarching resistance by controlling authorities and decision makers to transfer control and functions or recognise Māori heritage as materially significant to an extent that development proposals may not proceed. Thus, in the context of this research it will be of interest to evaluate the ability of Māori to influence decisions in the heritage space, from the perspectives of the Kaiāwhina. Similarly, it will be valuable to seek an understanding of the practicalities of the use of the mechanisms, and the degree to which they are currently used in the wider regime, as well as represented in the case studies. However, complicating matters is the fact that there are a number of other statutes that relate to the control of heritage in New Zealand. Therefore, before proceeding to the localised context, I will analyse some of the other heritage statutes within the heritage management regime in New Zealand.

### 3.1.8 LOCAL GOVERNMENT ACT 2002

The purpose of the Local Government Act is set out in section 3 whereby it is stated that:

*The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities*

The LGA serves to confirm the purpose and frameworks of local government to develop provisions related to, amongst others, heritage planning, funding and management.

Consistent with the RMA, the importance of the Treaty is indicated in section 4 which references the overarching Crown responsibility to ‘take appropriate account’ of the principles of the Treaty, as well as facilitate the participation and contribution of Māori in local authority decision making processes. However, it was only with the implementation of the 2002 LGA that obligations of the Local authorities were expressed in legislation. Prior to that, there was room for debate along the lines of the Treaty being an agreement between the Crown (central government) and iwi. As such, there was corresponding concern regarding the implications of treaty claims if local authorities were also deemed to be party to the Crowns obligations (Webster and Cheyne, 2017). However, the concept of kawanatanga helped frame these discussions as it was recognised that local government had functions to govern, and therefore were parties to the Treaty, even though they were functioning within devolved authority frameworks.

Section 14(d) is significant for Māori interests as it requires that local authorities provide opportunities for Māori participation within the decision-making processes, with the view to ‘establish and maintain processes to provide opportunities for Māori to contribute to the decision making processes’ (s.81(a)) and to ‘foster the development of Māori capacity’ to enable a contribution to decision making (s.81(b)). However, Webster and Cheyne (2017:150) suggests that the obligation to build capacity is in effect insufficient to fulfil Crowns Treaty responsibilities regarding ‘the notion of shared governance which is envisaged by the Treaty of Waitangi’. Section 82 details the principles of consultation in relation to relevant decisions, with sub-section 2 requiring the local authority to ensure processes for consulting with Māori are in place. In effect this clause sets the best practice framework for local authorities when consulting, including the need for the local authority to keep ‘an open mind’ within the process.

Section 77 is significant in that it requires a local authority decision to have considered all ‘reasonably practicable options’ to achieve the required objective and assess all the options in

terms of their advantages and disadvantages. Reflective of the RMA section 6(e) provision, all the identified options are those that ‘involves a significant decision in relation to land or a body of water, [must] take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga’.

In the Auckland context, the Independent Māori Statutory Board has an interesting role in local governance in that it has a statutory responsibility to promote the interests of Māori in Auckland, being both mana whenua and mataawaka. This unique arrangement was enabled under the Local Government (Auckland Council) Act 2009 and provided for board members to participate as of right across the various committees. The effect of this arrangement is that Council is capable of being held to account for their performance regarding engagement with Māori. However, more promisingly is the ability of Māori to be at the table of these committees at the very least, being party to the discussions. In doing so they are positioned in a prime place to be alive to the issues that may have the greatest impact on Māori and Māori interests. Accordingly, there are clearly obligations on the Council and associated structures to provide opportunities for Māori to participate in local government decision making, as well as to be supported in doing so through capacity building processes. However, the extent to which these obligations are given effect to, including their interpretation, has been questioned, as will be evident in the following case studies.

### **3.2 HERITAGE MANAGEMENT REGIME NEW ZEALAND**

Besides the heritage management provisions of the RMA, the other significant instruments for heritage management and conservation are the ICOSMOS New Zealand Charter 2010 and the Heritage New Zealand Pouhere Taonga Act 2014. However, as will be elaborated below, there are more statutes that interface with heritage management in New Zealand, with the main ones being the Conservation Act 1987, the Reserves Act 1977, the Building Act 2004 and the Marine and Coastal area (Takutai Moana) Act 2011. Therein lies a significant tension that is apparent within the Heritage Management Regime and has been for some time; the lack of integration between statutes is said to result in ‘a diverse range of statutes that may appear to be in conflict with heritage protection’ (McEwan, 2017:246).

With this tension in mind, I will now review the most relevant provisions of each of the statutes and then provide some commentary as to the relationship of these provisions with my research at the end of this chapter.

### ***3.2.1 ICOMOS NEW ZEALAND CHARTER FOR THE CONSERVATION OF PLACES OF CULTURAL HERITAGE VALUE***

The preamble to the ICOMOS New Zealand charter for the conservation of places of cultural heritage value reiterates that New Zealand has ‘a unique assemblage’ of places of indigenous cultural heritage. The areas are said to comprise of ‘cultural landscapes and features, buildings and structures, gardens, archaeological sites, traditional sites, monuments, and sacred places are treasures of distinctive value that have accrued meanings over time’ (ICOMOS New Zealand (Inc), 2010:1). The accrued meaning is an obvious reference to the nature of heritage being subjective and such meaning being socially constructed (Loulanski, 2006).

The charter functions to provide professional guidelines for members of ICOSMOS and other parties involved in conservation and management of cultural heritage places. However, it is a non-statutory aspirational document that informs practices and priorities. *Section 2* of the document promotes building an understanding of cultural heritage values through ‘consultation with connected people, systematic documentation and oral research, physical investigation and recording of a place’. Of significance is section 3 which relates to indigenous cultural heritage and associated values such as kaitiakitanga, or as defined in the charter, customary trusteeship.

Much of the charter defines the practical or technical principles and methods for conservation of cultural heritage including description of the elements and parameters of conservation plans [s.14] and conservation projects [s.15]. However, of elevated significance is section 17 which lists the degrees of intervention for conservation purposes including:

- (i) preservation, through stabilisation, maintenance, or repair;
- (ii) restoration, through reassembly, reinstatement, or removal;
- (iii) reconstruction; and
- (iv) adaptation.

Smith (2006:87) identifies that ICOMOS is an ‘authorizing institution of heritage’ within which the Authorised Heritage Discourse is embedded. Thus, as an institution it enables a particular view of ‘what heritage is, how and why it is significant, and how it should be managed and used’ through ‘privileging the innate aesthetic and scientific value and physicality of heritage’ (Ibid, 87). As such, it is these such notions that frame what heritage is valued in New Zealand and this has the ability to delegitimise Māori cultural heritage and associations, particularly in the decision making frameworks. As will be identified in subsequent chapters, this is a key factor in the ability of Māori to protect their heritage or not.

### **3.3 HERITAGE NEW ZEALAND POUHERE TAONGA ACT 2014**

Heritage New Zealand Pouhere Taonga (Heritage New Zealand) was established under the Heritage New Zealand Pouhere Taonga Act 2014 and is an autonomous Crown entity under the Crown entities Act 2004. It has statutory functions and powers in relation to the ‘identification, preservation and conservation’ of historic and cultural heritage in Aotearoa New Zealand.

The purpose of the Heritage New Zealand Pouhere Taonga Act 2014 is detailed in section 3 being to ‘promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand’. Of note is the different terminology used in this statute whereby cultural heritage is introduced as well as the RMA defined historical heritage, thus providing for cultural heritage as a consideration in decision making.

#### **3.3.1 ROLE OF THE TREATY**

Again, consistent with the RMA are the provisions under section 4(d) that provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, wāhi tapu, and other taonga. However, one difference between this act and the RMA and LGA with respect to the nominated values is the reference to wāhi tupuna, which is a 2014 amendment that recognises the ancestral significance of places.

Furthermore, section 7 references the Crowns responsibility to ‘give effect to’ the treaty of Waitangi by way of numerous subsequent provisions. Of significance is the establishment of a Māori Heritage Council as an overseeing body that advocates for Māori interests.

Section 9 establishes the Heritage New Zealand Pouhere Taonga as the governance body under the act. Sections 13 and 14 are significant provisions which define the functions and

powers of Heritage New Zealand Pouhere Taonga. Section 13(1)(a) relates to the role of Heritage New Zealand to ‘identify, record, investigate, assess, list, protect, and conserve historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas or enter such places and areas on the New Zealand Heritage List/Rārangi Kōrero’. The Act also requires Heritage New Zealand to advocate for the conservation and protection of historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas s.13(1)(c). Heritage New Zealand also have a public education function with regards to ‘fostering public interest and involvement in historic places and historic areas and in identifying, recording, investigating, assessing, protecting, and conserving them’ with a view to entering such features onto the New Zealand Heritage List / Rārangi Kōrero (s.13(1)(d)).

In reference to the potential encroachment upon private property rights, Heritage New Zealand is obliged to recognise the rights of the owners of a particular historic place, historic area, wāhi tūpuna, wāhi tapu, or wāhi tapu area (s.13(2)) and therein lies a significant constraint for Māori interests in their ability to advocate for protection.

### **3.3.2 MĀORI HERITAGE COUNCIL**

The Māori Heritage Council as referenced previously is confirmed under section 26. The composition of the Council requires four of the eight members who are appointed to be vetted by the Minister of Māori Affairs and to be of Māori lineage with relevant ‘skills, knowledge or cultural backgrounds’ (s.26(2)(b)(i-ii)).

The statutory function of the Māori Heritage Council is to advocate on behalf of Māori interests by way of ensuring that:

- in the protection of wāhi tūpuna, wāhi tapu, wāhi tapu areas, and other historic places and historic areas of interest to Māori, Heritage New Zealand Pouhere Taonga meets the needs of Māori in a culturally sensitive manner s.27(1)(a);*
- *developing Māori programmes targeted at the identification and conservation of wāhi tūpuna, wāhi tapu, wāhi tapu areas, and historic places and historic areas of interest to Māori s.27(1)(b);*
- *developing its own iwi and other consultative and reporting processes for Heritage New Zealand to adapt when dealing with matters of interest to Māori; consider applications to enter wāhi tūpuna, wāhi tapu, and wāhi tapu areas on the New Zealand Heritage List/Rārangi Kōrero s.27(1)(f);*
- *to propose historic places and historic areas of interest to Māori to be entered on the New Zealand Heritage List/Rārangi Kōrero s.27(1)(g);*
- *and to make recommendations to Heritage New Zealand Pouhere Taonga on applications for resource consents (s.27(1)(h));*

The Tapuwae document states that ‘[T]he Council does not seek to act as kaitiaki, but is committed to recognising, supporting, and where appropriate, facilitating the kaitiakitanga of whānau, hapū and iwi.’ (Heritage New Zealand Pouhere Taonga, 2017:13). So, the Māori Heritage Council is well positioned to advocate on behalf of Māori interests which is some assurance given the underlying authorised heritage discourse mentioned previously. However, it is not clear to what extent the advocacy role enables a change in the dynamics of power and influence within the heritage regime. Perhaps one significant benefit in the decision-making process is the ability under (s.27(1)(h)) to allow the council to make recommendations on resource consents. In theory this allows for Māori heritage matters to be considered by decision makers with culturally embedded knowledge, which commentators have referenced as one limitation of Council officers to date.

### **3.3.3 HERITAGE COVENANT**

Section 39 describes the mechanism of a Heritage Covenant with the effect of the covenant being in accordance with the terms of the agreement. Fundamentally though, it cannot constrain Heritage New Zealand’s ability to exercise its functions under the Act or the RMA, although it ensures that nobody can perform an action that is contrary to the Act. In terms of Māori heritage, Heritage New Zealand is enabled to enter into Heritage Covenants over wāhi tūpuna, wāhi tapu, and wāhi tapu areas, therefore affording increased capacity to make such agreements context specific, which can be beneficial where particularly sensitive elements exist. A further positive attribute of the Covenant is that they are registered on the underlying title which potentially provides for long term heritage protection.

Section 42 provides for overarching blanket protection of Archaeological sites (pre-1900 features) that as a baseline are not to be modified or destroyed. This provides for a protective mechanism to be imposed to manage modification and destruction by way of an Archaeological Authority. Section 43 defines the criteria for an archaeological site and identifies the means to designate complying features as such. To be declared an archaeological site the place should be such that:

*it is associated with human activity in or after 1900 or be a site of the wreck of any vessel where that wreck occurred in or after 1900; and*

*it provides through investigation by archaeological methods, significant evidence relating to the historical and cultural heritage of New Zealand.*

Section 44 details the provisions for Archaeological Authorities and their issue to modify or destroy the whole or part of archaeological sites whether they are recorded and listed or not. Authorities are also necessary where the effects of the proposed activity on archaeological sites will be no more than minor and where the action is to conduct a scientific investigation of an archaeological site.

Rights of appeal to the Environment Court are enabled within section 58 with regards to appealing against the exercise of any powers expressed under the Heritage New Zealand Pouhere Taonga Act by the Heritage Protection Authority. However, the use of the Environment Court to resolve such matters has been questioned by practitioners (Kaiāwhina E). The rights of appeal are of relevance to the Special Housing Area case study, analysed in the following chapters, in that it has provided the final (formal) participatory space to disrupt the development proposal. As will be established, the decision for this case is still pending at date of publication (November 2018).

### **3.3.4 HERITAGE LIST**

A significant provision within the context of the overall heritage management regime is section 65 relating to the purpose and functions of the NZ Heritage List, defined in s.65(3)(a-c) as:

- *to inform members of the public about historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas:*
- *to notify the owners of historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas, as needed, for the purposes of this Act:*
- *to be a source of information about historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas for the purposes of the Resource Management Act 1991.*

The list comprises of two categories described as Categories 1 and 2 below, but must also separately identify historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas (s.65(4)(b)).

The categories are of the characteristics detailed below:

- *Category 1: places of special or outstanding historical or cultural heritage significance or value;*
- *Category 2: places of historical or cultural heritage significance or value*

The criteria for inclusion on the list are defined in section 66 which identifies that any historic place or area can be entered on the Heritage NZ list provided that Heritage New Zealand is satisfied that:

*the place or area has aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, technological, or traditional significance or value.*

Section 66(5)(a-c) identifies that Wāhi tupuna can be entered onto the list provided the following criteria is satisfied:

- *has strong traditional associations with 1 or more ancestors significant to an iwi or a hapū; and*
- *is integral to the identity or cultural well-being of the iwi or hapū; and*
- *is a distinct and cohesive place or area.*

Local authorities must have particular regard to Heritage New Zealand recommendations in respect of historic areas and wāhi tapu under section 74, although in making a recommendation to a local authority Heritage New Zealand must recognise the interest of the owner of the subject area or wāhi tapu, thus alluding to the private/ public ownership tension.

Section 75 relates expressly to wāhi tapu that are entered on the Heritage New Zealand List. In the event that applications are submitted that affect a wāhi tapu, then Heritage New Zealand is required to refer such applications to the Māori heritage council and consult with interested parties including the appropriate iwi or hapū. The Māori heritage council is then compelled to make comment or recommendations back to Heritage New Zealand within a 15 working day statutory timeframe.

With regard to the effectiveness of the NZ Heritage list, Heritage New Zealand undertakes systematic reviews of local authority planning instruments against defined performance standards. As shown in figure Table 3-1 below one such review identified deficiencies in implementing the protections afforded by the list.

Of consequence to this research is the fact that one quarter of wāhi tapu and wāhi tapu areas that are scheduled on the list are not represented in the district plan schedules. The implications of this are an elevated level of risk for those features in terms of not being identified and provided for in decision making processes. Therefore, this limits awareness of these unscheduled areas by the general public, which can lead to unintentional damage and

destruction, as well as adversarial relationships upon the public discovering an obligation to consult.

Table 3-1: Heritage List Features protected in District Plan Schedules (Source:(Heritage New Zealand, 2015) )

Performance standard	2011	2012	2013
A heritage schedule that contains all NZ Heritage List entries	21 %	32 %	34 %
Demolition of scheduled heritage as non-complying activity for at least high-ranked items	43 %	56 %	67 %
Destruction of scheduled Māori heritage as non-complying activity for at least high-ranked items	9 %	17 %	25 %
Regulatory incentives for retention of heritage	28 %	32%	49 %

### 3.4 OTHER HERITAGE RELATED LEGISLATION

Other Acts have legislative roles within the heritage management regime, including the Conservation Act 1987 and the Reserves Act 1977 as discussed below. Although they are of significance within the heritage regime, they have less direct relevance to this research, therefore only the key elements are briefly mentioned below.

Both the Conservation Act and the Reserves Act utilise management plan mechanisms as their means to provide the framework for the management of the heritage assets and reserves, although the Conservation Act incorporates the use of a Conservation Management Strategy plan as well [s.17 (d-e)]. In terms of protective measures enabled within the Conservation Act, section 18 provides for additional protective powers over specific sites and areas, whereas other mechanisms such as Covenants [s.27], Ngā Whenua Rāhui kawenata [s.27.A] and management agreements [s.29] provide other means for protection.

The Reserves Act 1977 provides for ‘protecting and preserving in perpetuity such places, objects, and natural features which are of historic, archaeological, cultural, educational, and other special interest’ [18(1)]. Furthermore, the Act also ensures that public entry and access is provided to such areas subject to conditions. Of note is the reference to the need to preserve ‘structures, objects and sites that illustrate with integrity the history of New Zealand’. In consideration of the role of the authorised heritage discourse in New Zealand the question becomes what are such features and how are they afforded such value?

The issue of heritage features being located on private land is addressed in section 76, which allows for private land owners to apply to the Minister for a ‘declaration of protected private land’ provided the land ‘possesses such qualities of ...historic, cultural, archaeological’ interest that protection is desirable in the public interest’ [s.76(1-2)]. Corresponding provisions enable the establishment of conservation covenants over land to be managed to ‘preserve the...historical value...without acquiring the ownership of the land’ [s.77]. With regards to Māori land, or Crown land held under a Crown lease by Māori, a Ngā Whenua Rāhui kawenata can be utilised which acknowledges the spiritual and cultural values which Māori associate with the land [s.77(a)]. [s.77(a)(1)(a)(ii)].

Again, there are arguably enough tools and mechanisms to ensure enhanced protection of Māori cultural heritage through the instruments of the Conservation Act 1987 and the Reserves Act 1977. What it comes down to though is the extent to which such provisions are implemented. However, the use of management plans provides a statutory framework for engagement with Māori interests, and therefore there is potentially an enhanced opportunity of such tools to express Māori values such as Kaitiakitanga, provided genuine engagement is undertaken.

### **3.5 CONCLUSION**

The diversity of legislative mechanisms and frameworks has also created a number of tensions within the framework that threatens the functionality of the regime and thus, threatens the protection of heritage features. Correspondingly a primary critique is the lack of integration between administering bodies. In a tangible sense this is evidenced by Heritage New Zealand setting priorities and guidelines to enhance the protection of heritage, yet it is the relevant territorial authorities that must develop compatible frameworks within their regional and district planning instruments. The implications of this disconnect are represented in the table below which lists various performance standards advocated by Heritage New Zealand for planning instruments to adopt.

Table 3-2: Percentage of district plans that meet Heritage New Zealand Defined Standards (Source: (Heritage New Zealand, 2015))

Category	Total entered on NZ Heritage List	Number of NZ Heritage List entries scheduled in plans	Number of NZ Heritage List entries not scheduled	Percentage of NZ Heritage List entries scheduled
Total individually entered NZ Heritage List sites/areas	5,724	5,005	719	87 %
Archaeological sites	c 1,000	c 600	415	c 60%
Total individually entered NZ Heritage List sites/areas excluding Category 2 archaeological sites	c 4,700	c 4,400	304	c 95 %
Category 1 historic places	1,003	984	19	97 %
Category 2 historic places	c 3,400	c 3,208	192	94 %
Wahi tapu and wahi tapu areas	166	125	41	75 %
Historic areas	127	88	39	69 %

Although progress can be observed over the duration of data collection, the above table still identifies a lack of synergy between the aspirational and operational goals of Heritage New Zealand, and the implementation of such criteria by territorial authorities. This table is also not representative of the heritage contained within the conservation estate, which is obviously significant. The relationship between archaeological values and Māori values is a further area of tension within the heritage management regime. The list is a means to identify and protect sites of significance, but the sites are effectively nominated on the grounds that they are significant archaeologically and conform to dominant heritage characteristics as supported by the authorised heritage discourse. Thus, from a Māori point of view, given that such definitions of value may not correspond to Māori conceptualisations of value, the question to ask is to whom are these sites of value significant? Correspondingly, overall there is higher levels of prioritisation in regulatory terms given to scheduled historic buildings in comparison with historic sites and Māori heritage features. Some district plans adopt rules mainly relating to modification or archaeological sites or Māori built heritage, as opposed to other significant features.

The fact remains that 75% of district plans do not provide adequate provisions for Māori Heritage protection, in effect implying a statutory presumption permissive of modification as of right. This should not be the case. Correspondingly, Heritage New Zealand has stated that:

*The level of protection of Māori heritage in district plans is clearly unacceptable. There is no reason why scheduled Māori heritage should not have regulatory provisions comparable to scheduled heritage buildings. In fact, the principles of the Treaty of Waitangi promote adequate and equivalent protection for Māori heritage. (Heritage New Zealand, 2015:30)*

The lack of a strategic planning approach to all heritage is a further tension, whereby all heritage is incorporated into a system that ultimately serves to enhance, protect and preserve heritage. Perhaps one approach would be to establish a National Policy Statement for heritage establishing set criteria of a nature similar to Heritage New Zealand's performance standards, that territorial authorities, and the Department of Conservation are compelled to implement.

The focus of this research now shifts to defining the context for the two context specific case studies where these tensions, amongst other contributing factors are expressed.

## 4 ‘LEGACY OF HARM’

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The following chapter details two case studies that have been selected as current representations of the challenges facing Māori communities in their efforts to protect their cultural heritage and participate in decision making processes within their traditional territories. The relevance of these sites to my research is firstly, that they embody some of the wider issues of power within the heritage management regime. Secondly, I argue that these contact zones are examples where context specific participatory approaches, in some cases insurgent, can realise some degree of change for Māori heritage interests.

The first case study is that of Te Ihu o Mataoho ancestral landscape, on the Ihumātao Peninsula which borders onto the Manukau Harbour. This landscape represents a complex interface between development pressures associated with housing, industrial growth, an expanding international Airport and its cumulative impacts on Māori cultural heritage. Tribal affiliations with the wider peninsula are recognised with Ngāi Tai, Ngāti Tamaoho, Te Ahiwaru - Waiohua, Te Ākitai Waiohua, Ngāti Whanaunga, Te Kawerau ā Maki, Ngāti Whātua Ōrākei, Ngāti Tamaterā, Ngāti Te Ata, Ngāti Maru, Waikato – Tainui (Auckland Council, 2018d).

The second ancestral landscape to be considered is Te Wao Nui a Tiriwa, which generally corresponds to the extents of the Waitākere Forest Ranges. Tribal authority over this area is retained by Te Kawerau ā Maki and Ngāti Whātua Ōrākei. As with other areas in Aotearoa, Te Wao Nui a Tiriwa is subject to an environmental crisis called the Kauri dieback disease, which threatens the species and arguably the forest with extinction. Mana whenua have sought to participate within the framework of the management response, however, they have effectively been excluded, despite having statutory provisions that support their engagement. It is this aspect, and their subsequent response that is one focus of my current research attention.

Structurally, this chapter will be split into two distinct zones of ‘contact’, with initial analysis focused upon understanding the geographical contexts of each area and then shifting to evaluation of the multiple layers of significance of the ancestral landscape of each. The narrative will draw upon historical details derived from personal communications, digitised newspaper articles from the mid 1800’s and various online articles and reports. In doing so I

intend to expose the legacy of harm that has been imposed upon the landscape and people of Ihumātao, as well as the exclusion of mana whenua from acting as kaitiaki in formal governance structures of Te Wao Nui a Tiriwa.

#### **4.1 ANCESTRAL LANDSCAPE**

Tamaki Makaurau is the Māori name for Auckland City, which translates to Tamaki desired by many. The city is an ethnically and culturally diverse city which is home to over 120 ethnicities (Auckland Council, 2018b) and a 2016 population base of 1.6 million. Population forecasts for Auckland anticipate a population in the order of 2.0 million within the next decade. The scale of anticipated growth is forecast to require 440,000 new residential dwellings to meet the demand over the next 20 years.

Tamaki Makaurau is unique for its geological significance with its landscapes being dominated by over 50 separate volcanoes, known in a contemporary sense as the Auckland Volcanic field (GEONET, 2018). Many of these volcanoes are contained within a radius of 20km centred on Auckland city centre (GNS, 2018). Correspondingly, an 8000ha network of volcanic stone fields once littered the landscape, as recently as 200 years ago.

The Ihumātao Peninsula on the fringes of the Manukau Harbour, contains the remnants of one such stonefield, the Otuataua Stonefields Historic Reserve (Otuataua Stonefields Historic Reserve). The Otuataua Stonefields Historic Reserve has been described as a ‘physical expression of a unique convergence of ecological, geological and cultural values’. As alluded to, this significant geological landscape is also a constituent part of a significant ancestral landscape ‘connected to the earliest of times’ and is associated with Mataoho, the deity of earthquakes and volcanoes (TKITA, 2016:12). Oral traditions have identified that:

*Te Pane a Mataoho (Mangere Mountain) is the head of Mataoho, Te Ihu o Mataoho (Ellet's Mount, and the area misspelt today as 'Ihumatao') is the nose, and Mangere Lagoon and Kohuora and Pukaki Craters are Ngā Tapuwae a Mataoho – the footsteps of Mataoho. Te Kapua Kai a Mataoho (Mt Eden Crater) is the food bowl of Mataoho. (Ibid,12)*

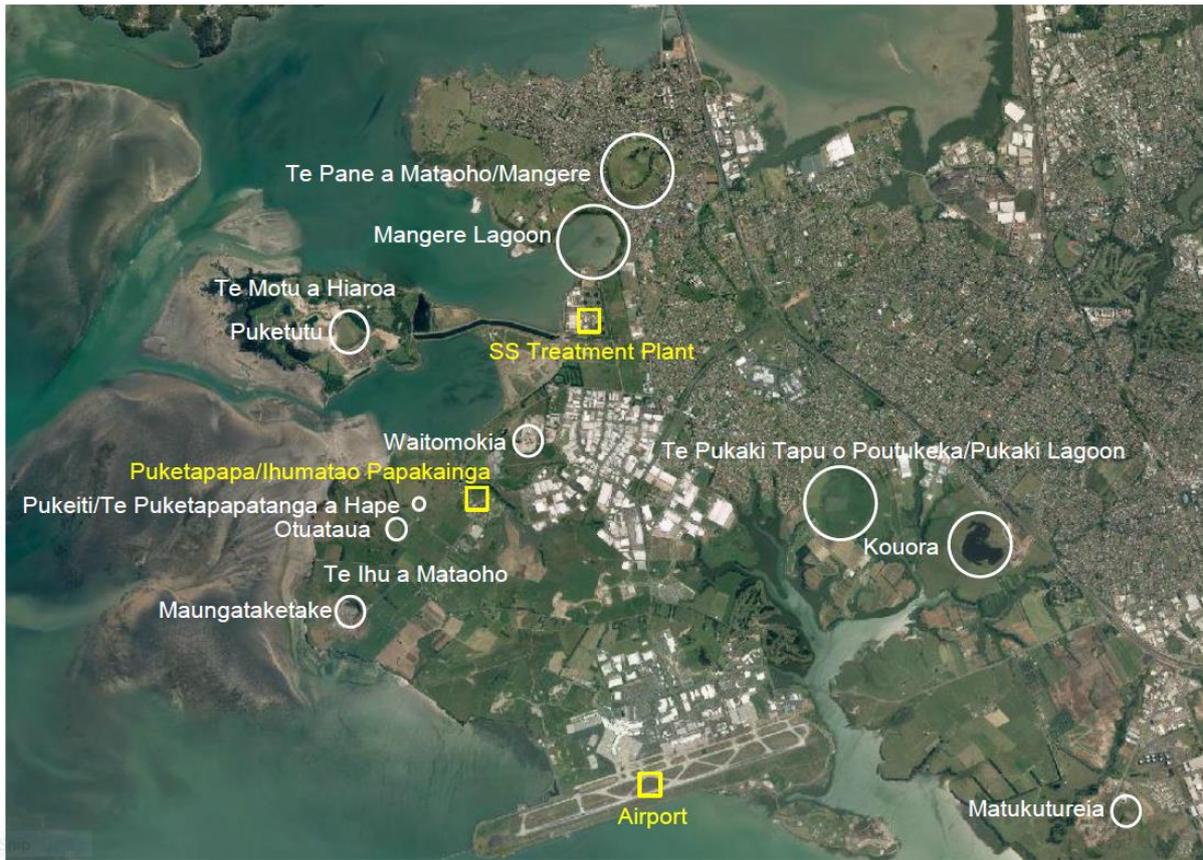


Figure 4-A Te Ihu a Mataoho Ancestral Landscape (Source: (TKITA, 2016:10))

The principal hapū associated with the Makaurau marae at Ihumātao/Puketapapa Kainga are Te Ahi Waru and Te Ākitai of the Waiohua iwi. These hapū affiliate with the Waikato-Tainui confederation as does Te Kawerau ā Maki who also exert influence over the peninsula through whakapapa and historic associations. Evidence confirms that Ihumātao was extensively occupied and cultivated, with carbon dating from the area verifying links to the 12<sup>th</sup> century, thus being one of the earliest dates for human occupation in Aotearoa New Zealand.

Correspondingly, the area adjoining and contained within the Otuataua Stonefields Historic Reserve, includes documented and undocumented wāhi tapu including springs, lava tunnel entrances and urupa (TKITA, 2016). Other features comprise of stone and earthwork structures that formed the basis for their garden arrangements are spread across the predominantly rocky site. Furthermore, the site contains remnants of whare and rua, situated on rock retained terraces and flat areas. Thus, from a geo-heritage perspective, Ihumātao is significant due to the area demonstrating a wide range of human activities ‘responding to and shaped by the underlying volcanic landscape’ (Gravis et al., 2017:384). Such interactions

include the modifying of topography, and intensive use of the volcanic soils and materials, including the network of drystone walls throughout the site built from in-situ lava deposits.

Consequently, this localised part of the Ihumātao peninsula is of significance for cultural, geological, archaeological and historical reasons. Regardless, this area is under significant development pressure, which threatens the remaining cultural heritage and therefore the identity of the tangata whenua of the area. In a wider sense, the whole ancestral landscape of Te Ihu o Mataoho is threatened by the incremental loss and subsequent cumulative effects on the area. Given the legacy of harm revealed below, this research will subsequently evaluate the participatory responses to the current pressures, and how this legacy has shaped such responses.

#### ***4.1.1 RAUPATU***

A series of incidents has led to this wider cultural and physical landscape being stressed and degraded at various scales. Whilst Ihumātao is not unique in this respect it has been somewhat concentrated and sustained in this locality and has led to what is arguably a legacy of cultural harm on the peninsula. Some of the primary incidents along this timeline are now detailed below as a means to understand the scale of pressure the landscape and tangata whenua have endured and responded to.

The people of Ihumātao share whakapapa with the first Māori king, Pōtatau Te Wherowhero, and therefore were intrinsically aligned with the Kīngitanga movement of the mid nineteenth century. The colonial government perceived the Kīngitanga to be a potential threat to the Crown's sovereign rule of Aotearoa. Inevitably, on the 9th July 1863, amidst a 'mounting climate of mistrust and suspicion' (Waitangi Tribunal, 2006:193), Governor George Grey issued a proclamation forcing the tangata whenua of Ihumātao and other areas to take an 'Oath of Allegiance to Her Majesty the Queen'. The proclamation afforded protection to those who complied, whereas those who did not were subject to being forcefully 'ejected' from their tribal territories to 'retire to Waikato, beyond Mangatawhiri'.



#### NOTICE

*To the Natives of Mangere, Pukaki, Ihumatao, Te Kirikiri, Patumahoe, Pokeno, and Tuakau.*

ALL Persons of the Native Race living in the Manukau District, and the Waikato frontier, are hereby required immediately to take the Oath of Allegiance to Her Majesty the Queen, and to give up their Arms to an Officer appointed by Government for that purpose. Natives who comply with this order will be protected.

Natives refusing to do so are hereby warned forthwith to leave the District aforesaid, and retire to Waikato, beyond Mangatawhiri.

In case of their not complying with this Order, they will be ejected.

By His Excellency's Order.

Auckland,  
July 9th, 1863.

#### PANUITANGA

*Ki nga tangata Maori o Mangere, o Pukaki, o Ihumatao, o Te Kirikiri, o Patumahoe, o Pokeno, o Tuakau.*

KO nga Tangata Maori katoa e noho aua ki te Takiwa ki Manukau, ki nga wahi e tata ana ki Waikato, me whakakua, me tuhituhi o ratou ingoa ki te Oati piri ki Te Kuini inaianei ano; a me tuku mai a ratou patu ki te Apiha ka whakaritea e te Kawanatanga mo taua mea. Ko nga tangata Maori e rongono ana ki tenei kupu ka tiakina paitia.

Ko nga tangata e whakakahore ana, kaore e whakaae ki tenei, me haere atu i aua Takiwa, me hoki atu ki Waikato, ki tera taha o Mangatawhiri. Ki te kore ratou e rongono ki tenei, ka tonoa atu ratou kia haere.

Na Te Kawana i mea.

Akarana,  
Hurae 9, 1863.

Figure 4-B Governor Greys Oath of Allegiance Proclamation 1863 (Source- (Papers Past, 1863a))

Consequently, the tangata whenua of Ihumātao left their tribal territories en-masse. Very quickly, war broke out in the Waikato, with initially 1.2 million acres of land being confiscated within the Waikato rohe, including 1100 acres at Ihumātao. The confiscated land included Te Ihu a Mataoho. Within a couple of weeks of the outbreak of war, the landscape was being offered to settlers to graze their cattle.



## NOTICE.

ANY settlers driven from their farms by the war, who are desirous of running cattle on the Native Reserves at Mangere, Pukaki, and Ihumatao, are requested to make immediate application at the Native Office, stating the number of cattle which they wish to run.

H. HALSE.

Native Office,  
Auckland, July 29, 1863.

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Figure 4-C Notice advertising Raupatu lands to Farmers (Source- (Papers Past, 1863b))

Within the following three years the land reverted into private ownership by way of a land grant to Gavin S Wallace, whose family had retained the land until the most recent purchase which facilitated the contested SHA62 development, as discussed below. As a consequence of raupatu, the tangata whenua of the area now retain just 0.671 hectares of their original domain as Māori Reservation Land (Kaiāwhina C).

It is clear that subsequent transfer of the subject land into private ownership has resulted in significant loss for the tangata whenua, including loss of access to ancestral landscapes and associated practices. Loss not only facilitated a shift of land management methods to farming practices brought from the British Isles, but also a shift towards more unsympathetic and destructive land uses such as resource extraction operations. This shift marked a significant change in the tangata whenua relationship with their traditional lands, one that has never recovered. As will be established, extraction was a particularly damaging process in terms of the cultural heritage and wider mauri of the ancestral landscape and people.

### **4.1.2 EXTRACTIVE WORKS**

Extensive quarrying of the maunga within Te Ihu o Mataoho has occurred since the 1950's with the aggregate has being utilised as base materials for Auckland's urban infrastructure such as roading, house foundations and the adjoining airport. Ashby (2018b:11) describes in this regard how 'in the past 100 years, of the 7 volcanic cones that existed at Ihumātao and Puketutu Island, only 3 remain, and even these have been heavily modified'.



*Figure 4-D Maungataketake before quarrying circa 1937 (Source-,(Aoterarocks, 2018)*



*Figure 4-E Maungataketake after quarrying (Source: Google maps, accessed 30/10/18.)*

The social and cultural impact of these extraction activities has been immense as expressed by Kaiāwhina C who described how the quarrying of the ancestral maunga has been a source of inter-generational *mamae* which still lingers within the consciousness of some descendants of the area. Unfortunately, these cultural impacts were not isolated to just their maunga. At the same time, their traditional relationship with the adjoining Manukau Harbour was being challenged by way of a mass scale sewerage system to be constructed over their traditional *mahinga kai*, desecrating their traditional food resources.

### **4.1.3 SEWERAGE PURIFICATION WORKS**

In the 1960s the Auckland Metropolitan Drainage Board undertook a development project for the disposal of Auckland sewage and trade wastes into the Manukau Harbour, using a system of oxidation ponds situated over a substantial area of harbour bed. At the time this was the largest oxidation pond system in the world. The location for the works corresponded to a traditional mahinga kai of the people of the Puketāpapa kainga, comprised of extensive oyster and scallop beds (Waitangi Tribunal, 1985).

In total the treatment plant and associated oxidation ponds occupied 720 hectares, resulting in the closure of Oruarangi and Waitamakoā Creeks. The Manukau Report found that these actions led to the loss of direct access to the Oruarangi Creek, the Manukau harbour and ‘the whole of their traditional food resource’ (Ibid,25). Adding insult to injury, as well as living with the nuisance effects associated with the stench of the ponds, the papakāinga had to wait for two decades after commissioning to be connected to the system occupying their traditional whenua, whanga, awa and mahinga kai. This was not the case for immediately adjoining European owners, who were connected much earlier.

After 40 years of operation, the ponds were eventually decommissioned amidst rising public pressure and aging infrastructure. At the time, the then Mayor stated in reference to the establishment of the ponds that:

*Sadly, promises made to iwi at the time were not honoured. Their lifestyle was affected substantially and for over forty years they have had to endure nauseous smells and swarms of midgies from the ponds. Fortunately, that will soon be a thing of the past (Scoop, 2001)*

It is hard to comprehend the impact of such works on the wellbeing of the mana whenua in the area, however the decommissioning signified a period of regeneration for the coastal surrounds, the Oruarangi Awa and the people of Ihumātao, at least for a short period of time.

### **4.1.4 ORUARANGI AWA CONTAMINATION**

As noted above, the mauri of the Oruarangi Creek was significantly degraded with the sewage purification works and associated closure. After decommissioning locals observed that ‘we started to see kaimoana return to our pataka kai, ...seafood was coming back into our pantry, which was the moana’ (Kaiāwhina C). However, in 2013 an industrial incident occurred which desecrated the regenerating ecosystem. One thousand litres of methyl violet

dye overflowed from an industrial property into the creek and ‘travelled throughout 900m of freshwater and intertidal zone, approximately 3.5km of estuarine environment, and was still visible several hundred metres into the harbour’ (NZ Herald, 2015). The spill was to have ‘calamitous’ effects on the awa, particularly on ‘the “healthy and abundant” freshwater fish and eel population, dominated by short fin eels and inanga as well as some long-fin eels and banded kokopu’ (Ibid). In terms of damage, up to 400 eels ‘may have been killed’ as well as ‘drastically’ affecting the oyster beds in the area and resulting in a fishing ban in the area for a number of months (Ibid).

The offending company was eventually charged and fined \$103,000 for causing accidental environmental harm. Perhaps it is no surprise that various descendants of the area have sought ways to engage with the Crown and Council to disrupt the status quo. As will be established, this lineage of resistance has arisen in response to numerous injustices that have affected the mana whenua of Ihumātao peninsula.

#### ***4.1.5 MĀNGERE GATEWAY AREA***

In 2007 the Manukau City Council sought to designate the land adjoining the remaining Otuataua Stonefields Reserve for a public open space and preservation of the landscape, in anticipation of a wider and strategic Māngere Gateway Heritage Project. Doing so would protect the Otuataua Stonefields Historic Reserve and adjoining land parcels from further incremental destruction and preserve the area on behalf of the wider community. A proposed heritage trail, revitalisation of the Māngere township and construction of a heritage visitor centre at the Otuataua Stonefields made up the primary design elements. Conceptual design was well advanced for the heritage centre as shown in Figure 4-F signalling the advanced intentions of the project proponents.



Figure 4-F Otutata Visitor Centre Concept Plan (Source: <http://crosson.co.nz/otutata-heritage-centre-otutata/> (accessed 10 October 2018))

However, the land needed to be designated, and this was pursued by way of plan change 14 within the proposed unitary plan notification process. The plan change sought to limit the extension of the Metropolitan Urban Limits (MUL), therefore protecting the sensitive Ihumātao land from intensified residential activities. However, several appeals were brought by the owners of the raupatu land immediately adjoining the Stonefields (*Gavin H Wallace Ltd & Ors v Auckland Council* [2012] NZEnvC 120). The subsequent ‘Wallace decision’ overturned planning decisions by the Manukau City Council and the Auckland Regional Council ‘to not extend the MUL west of Oruarangi Road and to apply a notice of requirement over the appellants’ land for open space and landscape protection purposes. The implications of this decision facilitated intensive residential development of the Wallace block as of right.

In response the newly formed Auckland Council, Makaurau Marae and Te Kawerau Iwi Tribal Authority opposed the appeal and pursued the notice of requirement, ultimately opposing urban development of the subject land. However, in June 2012 the Environment Court cancelled the notice of requirement and compelled the Auckland Council to zone the land as a future development zone. Correspondingly, the Court suggested that a notice of requirement was not necessary to achieve the Council’s objectives and that a structure plan could be utilised to protect the features of significance within the area. Consequently, the Wallace decision in effect prioritised private property rights, residential development and economic values over recognised cultural, archaeological and heritage values and took limited to no account of the potential cumulative effects of doing so. The Court made clear the dominating paradigm in the statement that:

*To lock up the land might indeed provide for Māori and heritage values. But it would not provide for the economic needs and wellbeing of the owners.*

*(Gavin H Wallace & Ors v the Auckland Council [2012] NZEnvC 120,[128])*

Inevitably, the Wallace family land was sold off for a high-density residential development thus signalling another challenge for the people of Ihumātao and the wider ancestral landscape. Correspondingly, the resultant Special Housing Area 62 is one of the case studies that I will evaluate in subsequent chapters, but first some background to set the context.

## **4.2 SPECIAL HOUSING AREA 62**

As alluded to previously, Auckland city has for some time been facing significant developmental challenges with housing the existing population base, as well as accommodating future growth forecasts. This situation is also evident in other cities and regions within Aotearoa New Zealand. As a response the previous National government implemented the Housing Accord and Special Housing Areas Accord Act 2013 (the Act) to attempt to address such pressures. The purpose of the Act is to enhance housing affordability by facilitating an increase in land and housing supply in certain identified regions or districts, identified as having housing supply and affordability issues (s. 4).

### **4.2.1 THE AUCKLAND HOUSING ACCORD**

The Housing Accord between the Auckland Council and the government resulted in the designation of over 150 special housing areas within the Auckland Council territorial limits. Special Housing Area 62 was designated for the Ihumātao area, specifically, the land comprised in the former Wallace block and portions of land on the slopes of Pukeiti and Puketapapa as depicted in Figure 4-G below.

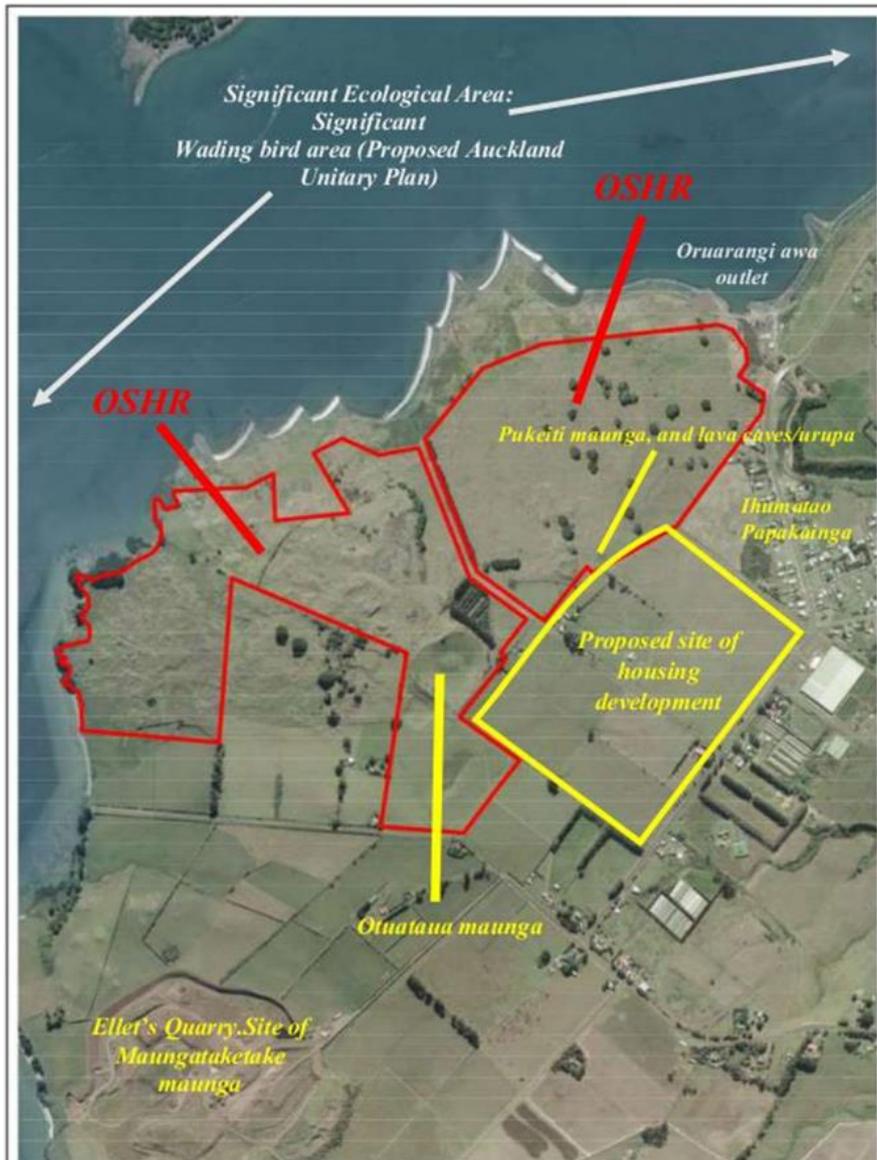


Figure 4-G Special Housing Area 62 Location Plan (Source: Manukau City Council)

A defining feature of the Act is that it enables the fast tracking and bundling of consent and plan change processes to bring to market land ready for development quickly. It is a permissive process and significantly, it limits the invited participatory spaces available to the wider public. In this instance it also limited consultation opportunities for some tangata whenua of the area. Consequently, some community viewpoints are formally excluded from participating in the decision-making process. As a result, the designation of Special Housing Area 62 has been strongly contested by some networks of community members, including tangata whenua of Ihumātao.

#### **4.2.2 THE ORUARANGI ROAD DECISION**

On the 18 May 2016 the Auckland Council Hearing Commissioners approved the development and associated consents under the Housing Accords and Special Housing Areas Act 2013. The decision itself is interesting in that it discusses a wide range of issues including their weighted assessment of the archaeological values, cultural values and associated supporting evidence. Of further interest is the role that the developer's archaeologists played in limiting their need to undertake baseline surveys, and the corresponding weight given to their evidence and mitigation measures. As will be discussed in chapter six, reference was also made to the 'mandated' mana whenua interests, and the influence that their participation and evidence had in reaching a favourable decision for the development interests.

#### **4.2.3 IMPACT ON HERITAGE**

Archaeological experts agreed that Special Housing Area 62 'will significantly alter the nature of the property and its heritage landscape, and that it will have more than minor effects on historic heritage' (Council, 2016:26). However, the extent to which significant cultural heritage features existed within the site was contested. As a baseline though, Māori heritage elements associated with the subject property were defined (Council, 2016:11) as:

*(a) maunga/stonefields. The lower slopes of the volcanic cones are inside the project area, but the main craters and archaeological features associated with those sites are located in the Otuaataua Stonefields Historic Reserve neighbouring the project area. No archaeological remains associated with the volcanic elements extending into the SHA were identified (with the exception of portions of the recorded burial caves);*

*(b) Midden located in the southern corner of the property (R11/2997);*

*(c) Burial caves near the craters on the northern side of the property (R11/2999).*

*European features of historical significance were identified as:*

*(a) The 1867 Wallace homestead site, including some farm buildings and heritage trees (R11/2998, CHI 14156)*

*(b) 1920s 'Kintyre', the second Wallace homestead (CHI 19489) located on the corner of Oruarangi Road and Ihumatao Quarry Road*

*(c) Stone walls comprised of more than 2.5 kilometers of stone walls of varying conditions (R11/3000)*

*(d) Drainage features (part of R11/3000) potentially present at subsurface level*

*(e) Farm features such as water troughs and buildings*

*(f) Trees and other planting associated with the homesteads and the walls.*

*(g) The road alignment which has historical significance as a long-established boundary and through road*

Mitigation measures proposed to create a buffer zone around the toe of the maunga as well as: ‘protect the burial caves, the lower slopes of the nearby volcanic cone pā, the first Wallace homestead site, a pohutukawa tree, and some of the stone walls’(Ibid,12). Surprisingly, the only features acknowledged to be directly destroyed, as presented by Fletchers were a single midden, stone walls and drainage elements. Supporting mitigation measures proposed by Fletchers do not reference cultural matters, although included:

*development of a discovery protocol, a reserve management plan, a protective covenant for Kintyre, restoring and repairing the stonewalls where feasible, archaeological investigations and recording to recover information relating to the history of the area and providing public amenities (Ibid,12).*

As it currently stands SHA62 will proceed as of right, despite the development still being contested by parts of the community in various formal and informal arena. In effect, the SHA 62 decision is another consented and Council approved encroachment of intensive urban development into significant ancestral landscapes. The cumulative effects of this in a holistic sense are a further diminishment of the mauri of the landscape and therefore the identity of the mana whenua. Consequently, it appears that the existing statutory provisions, indeed heritage regime, is ineffective in protection of Māori cultural heritage. In any case, this SHA62 process is evidence that special legislation that prioritises development and economic values over environmental, cultural and arguably social values too, can be imposed irrespective of statutory protections for Māori, heritage and participatory spaces. This is of concern given the Crowns and Councils obligations under the Treaty of Waitangi. So, to make sense of this, this research will evaluate what constraints exist within the current heritage regime with a view to discerning alternative participatory approaches to limit and restrain such power-imbalances evident above. However, before that I need to present a further instance of encroachment of infrastructure pressures upon Te Ihu o Mataoho to further demonstrate the scale of pressure this ancestral landscape is under. In this instance the effectiveness of the participatory spaces offered to mana whenua are telling in their expression of the wider power issues in heritage. The following detail will provide the basis

for evaluation of divergent Māori responses to these two development proposals within Te Ihu a Mataoho, undertaken in chapters 6 and 7.

### 4.3 SECOND AIRPORT RUNWAY UPGRADE

The Auckland International Airport Ltd is also located within the Ihumātao peninsula and is thus contained within the Te Ihu o Mataoho ancestral landscape. As a method of strategic planning the Auckland International Airport Ltd has developed three masterplans over the years, the most recent in 2014. Existing designations and resource consents are in place to implement the plans, with some preliminary work already being undertaken in stages.

In 2009 preliminary earthworks for this runway uncovered an urupa in a location that tangata whenua had specifically identified as a cultural site of significance. However, archaeologists representing the interests of the Auckland International Airport Ltd offered conflicting advice, which resulted in mana whenua assertions being ignored. Kaiāwhina C relates this interaction below:

*we told them that there was a 600yr old urupa site in the path-plan for that runway. They ignored us. They said there wasn't any scientific evidence. Through that development they unearthed eighty-seven human remains.*

*Our ancestors unearthed.*

*Put into a sack.*

*Left in a container for two years and [then] they were returned to us to bury somewhere else.'*

The size and scale of the second runway has now changed which requires changes to the existing conditions of designation. The scope of the changes relate to an extension of the second runway by an extra 40% increase in length. A summary cultural values assessment report prepared on behalf of the Auckland International Airport Limited acknowledged that the cultural values assessments prepared by the four iwi 'do not support the development of the proposed second runway' and that the 'possibility of significant cultural effect through wāhi tapu being disturbed in the northern location is considerable' (Chetham Consulting Ltd, 2015:9). A statement of evidence submitted within the process on behalf of Te Kawerau ā Maki asserted that

*AIAL's failure to undertake in situ research to establish baseline information, before destruction, makes it difficult to assess likely impacts, avoidance and mitigation strategies. This can be contrasted with AIAL's methodology to obtain and assess baseline data on ecology, hydrology, and geology/soils.*

*Failure to take reasonable steps to assess in situ Māori wāhi tapu, means that this proposal should be declined, because of the likelihood of destruction of values of national importance. (Ashby, 2018b:15)*

When you consider the wider context of power, and the incremental yet sustained damage to sites of Māori significance within this landscape, this statement is revealing. The evidence suggests that this participatory process is a further depiction of a dominant western paradigm of ownership and economic interests over cultural associations, values and heritage. The inequity in the process reinforces the intergenerational *mamae*, mistrust and suspicion of the role of decision makers, especially in matters regarding the protection of cultural heritage within traditional territories. It also challenges the place Māori have in society as treaty partners, and the value that the Crown, local authorities and state-owned companies place on the statutory protection for Māori and their relationship with their *taonga*. Thus, it brings into question the legitimacy of participatory frameworks that are intended to support Māori cultural heritage protection, as well as confronts the legitimacy of governing institutions.

The purpose of the previous subsection which discussed the legacy of cultural harm within Te Ihu o Mataohoi intended to convey a body of evidence that points to the systematic disregard of the relationship of *tangata whenua* with their traditional territories, associations and practices. In doing so it provides the basis for the evaluation of *tangata whenua* responses to these instances within participatory spaces. Regrettably, in a similar vein to the above, the following section describes another situation where *tangata whenua* are excluded from participatory processes to the detriment of their recognised *taonga* and ancestral landscape. However, this instance not only affects the cultural heritage of the *tangata whenua*, but arguably also imposes upon the heritage and rights of New Zealand society in general.

#### **4.4 TE WAO NUI A TIRIWA**

The second ancestral landscape examined in this research is Te Waonui a Tiriwa, or the great forest of Tiriwa, which generally corresponds to the forested area of the Waitākere Ranges. This area is part of the tribal rohe of Te Kawerau ā Maki and Ngāti Whatua as recognised in statute by the Te Kawerau ā Maki Claims Settlement Act (2015) and the Waitākere Ranges Heritage Area Act (2008).

The contemporary footprint of Te Wao Nui a Tiriwa is fragmented by various tenure arrangements including private land, conservation estate, lands managed as reserves by the Auckland Council and the Waitākere Ranges Regional Park. The forest has been declared as

‘the spiritual heartland of Te Kawerau ā Maki and is central to their identity and wellbeing’ (Ashby, 2018a:3). In recognition of the significant natural and cultural heritage of the forest, the then Waitākere City Council and Te Kawerau ā Maki advocated for Central Government to provide statutory protection over the forest resulting in the subsequent establishment of the Waitākere Ranges Heritage Area Act (2008). This act established the Waitākere Ranges heritage area and stated its ‘national significance’ (s.7(1))



Figure 4-H: Te Wao Nui a Tiriwa location plan (Source: Te Kawerau ā Maki Treaty Settlement)

The tangata whenua status of Te Kawerau ā Maki was recognised in this statute as was their ‘unique role as kaitiaki over the Waitākere Ranges’ (Ibid. 4). Section 29(1) acknowledged the ‘particular historical, traditional, cultural, or spiritual relationship of tangata whenua... with any land in the heritage area’. The purpose of the deed of acknowledgment identified that:

*(1) The only purpose of a deed of acknowledgement is to identify opportunities for contribution by tangata whenua to the management of the land concerned by the Crown or the local authority concerned (s.30(1))*

Thus, the statutory framework for tangata whenua engagement in the management of Te Wao Nui a Tiriwa has been enabled, although with the caveat, that the deed does not ‘have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of

any kind in relation to, any land referred to in the deed'. Regardless, in the ten years that the Waitākere Ranges Heritage Act 2008 has been in force, the deeds are yet to be given effect to.

The main issue confronting the Te Wao Nui a Tiriwa is the rapid spreading of the Kauri dieback disease that is threatening the indigenous Kauri population with extinction. For Te Kawerau ā Maki, Kauri are recognised as tupuna and as rangatira of the forest, with the kauri forest covering 2571 hectares of the recognised heritage area. Te Kawerau ā Maki tikanga links 17 other plant species to kauri. Therefore, it is of collective concern that within a three-year period the number of kauri infected with the disease more than doubled from 'eight per cent in 2013 to 19 per cent in 2016 (with a further five per cent showing signs of infection)' (Auckland Council, 2018c:10). Furthermore, the 2018 summary report states that:

- *of the 91 distinct areas of kauri forest greater than five hectares in size (ecologically significant), 53 areas are exhibiting symptoms of kauri dieback disease*
- *there is a close relationship between kauri dieback zones and their proximity to the track network, with 71 per cent of kauri dieback zones within 50 metres of a track*
- *all of the kauri forest within the heritage area is at very high risk of being infected by kauri dieback disease (Ibid, 10)*

Despite being the recognised mana whenua and kaitiaki of Te Wao Nui a Tiriwa, engagement between Te Kawerau ā Maki and the Crown regarding kauri dieback matters has been minimal. A more direct description is offered by Ashby who suggests that engagement 'has been lacking and inadequate at best or negligent and non-existent at worst, depending on which part of the Crown one focuses' (Ashby, 2018a:5). Evidence suggests that this lack of engagement has left Te Kawerau ā Maki disempowered and questioning their status as mana whenua, treaty partners and kaitiaki.

In order to protect the forest, the mana whenua initiated an alternative and somewhat radical approach to achieve protection of their ancestral landscape. As will be established in the next chapter, the approach they took was to adopt a cultural environmental management practice and transfer that knowledge to action through the mechanism of radical planning.

## 4.5 CHAPTER CONCLUSION

A small number of common themes are apparent throughout this chapter. First, the ancestral landscape of Te Ihu a Mataoho has been incrementally compromised, with corresponding damage to the mauri of the area and thus the identity values of the tangata whenua. The tools for this seemingly systematic desecration have been unsympathetic central and local government policies that have disassociated Māori with their traditional landscapes and cultural heritage practices. The mechanisms for this approach have been raupatu, individualisation of title, special legislation and acquisition by way of infrastructure designations and notice of requirements. In particular, the special housing area legislation has arguably superseded normative frameworks of participation and engagement in a national and international context. These dominating instruments have been consistently employed for over 150 years, and consequently the generations are still trying to fight the same fight their ancestors fought many generations ago. This is despite statutory frameworks such as the Resource Management Act, the Local Government Act, various Treaty settlements as well as international indigenous and heritage focused conventions providing for engagement, consideration and protection of Māori values.

With the above context now well established the following chapters will evaluate and discuss the many challenges referred to above through the lens of various Kaiāwhina who are 'close to the coalface' in terms of their professional backgrounds and operational roles. Initially I will pay attention to the themes evident in the wider heritage regime and subsequently will shift focus to the selected case studies. Evaluation will be in accordance with the parameters of the theoretical frameworks identified in figures Figure 1-B & Figure 1-C whilst also incorporating secondary data sources such as literature, caselaw and statutes for example.

## 5 ‘THERE’S A POWER PLAY BETWEEN TWO DIFFERENT PARADIGMS’

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This current chapter discusses the overarching factors that were raised during the research that have a bearing on Māori interests within the heritage management framework. Initial analysis will focus on the wider concept of heritage as a means to identify the effect that has on valuing Māori heritage. Subsequently, this chapter will shift to considering the effectiveness of the wider heritage framework for protecting Māori heritage, and then the multiple expressions of power within it. Part two of this chapter relates to findings regarding the nature and effectiveness of the various participatory mechanisms that heritage practitioners are using. By structuring the chapter in this manner, I hope to initially convey some of the wider issues that will subsequently provide some context for the two detailed case study examples in chapters six and seven. Furthermore, this chapter will directly address two of the four main research objectives as stated below:

- *Evaluation of the characteristics of Aotearoa New Zealand’s Heritage Management Regime that impact upon Māori heritage protection*
- *Identification of the most common participatory mechanisms that are utilised and evaluation of the extent to which they are currently effective in the protection of Māori Heritage?*

### 5.1 CONCEPTUALISATION OF HERITAGE

Fundamentally, if we want to protect Māori heritage, we need to understand what it is and why it is worth protecting. In this respect, Kaiāwhina conveyed the extent to which heritage dissonance is prevalent (Loulanski, 2006), in their divergent descriptions of what heritage is and the multitude of complexities within the heritage sector. Multiple Kaiāwhina suggested that traces of the Authorised Heritage Discourse dominate the conceptualisation of heritage in New Zealand, and in doing so privileges and excludes certain forms of heritage.

Kaiāwhina responses suggest that Māori heritage appears to only be valued by decision makers in planning and heritage frameworks if it has associated archaeological properties and significance. The statutory framework under the Heritage New Zealand Pouhere Taonga Act

reinforces this by only protecting as of right pre-1900 heritage, thus conceptually situating valued heritage in the distant past. This applies to Māori heritage also in that it constrains concepts of Māori heritage to that era, implying an almost primitive cultural form situated in the past when Māori were ‘authentic’ Māori. Kaiāwhina E communicated this notion in the statement that:

*when people think of Māori heritage, they have this kind of dying race mentality which is stuck, of being pre-1900, and that's a bit because of archaeological provisions and I think a lot of it's a perception issue.*

Thus, this Kaiāwhina considers that Māori cultural heritage is not acknowledged to be dynamic and evolving, rather Māori cultural heritage retains legitimacy only when it assumes a certain form, as informed by a western world lens. This is cultivated through normalisation of a particular cultural discourse, and often this discourse is perpetuated through planning instruments. Kaiāwhina E again recognised this as suggested by the statement that:

*And then iwi died. You will see that though, in lots of histories of management plans, they'll talk about Māori until 1840, and then, 'don't worry, that's when all the proper people arrived'*

Pā sites are often considered to be representative of Māori heritage that warrants preservation and protection. It was suggested by Kaiāwhina F that these features were never meant to be valued as significant heritage features and subsequently protected in their original form. Rather they were functional features that served a particular purpose at a particular time and were not intended to be preserved in their original form in perpetuity. The notion that Māori too should be challenging such an idea was conveyed in the following statement:

*so it could be pā, or the archaeological definition of a pā site. So, I think they weren't set out to be significant, significant at that time yes, significant for political or social reasons, no, I don't think they were meant to be significant for us. I think they were fit for purpose, they were built with specific intention. So sometimes I think we're protecting some of the physical attributes of the pā and what not that we protect. Why protect that? What is significant, and why protect that? What is being created, how has it been created, or what story are we following to tell people that its significant?*

Thus, it is implied that a contemporary Māori conceptualisation of heritage may also be influenced by the approved heritage discourse in that features like pā and middens are largely seen by Māori as representative of significant heritage too. Kaiāwhina F conveyed that privileging of these features may be an example of heritage by appropriation as referred to in (Tweed and Sutherland, 2007), and as a result it:

*narrows peoples thinking around what heritage is, and when I'm deep thinking I wonder whether, one of the best protections we should look at implementing more, or putting more emphasis on is the culture, 'cause I find the things we define as cultural heritage are bi-products of culture*

Being a core heritage professional with experience in Museum collections Kaiāwhina F suggested that the act of preserving examples of cultural heritage in a museum is potentially detrimental to the retention of Māori cultural practices and traditional knowledge.

*but I have thought hard about it over the years, like with my time at the museum, how do you protect these taonga? And I'm thinking well actually if we hadn't protected these, maybe somebody would have kept making them. Because sometimes I feel like we can say, oh there's all these beautiful kete in here...we don't need to make any of those ones, there's some in the museum you can go and visit...So, we don't need a specialist in that area anymore. I think that about the preservation of wood things as well, I think maybe they were never intended to be kept, if they do deteriorate, rot out whatever then somebody needs to replace it. Then you keep that skill alive. So sometimes I think is that really the right thing to do, which is why I've sort of come around to the conclusion to take care of the culture, take care of the people and you'll keep getting your taonga.*

Kaiāwhina F's statement is a reflection of a Japanese cultural heritage practice which is 'not at all interested in the material of the monument, preferring the culture of knowledge linked to its creation'(Vecco, 2010:324). This concept is apparent in the complete reconstruction process of the Ise Temple every 20 years, a practice that has occurred for more than twelve centuries. Renewal utilises the original construction techniques and the same type of wood 'without undergoing any material or spiritual changes'(Ibid,324)

The above Kaiāwhina express uncertainty around a conceptualisation of heritage, which also permeates throughout the heritage management regime (Loulanski, 2006);(Gonzalez-Perez and Parcero-Oubiña, 2011). The impact of this is that wider perceptions of heritage including the value of intangible heritage is superseded by the ideals promoted by the authorized heritage discourse, being centred around buildings, monuments and representations of a depoliticised national heritage. As will be demonstrated below, these dominant notions of heritage are enabled through the statutory frameworks, and subsequently, Māori heritage and associated values are marginalised by an institutional bias and a dominating archaeological paradigm (Smith, 2009).

## 5.2 HERITAGE FRAMEWORK- UNCERTAINTY

Kaiāwhina discussed a number of issues that related to the wider heritage management framework, with the impact of multiple stakeholders, statutes and therefore varied localities of power being a reoccurring theme. There were also concerns relayed about the implementation of the frameworks and the technical and cultural skillsets of the decision makers. This is of some concern as it can be argued the effectiveness of the heritage management regime is largely dependent on ‘the quality and comprehensiveness of the legislation, the zeal and wisdom with which it is implemented, and the adequacy of the administrative and technical systems and financial resources supporting it’ (Pearson, 1995:35).

There was general consensus amongst Kaiāwhina that the frameworks, architecture and mechanisms for cultural heritage management in New Zealand were sufficient. However, certain elements and functions of the framework were poorly understood or poorly implemented by decision makers which led to obvious frustration. This view was summarised by Kaiāwhina H:

*there are nonetheless good policies for giving effect to, and this is some of the words in there, ‘giving effect to’ you know, kaitiakitanga and things like that but... we’ve got a range of legislative, national policy, regional policy, a whole bunch of mechanisms there, that in my opinion are enough, if they were used right to be able to help. They may not be perfect, and they can do with some tweaking but there is enough infrastructure there, architecture there, to get it done, it just isn’t implemented*

Kaiāwhina H then went on to suggest:

*It’s more actually about people following, implementing them, which comes back to the partnership and weighting of our values. That these things exist, but they are not implemented, they’re stuck in a drawer and not given due regard*

Kaiāwhina D reiterated that same sentiment:

*I think with the RMA, the framework is sort of there, it’s just when it gets put into practice it isn’t working as well as it could.*

As such, it is evident that there is a perception by heritage practitioners that the statutory infrastructure is there, but there are implementation issues that possibly extend to an unwillingness to share power.

### 5.3 LACK OF INTEGRATION

Criticism of the lack of integration between the various pieces of legislation that controls the heritage management regime in New Zealand was identified by several Kaiāwhina. The lack of integration was observed to create uncertainty for practitioners and decision makers, and as a result Māori heritage and heritage in general tends to ‘fall through the crack’s’.

*[There is a] lack of integration with Archaeological provisions of the HNZ Act and just kind of planning in general. Cause heritage NZ is obviously responsible for regulating the damage, and modification and destruction of archaeological sites, whereas Councils are responsible for heritage management in general. And I guess where the overlap between those two things is and whether Council under the RMA, archaeology is still heritage in the definition of heritage in the RMA, but Councils often tend to leave that to HNZ- but they don't realise the limitations of the HNZ act. So that's an issue, a lack of understanding and lack of integration having two separate bodies kind of managing heritage I suppose. (Kaiāwhina D)*

The uncertainty is particularly evident in Councils relying upon HNZ to protect heritage, although the statutory provisions and functions of HNZ constrain it from being effective in this regard.

*theoretically, I think HNZ's role as a body that identifies heritage and tells heritage stories is good, but the lack of integration with planning and council processes and stuff is a problem, and what I think is an over-reliance of HNZ to be performing a decision making function...effectively a decision making function that councils are supposed to be filling isn't good. (Kaiāwhina D)*

Even second-generation plans are noted to be struggling to appreciate the role of HNZ versus the council's role in heritage management, which shows the prevailing uncertainty.

*it's still not ideal, like it falls back on the HNZ act a bit...it requires resource consent unless an archaeological authority has been granted, which sort of assumes that an archaeological authority is going to deal with everything that needs to be dealt with, which isn't necessarily the case (Kaiāwhina D)*

As a professional, Kaiāwhina E had moved from a central government role to a local government role and had recognised a disconnect in the framework. During the interview Kaiāwhina E expressed concern that the wider statutory framework for heritage protection was apparently superseded within councils by the RMA, with limited to no regard of other protective statutes in decision making.

*Then going to local govt and realising that its dominated... So, their main legislation was of course Reserves act, Conservation act, Antiquities act, now Protected objects act, the HPT act. And that's what I thought dominated*

*heritage. And then you go to local govt and you realise that the only piece of legislation they look at is the RMA, then they even narrow that down to being built heritage only. That was such a disappointment. I had no comprehension that within heritage there were these two worlds that just seemed to be independent of each other.*

#### **5.4 HERITAGE FRAMEWORK- LIMITATIONS**

The uncertainty referenced above can be attributed in part to the statutory provisions of the Heritage New Zealand Pouhere Taonga Act, and the degree to which these provisions facilitate protection. In effect, the Act limits consideration of the impacts of development on site specific heritage features. Thus, the Heritage New Zealand Pouhere Taonga Act constrains the powers of Heritage New Zealand, as referenced below:

*the other thing about the HNZ act is that it only governs direct modification, damage or destruction of the site. Whereas a district plan may be able to sort of designate an area around a site and say you can't build, not that you can't but you need a consent to build a new structure or put signage or carparking in or whatever. The HNZ act, it can't control that kind of stuff. (Kaiāwhina D)*

*So, there's a lot of post 1900 archaeology around, but it's not protected by our act. I'm thinking mining stuff like depression era, mining. (Kaiāwhina D).*

The *Greymouth Petroleum Ltd v Heritage New Zealand*, Decision No 2016 NZEnc 11 decision was a significant case in this regard as it framed Heritage New Zealand's power in terms of matters they could or could not consider. In brief Heritage New Zealand declined an application for archaeological authority for exploratory mining work on the following grounds:

*Although the proposed development will not directly impact on the burial site, the values associated with this site are considered so important that any development in the area will impact on the integrity of the cultural values.*

However, the Environment Court in *Greymouth Petroleum Ltd v Heritage New Zealand*, Decision No 2016 NZEnc 11 found that:

*HNZ's considerations should have been limited to the effects of the proposal on Māori or cultural values as they pertained to [the site] itself and it was not entitled to take into account contended effects on Māori and cultural values of the wider area;*

Hence, in a statutory context, decision makers are limited to actual effects on a recognised feature. Arguably this is indicative of the reach of the authorized heritage discourse in terms of the privileging of tangible expert-centred evidence and the subsequent devaluing of cultural values as represented by intangible heritage in this instance.

#### **5.4.1 LACK OF INTEGRATION OF VALUES INTO PLANNING INSTRUMENTS**

Although the framework provides the infrastructure for protection of Māori heritage, Kaiāwhina D suggested that Māori values, and supporting provisions, were poorly integrated into the plans which subsequently limited the plans effectiveness to protect Māori interests.

*The other main issue I see, particularly around Māori heritage – is the identification...there's still no real identification of what the values are, what the activities are that could adversely affect those values, and potentially, what the assessment matters will be... no guidance really. So, they might need to consult with HNZ and the Runanga, but it's really difficult to kind of achieve anything through that process when there's no... when the plan contains no detail on what the values are... particularly regional plans. (Kaiāwhina D)*

However, as mentioned elsewhere, the capacity of iwi to perform such a role may be limited, especially when considering the capacity limitations mentioned by Thompson-Fawcett et al., (2017) and Gooder (2018).

A contributing pressure that iwi face in participating within planning processes is the perception that Māori heritage protection matters are being considered under a development focused statute. Kaiāwhina E considered this to increase the risk for Māori heritage as evidenced in the following statement:

*For Māori Heritage, what I think its biggest issue is in the RMA is that it gets put as a section 6(e) matter, not 6e- 6f together. So, it's not seen... so the development impacts of heritage are protected under the RMA (Kaiāwhina E)*

*We are defaulting, and that default to a development-based system which supports and is basically there to manage the impact of development and in very rare cases it's to stop it... We've got awesome tools and other pieces of legislation that the RMA can't override- and yet we don't use them. (Kaiāwhina E)*

This statement alludes to the sense of frustration expressed by Kaiāwhina regarding the limited scope of interpretation by heritage decision makers, and the sense that heritage matters are not given sufficient priority.

#### **5.4.2 LEGISLATIVE CONSTRAINTS – BALANCING POLICY PROVISIONS**

With regard to Māori heritage protection, it was recognised by Kaiāwhina F that there was a tension in the preparation of policy that achieves protection of Māori heritage and associated values, whilst also providing the opportunity for such values to evolve.

*with the Unitary plan, ... but there aren't many rules, and that's partly because, I guess, it doesn't restrict mana whenua from doing things on their own sites. But they also aim to protect those sites that aren't owned by mana whenua. So, there's that real balance that you have to get so that you are not too restricting, so that those values can carry on, so you can keep evolving, the culture can keep going...*

Again, this statement alludes to the broad conceptualisation of heritage being dynamic and evolving (Loulanski, 2006), which can often be at odds with the authorised idea of heritage in western cultures (Smith, 1996).

#### **5.4.3 OVERLAPPING TRIBAL INTERESTS**

Another level of complexity regarding the statutory frameworks, at least in Auckland, is the extent of overlapping tribal interests and associated issues of mandate. This was mentioned by Kaiāwhina F in the following manner:

*And of course, there is the complexity of having the 19 Mana whenua to engage with here. But in regards to that, there's the overlapping interests from different iwi, maybe in the same spaces for sites of significance or things like that, and so things have to be articulated in a way that everyone, I won't say is happy with, but everyone can accept.*

An example of overlapping interests was discussed in the context of the East West highway alignment project, at the time a process to facilitate the construction of a road of national importance.

*...contested space almost and it really came to a head in the context of the east and western where you had different tribes claiming cultural associations in an area. And it's very hard...there was a hearings panel, there was one Māori representative, one Māori commissioner and the rest of them were pakeha Engineers, judges, what have you experts. They're very unwilling to make a judgement call as to what particular claims, what particular area might be stronger than others ...so what we ended up there with was a whole bunch of*

*different cultural values associations being produced, some of which are conflicting, and never being resolved (Kaiāwhina B)*

Kaiāwhina B suggested that the uncertainty this created in the decision-making framework may have supported a predetermined decision, which speaks to the risk of further heritage damage when definitive associations and mandate parameters are not established.

*And you got this mixed message coming through to the committee, because of the different associations coming through with the different messages coming from different tribes. That made it very easy of course, ...so they made a decision that they probably wanted to make anyway because the cultural associations became so confusing. What they ended up doing was throwing it all up in the air and saying well there's no clear outcome on this, how can it really influence the decision? (Kaiāwhina B)*

It is apparent from the above subsection that there is recognised potential in the statutory frameworks, but factors such as a lack of integration between the statutes, statutory protection as of right of only pre-1900 heritage, iwi capacity and competing iwi interests all conspire to create challenges and complexity for the protection of Māori heritage. Thus, findings suggest that the framework for protection of Māori heritage appears to leave Māori heritage exposed to incremental, but inevitable loss. However, there is limited literature found with which to inform a response. This leads to the question as to how Māori can assert influence within the existing framework, and whether there are changes necessary. In this regard I now turn to the localities of power in the regime to assess the place of Māori influence over their heritage.

## **5.5 ROLE OF POWER**

*There's no real shift towards what I think, ultimately, if you're looking at treaty provisions and treaty settlements its pointing to a sort of co-governance model really, where you have a say in what the governance of the area should look like, but that's a long way away aye... (Kaiāwhina B)*

### **5.5.1 POWER- TREATY PARTNERSHIP**

A couple of Kaiāwhina raised power relationships by way of discussing the potential of the Treaty of Waitangi to frame Crown and Māori relationships as a partnership. Yet there were clear indications that Crown and local government have different interpretations of what a partnership entails and thus various Kaiāwhina displayed frustration. When questioned about what the main issues were within the heritage framework that limit the protection of Māori heritage Kaiāwhina H suggested:

*Main one comes down to, not to put it all on the treaty, but our treaty partner, not actually giving effect to the treaty partnership, with a capital P, in partner.*

Hence, the heritage management space in New Zealand displays the characteristics of a contact zone between Māori interests and those of a post-colonial hegemonic state policy framework. Clearly the notion of a treaty partnership is not fully implemented as suggested below:

*so there's a power play between two different paradigms, essentially and probably not a great deal of effort to try to step over the boundary and understand from the other side or try and stitch them together. Which a true treaty partnership would entail (Kaiāwhina H)*

### **5.5.2 POWER- ABILITY TO INFLUENCE DECISIONS**

*[Financially] they could literally just go on forever, playing us, overwhelming us, outflanking us (Kaiāwhina G)*

Kaiāwhina relayed the multiple ways that power over Māori heritage is expressed within the heritage regime, again indicating the lack of power that Māori have over their own heritage, let alone the extent to which a partnership is apparent.

*The power still rests with others though really doesn't it, rests with councils most of the time, still rests with the archaeological paradigm, rather than a Māori heritage paradigm, other agencies that can wield power there, heritage, like Ministry of Cultural Heritage and heritage NZ, so yeh, we don't have the power is the thing (Kaiāwhina G)*

Correspondingly, given the locality of power, Māori are constrained from controlling their own heritage by way of the statutory framework and the subsequent need to seek authority from others. This poses a potential dilemma alluded to by one Kaiāwhina when wanting to undertake works on their own land in accordance with the principles of kaitiakitanga and tikanga Māori:

*we might be able to do it on our own whenua ... and don't invite the law in and go through those legal processes and manage our own landscapes when we want to, I guess we can proceed until arrested. But out in the public domain, whenever there are hard decisions [and] management of Māori heritage, my experience even in recent times, we wind up as applicants, and supplicants and petitioners rather than decision makers (Kaiāwhina G)*

These constraints speak to the inherent tension in respect of the heritage management regime and the ability of Māori to protect interests and implement their values. The tension is evident where Māori may want to manage their heritage in accordance with traditional methods and

practices and yet are constrained by a dominance of the archaeological paradigm that sees archaeologists as gatekeepers, the only experts with legitimate knowledge.

Consequently, the dominance of the archaeological paradigm as a manifestation of power was also expressed by other Kaiāwhina who alluded to the frustration at the lack of ability to influence decisions, as well as the lack of financial capacity to compete on even terms.

*But the reason I get frustrated, and angry at times is the reason of there not being a level playing field, if it's a level playing field and its complex and there is horse trading, then you could probably live with that if you feel like you are getting a fair suck of the sav. If you feel like yeh, you are playing a monopoly game with half the money and half the cards than everyone else, then whatever outcome happens will be unsatisfactory. (Kaiāwhina G)*

*I went to the hearings and defended many provisions and pushed for enhancing many of those provisions and we had a massive, massive, pushback by a redneck public, and in particular by infrastructure providers. Airport, watercare, people like that. Big infrastructure ones just slammed us (Kaiāwhina H).*

Kaiāwhina G conveyed that fundamentally, there was still sufficient subjectivity within the heritage frameworks to allow for decision makers to disregard Māori interests in favour of economic or archaeological interests. This view was summarised as:

*hearing commissioners have enough leeway that they can decide, the key bits that are in black and white, they have to make sure it happens, But, it's subjective, its very unlikely that the Māori paradigm will win out over the archaeological values, or the push from the engineers, all the economic arguments*

### **5.5.3 POWER TO INFLUENCE DECISIONS- PRIVATE/ PUBLIC PROPERTY**

Fundamentally, the ability of Māori interests to influence decisions that are likely to compromise Māori heritage is constrained by private property interests, whereby private property rights are effectively prioritised over public interest rights under the RMA.

Accordingly, private property rights were identified as a significant constraint, as was the limitations associated with engagement with the Department of Conservation regarding the public estate.

*'it's a huge limiter, a massive limiter, because most of the land is private land, particularly in somewhere like Auckland. So even leaving aside the difficulties and the very real difficulties, of having a relationship with someone like DOC over the public land estate and the exercise of Kaitiakitanga, and partnership,*

*which should be us supporting each other and them supporting our capacity, and us having decision making about the work programme, and the budget and what the priorities are, that doesn't exist. Even setting that aside...your ability to actually go in there and do anything other than just give an opinion into the ether is very, very, difficult (Kaiāwhina H)*

Vossler (2006:67) cites Jones (1994) who suggests that this is representative of a dichotomy which is represented in the legislation:

*'first is that it should respect the community's right to protect such places. The second is that it uphold the freedom of the rights of the property owner to do what they [sic] will with their [sic] property'*

Kaiāwhina H in their statement above alludes to this dichotomy within the heritage management regime and in doing so identifies the significance of the private property issue to Māori interests.

#### **5.5.4 POWER- EVIDENCE BASED PARADIGM**

Power is also demonstrated through the dominance of traditional evidence-based decision-making frameworks which privileges certain types of evidence. In doing so, non-tangible heritage concepts or elements of a landscape can be discredited, therefore imposing a westernised view of what types of heritage are valued and what is not. Thus, this approach aligns with the authorised heritage discourse (Smith, 2009) as discussed below and also as expressed by Kaiāwhina H in the statement that:

*even within those existing structures and systems the existing discourse, the narrative is drawn towards or bias towards archaeology for example...information gathering and types of sites, and what evidence and information you have to defend those sites for example.*

A significant forum for exposure of this paradigm was the process of the Proposed Auckland Unitary Plan that occurred in Auckland during 2016. It was not originally anticipated that this process would be such a significant feature of this research, however the implications of this process continue to impact upon Māori heritage protection in Auckland. Several Kaiāwhina conveyed this process as a milestone event for the protection of Māori heritage, and also for its significance for Māori and non-Māori relationships in the context of private property rights and Māori cultural heritage. The sites of significant process provided the basis for significant discourse related to the values of evidence, intangible heritage, cultural landscapes and Māori rights under the Treaty of Waitangi. Kaiāwhina conveyed these key themes in

various ways as further detailed below, however the overarching theme was referred to by Kaiāwhina B as an institutional bias in decision making.

*So, I pick up, and this applies to environmental things too, a sort of fairly profound, and it's a very fundamental institutional bias because the western models of decision making rely on physical evidence a lot of the time, or impartial tangible evidence, and in dealing with cultural matters so much of it is word of mouth, kōrero that's passed down through the generations and it's harder for that kind of thing to stand up in court rooms*

The implications for adopting this approach in New Zealand are severe (Kaiāwhina G and H) for the retention and protection of Māori heritage. As mentioned above, the process for sites of significance brought this matter to the fore in a significant way.

*we had scheduled sites, which is essentially a designation, we had sites of value to mana whenua, they're estimated at 25,000, it would be more than that in greater Auckland, how you even count that, there is a methodology that needs to be questioned there, but that's low balling, 25,000 sites.*

Despite the scale of sites of significance across Auckland, the Auckland Unitary plan originally proposed to schedule only a portion, and even that met resistance in a significant way.

*Originally in the Auckland Unitary Plan (AUP) there was a schedule of about 4000 sites of significance for the various iwi in the area that was proposed, and it ended up getting thrown out during the hearing process for lack of evidence. And I think that is one of the difficult things because when you are in a statutory process and you are getting into hearings and the environment court and things like that they fundamentally rely on a fairly traditional form of evidence, and this is across the board it applies to environmental matters too, and it can be very hard, because the culture is so heavily based on word of mouth it can be very hard to produce tangible evidence that stands up in a court room environment basically.*

The contested nature of the process was clearly portrayed by Kaiāwhina H, who, as a professional archaeologist working for iwi interests was particularly affected by the process.

*What we ended up with was about 2500 that we tried to defend, and those infrastructure providers and everyone else and the ratepayer's association and all of the other red necks that came out from under the woodwork. Those fell out, because we were challenged and they said that the information basis wasn't good enough, the evidential basis for these sites being effectively put into a layer that had, even though they weren't being called a statutory layer, they would take the effect of being a statutory layer and so it didn't reach an evidential threshold to be kept in*

What was interesting in this discussion was the reference to the objecting parties and the composition of the interests pushing against the proposed provisions. However, the

Taxpayers' Union, with support from the Auckland Property Investors' Association, Auckland Ratepayers' Alliance and Democracy Action adopted an approach that spoke of significant racism, in that it portrayed the provisions as a 'taniwha tax' and undertook a campaign of pitting Māori heritage interests against private property rights, human rights and the national good. An excerpt displays this:

*But the right of iwi to impose their cultural and spiritual preferences, or to invent new ones, could diminish the value of land within the designated areas without any corresponding benefit to iwi. The representative might get a fee, and 'psychological benefit', but that may be dwarfed by the uncertainty discount imposed on all the properties that have been made vulnerable (Taxpayers Organisation NZ, 2015)*

The Archaeological Association also exposed the predominance of the authorised heritage discourse in their statement against the scheduling of the sites whereby they suggested that:

*...we have serious concerns relating to the proposed rules for archaeological sites and their surrounds within the overlay, as the sites have been effectively scheduled without any prior assessment and in many cases without confirmation of the presence, exact location and extent of the sites. (Taxpayers Union, 2015:11)*

This constrained viewpoint speaks to the prejudicing of expert and science-based knowledge over other forms such as indigenous knowledge, particularly in the implied need to be located and measured in order for a feature to be valued. Kaiāwhina H referenced the above indirectly when they stated:

*we had archaeologists saying there's no archaeological basis for this, so therefore that site should be removed, and me having to argue with my former fraternity that actually, these values are mana whenua values, they are not archaeological values. They are two different things, they can overlap sometimes, sometimes they can't. Sometimes you can have an archaeological site there that's of no value to the mana whenua value that overlies it. Cause the thing that we've got here is time, and different layers of activity, and you shouldn't have to have a Māori midden to justify a wāhi tapu for example, it doesn't make sense.*

Furthermore, Kaiāwhina H expressed regret that Māori interests did not participate in the process to a significant extent, thus implied that a more forceful insurgent approach may have provided some relief for Māori interests:

*I talked about Iwi capacity earlier... I turned up, I only saw about one or two other manawhenua representatives for all of Auckland defending those provisions. So, there was a lot of people talking about them but not a lot of people turning up there to defend them on the other side of the fence. And the reasons for that are capacity...or maybe not having faith that that work might*

*be one, their reasons will be their own. But the result is there was me and like one other person trying to defend all of this stuff, up against very well-resourced people. And I'd like to think we could have saved more of it if we'd had more of a show of force, them turning up, rather than disengage from it. But I can understand at the same time why people might.*

Eventually the dominance of the evidence based, and archaeological paradigm prevailed, and the sites of significance schedule was eliminated from the Unitary Plan for the meantime. However, this was not before the Archaeological Association was challenged on their stance by Māori interests for being complicit in inequitable processes.

*We said, do you really want to be in the space where you're, given the fields background supposed to be in anthropology, and come in as the coloniser, dictating a hierarchy of values, cause I don't think you want to be in that space. And they eventually turned around, so that was how those sites, started off at 25,000 went to 7000, went to 2500 and went to 0, that's how that happened (Kaiāwhina H)*

The above statements demonstrate clearly the dominating paradigm in the heritage space which favours physical evidence and the role of the experts including the archaeologist over other interests. In doing so the sites of significance process within the proposed unitary plan exposed the authorised heritage discourse and its 'issues of power, and the ability to secure a particular version of heritage over other realisations' (Fairclough, 2003:41). Furthermore, the outcome of the process corresponded to the suggestion by the Waitangi Tribunal that 'there is one standard for sites of significance to New Zealanders as a whole and another lesser standard for sites of significance to Māori people (Waitangi Tribunal, 1985:61).

An interesting finding related to the role of the expert was the evidence of a perceived hierarchy of experts within the broad field of experts. This was best summarised by Kaiāwhina E in the statement that:

*you could have somebody amazing in the room giving heritage evidence then all of a sudden you get a planner with no standing in the heritage community but because you're a planner all of a sudden your heritage gets more weight*

Despite the unfavourable judgment for Māori interests, Kaiāwhina B was pragmatic about it and understood the challenges that Council would face if the sites of significance process had gone through as originally proposed; that is with a statutory layer imposed in the absence of tangible evidence:

*And I think the people I deal with on the ground at the officer level in council and the Heritage NZ I think their hearts are in the right place, it's just this institutional difficulty in actually producing the evidence to make it stand up,*

*'cause ultimately all these decisions have to be able to stand up in a courtroom.*

However, what was also clear from various Kaiāwhina was that the outcomes of the process were not necessarily all negative. One key outcome was the initiation of the Cultural Heritage Sites programme, which sought to gather evidence of a smaller selection of sites of significance to reintroduce into the unitary plan by way of a subsequent plan change process, although:

*the number of sites that we are dealing with are a lot fewer, and it tends to be the ones that they're easier to gather sufficient evidence for, and, I think it's probably safe to say that it's ones where that level of cultural significance is also to an extent backed up by archaeological finds*

The project provided an opportunity for one iwi as suggested by Kaiāwhina B:

*...what that's made us do is actually put the effort into digging out the kōrero to go with those sites, actually identifying them properly, and pulling together a consolidated set of information, which we hadn't done before, so the very act of that project has forced us to get our act together to start getting those sites known and publicised.*

The revised process referred to above sought to verify some of the easier to justify sites. However, Kaiāwhina F suggested that not enough was being accomplished by not challenging the status quo and subsequently they advocated for a more strategic, holistic and arguably insurgent approach.

*what we are trying to protect, in plans and what not I think we need to sort of go out of our comfort zones and challenge things a little bit more. I feel like we quite often go for the easy wins, things that have been done before. Oh, it's a Pā, let's protect the Pā, that's an easy site of significance. Or rather than saying easy, we say something like it's definitely a site of significance rather than... I feel like a lot of it comes back to an easy win.*

An example of harder sites of significance to justify and challenge was given but the tension between requiring substantive evidence and a fixed mapping approach to support such assertions of value was also acknowledged.

*depending on what the criteria is for the plan, I think water bodies are harder to protect as a site of significance. Especially things like streams and rivers because of their changing course and it's hard to map them. I don't know, I haven't given it a real good go but I don't think it will be that hard, I think that there will be challenges but that's what I mean we have to challenge these things. Because I feel that often that's some of the most significant things to the iwi, it's their awa, their puna, and the ones that change shape, yeh, they're hard to map (Kaiāwhina F)*

Corresponding to this predominance of expert centred, evidenced based paradigm in heritage is that imposed by western science, economic and development focused drivers.

*Mana whenua were really clear in expressing their dissatisfaction with this process and trying to really argue for their cultural values to be put at the forefront of that decision and really not being heard. And they talked about the weighting between the mātauranga Māori and western science and who gets the final say, and ...with economic stuff as well. What it came down to in the end was discussions around how many jobs were being created and all of that sort of stuff. And some of that was being used as a good will offering to a particular hapū who had a stake...(Kaiāwhina A)*

*development has a cost, and I think that heritage isn't seen as a legitimate cost, whereas putting in roads and earthworks and engineering solutions, that's all seen as a legitimate cost because it contributes to the physical infrastructure and I guess the economic viability of the project, whereas heritage is seen as something that is not going to provide any economic return, but actually in some cases it can create a better product that has a higher value.(Kaiāwhina D)*

However, Kaiāwhina G conveyed a pragmatic recognition that, despite the competing paradigms and interests, complexity was the defining feature.

*The bigger you get in looking at these things the more trade-offs there are for everyone, for us, for the archaeologists for everyone. It's easy to be smug and get angry ... but it is complex.*

Hence, the above statement suggests that despite the frustration there is also some understanding of the contested spaces, multiple interests and the corresponding level of difficulties faced by decision makers in the heritage management sector.

### **5.5.5 DATA SOVEREIGNTY**

A further field of kōrero that arose as a direct result of discussions about evidence was the topic of data collection and data sovereignty. There were differing opinions expressed about the value of mapping sites of significance and relinquishing control of that data to controlling authorities. Kaiāwhina B suggested that there were benefits to be gained from publicising such information into the public domain.

*with Ngāti Whātua o Orakei what I've found is more a desire to get things out in the public domain so that the cultural heritage can be publicised, known and celebrated. There may be another layer that I am not aware of that is deeply hidden, but in terms of the stuff that I'm dealing with is get it out there, get it known so that it can be protected and taken forward*

In a similar vein, Kaiāwhina H reflected upon the benefits of recording and retaining data as a means to enhance protection of Māori heritage

*you don't necessarily want to paint, x marks the spot on a map, particularly when we know that there are people out there that will take advantage of that, and particularly where some of those might be on private land...on the other side the coin, you can't argue or ignore the scale of the heritage loss, and particularly in Auckland. And we have had silent files that sit with council for 50 years, and they're obviously not effective because no-one looks at them, or knows that they are there with the staff turnover and all the other issues we talked about...*

Kaiāwhina H continued by suggesting that it was potentially more of a risk to not identify the sensitive sites in some capacity, at least as a means to provide for procedural engagement with iwi.

*So, the other side of the coin is if you don't identify something, you also can't protect it... If there is no mechanism to trigger...iwi authorities aren't omnipotent, we don't know everything that's going on everywhere. And if there is not a mechanism to trigger when an applicant goes to do something, even if it's a non-statutory trigger, it just triggers someone sending an email or picking up the phone to us, saying hey, somethings coming up, happening here ...then you can't manage it.*

Discussion with this Kaiāwhina then turned to the methods to identify such features, and how some of the inherent risk of damage can be mitigated through different techniques:

*So, you can only manage something if you identify it, but how you identify it is the more important question. I don't think you need an x on the map, and a 'this is a burial site' ...for an example you could light up a whole property, i.e. somewhere on this property is something of high value to Iwi, you don't need to say what it is...you got to balance that out against not making a treasure map.*

Another Kaiāwhina tended to develop thoughts on the data sovereignty issues. Thus, the control of the data and the corresponding trust issues were discussed and interestingly, a tendency of iwi to not identify the level of significance at all as another means of protection.

*how much do you share publicly with other authorities? Do you want the public to know that this recorded archaeological site on the data base is actually a burial site? Do you want the public to know that? What are the risks do you get fossickers, so yes or no? Next level up. Do you want archaeologists to know through the archaeological association, their data base, can you trust them to manage that knowledge safely? Council, especially if this is in the public domain, or private land, do you want Council to... can you trust them to manage that information sensitively or is it better to do what iwi very often do which is not talk about those things, or often don't let on*

*about the deeper meaning of those things or the material importance of some sites (Kaiāwhina G)*

The above suggests that iwi recognise the significance of data and sovereignty over their data as a response to a rapidly shifting data landscape, particularly on the back of treaty settlements (Hudson et al., 2016). In the heritage space this raises issues of risk; risk of loss of heritage, but also the risk of not knowing the extent of heritage features and therefore not being able to monitor and control the same. Consequently, Kaiāwhina suggest that Māori interests need to establish criteria that they are comfortable with to record and manage their heritage data. A key consideration in these conversations will be who retains control of the data, and in what format it is presented and retained.

### **5.5.6 POWER- LOCAL GOVERNMENT CONTROL**

Regardless of the trust issues discussed above, councils are in control of the heritage management framework in a statutory sense, despite there being other recognised interests as discussed in chapter three. In this respect Kaiāwhina displayed consistency in their descriptions of council's role in the heritage management regime. An appreciation of the pressure they are under and acknowledgement of the competing interests to balance was discussed. Correspondingly, there was also concern expressed that councils are in general ill-equipped to do justice to the role which is of concern to some Kaiāwhina as suggested below.

*There's a lot of pressure on them with the housing shortage, historic heritage, archaeology and Māori heritage that is traditionally protected in plans, they are physical, they're features, they're sites, and what not... I guess that's the challenge is that space available to develop, how close can we get to it, those sorts of things (Kaiāwhina F)*

*You gotta look at just here, there's the heritage area, one house big sections and we've got a housing shortage. I think there is a lot of pressure on councils so to that degree they actually do what they can, but I think they can do more (Kaiāwhina F)*

*Councils always at war with itself, yes that's a registered heritage site but a recreational park, it's a place where key infrastructure is located, it could be housing to ease the housing crisis. So, they endlessly fracture, which of their interests are going to win out for any particular site or project? But, the one you can almost bet won't win out is the protection of Māori heritage over other values because they don't really understand it as an organisation (Kaiāwhina G)*

### 5.5.7 RESOURCING LIMITATIONS/ EXPERTISE

Despite acknowledgement that council officers have a complex role to play in the management of heritage, Kaiāwhina were very clear that there were a number of issues that limited the effectiveness of councils in performing their role within the heritage framework.

<p><i>Disappointed with quality of heritage professionals in council, based on previous experience with MFC &amp; Te Papa (Kaiāwhina E)</i></p>
<p><i>And so one of the main issues I see is just a lack of expertise within councils to perform their functions adequately I suppose. And an over-reliance on HNZ to act as a watchdog, and to provide that professional heritage expertise through the process, because HNZ isn't going to get involved in every local heritage issue. So I think a lack of expertise is one thing. (Kaiāwhina D)</i></p>
<p><i>I really struggle personally with the fact that there are heritage planners and their experience is doing one heritage paper at university. That's not a heritage planner, that's someone who did a paper at university...however, the current regime would have us give that to a city council that has no one in their staff, although it doesn't really have a big team, but it has no one with the skill to make that call. (Kaiāwhina E)</i></p>
<p><i>And if you've got people without the skillset to take that from legislation, through implementation through to monitoring it's a massive gap. (Kaiāwhina E)</i></p>
<p><i>It seems that planners can manage when there are clearer environmental effects, like water, but when they are sitting in some sort of matauranga space they feel a lot more unsure and a lot more reluctant I guess to hang their hat on the decision that they've made. (Kaiāwhina A)</i></p>

Kaiāwhina E suggested that a major reason for deficiencies in the decision-making frameworks was due to there being no professional body to oversee heritage professionals, and therefore there was no structure for professional accountability to their peers.

<p><i>I think that the larger issue, isn't even the heritage management, its heritage as a profession. Heritage is huge. In NZ, we've got no uniformed body, despite several attempts, there's no professional development methodology, there's a lot of people who have come in from different ways. The most qualified tend to be conservation architects who tend to dominate. As a profession its disjointed. (Kaiāwhina E)</i></p>
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*Management requires people, so you've got tools, but one of those tools are people, and if you haven't even got good people, consistently, or with a level of expectation of what best practice looks like in New Zealand. And to be held to account to your peers, we don't have that so, the tools are ineffective or disregarded. (Kaiāwhina E)*

Another perceived deficiency on the part of council resources was expressed specifically as the cultural competency, or the capacity of the Council planners to appreciate cultural values within their decision-making frameworks. This is reflected in wider literature (Thompson-Fawcett et al., 2017); (Gooder, 2018). When questioned about the standard of cultural competency of council planner's responses suggested:

*it depends on who you're dealing with. Some are obviously highly aware and very sensitive, some are completely ignorant. There is a very wide spectrum actually of cultural awareness in the institutions in general. ...so, it is personality dependent, you might be dealing with someone alive to the issues, and if they move on and the next person comes in it could be very difficult. (Kaiāwhina B)*

*So, it's been interesting to talk about that with planners and mana whenua because they all, I guess everyone has good intentions around being able to listen to and honour and hear what mana whenua are expressing, but there's real mixed capacity to translate that to tangible recommendations and decisions and making that clear. (Kaiāwhina A)*

### **5.5.8 COUNCIL STAFF TURNOVER**

The 'churn' of short-term council employment was raised on a number of occasions during the interviews. For iwi interests this limits the longitudinal development of relationships and also the capability and experience of the council planners to assess iwi responses. Therefore, as a limitation it has a very real impact on Māori interests within decision making frameworks.

*And of course they have a bit of a difficulty ... Auckland Council for example is a big institution with a relatively high turnover of staff, so they can actually get someone raised up in terms of cultural awareness and then they may only be there for a year or two and then they move on again and then you've got to start again. So, there's the whole 'churn' process coming through (Kaiāwhina B)*

*Council staff have a really high turnover, especially in the resource consents they are constantly being poached into private sector (Kaiāwhina*

A)

*you've got turnover in Councils as well, you've got planners coming in every 6 months or whatever, coming in, 'I don't know anything about this' and they'll just follow their typical process that they may have been taught in Uni (Kaiāwhina H)*

However, there are potential benefits from the turnover in that the training and experiences received within the Council structures can transfer directly into the private sector, thus the industry retains the capacity although it is situated elsewhere.

### 5.5.9 COUNCIL CULTURAL CAPACITY

A more critical perspective was also offered by Kaiāwhina G who referred to a perception that council planners lack the will or empathy to appreciate Māori values and subsequently this limits their effectiveness in decision making and adversely impacts on Māori interests.

*Council as an organisation, just in terms of their staffing, the make-up of the council staffing, they have limited understanding, and empathy for Māori values and Māori heritage (Kaiāwhina G).*

*Um... education even around the policies drafted in a way that everyone should be able to read and understand, yet there's a cultural barrier in some ways to even wanting to understand I think. (Kaiāwhina H)*

*Planners who are putting these plan changes through to get sites of significance into their plans and that sort of thing. How many of them have mātauranga Māori, so that they can understand values that are being put in front of them for protection? I know maybe a couple. (Kaiāwhina F)*

*It also puts strain on manawhenua or whoever is bringing those values to be protected, in that, not only do they have to articulate those, but they have to ensure that the planner or whoever is doing that process has a good understanding of why, so they are protecting the right things. So, they may have articulated it in a nice Māori values sort of way, but how does that translate to the plan? How does that translate to the planners and planning? So yeh, [there are] not many with that sort of capability to interpret Māori values in the right way, I guess. Or accurately. (Kaiāwhina F)*

It is apparent that council capacity to understand Māori values in an effective way was identified by Kaiāwhina as a significant area for improvement.

Extending the above, to be able to influence the protection of Māori values Māori are increasingly having to present them in such a manner and format that non-Māori can interpret

them. This was expressed as a potential problem by one Kaiāwhina as referred to below, and was also referenced in literature by Majurey et al. (2010) and Kawharu (2000):

*Because obviously you give new meaning to whatever you choose to put in there. Like we see happen with kaitiaki, the RMA has their definitions around it, and it's not always the way all Māori define kaitiaki, or kaitiakitanga. And so I feel like we are constructing something new, and we are telling a certain part of the population, a certain demographic that this is what it is, you know, compromise part of our culture for that. (Kaiāwhina F)*

A further Kaiāwhina implied that Māori should not have to compromise cultural concepts to accommodate planners who do not have an adequate level of cultural competency for the role they are performing.

*All of our statutes and policies tend to basically identify mana whenua as experts in their own values, it's not for any Tom, Dick and Harry to claim to be an expert in that. And so that parts fine, but the transition of trying to communicate that in a packaged way, that a planner that doesn't have any understanding, can implement is often... It's difficult for some iwi authority personnel as well, and the deeper issue is should they even have to do that? (Kaiāwhina H)*

The same Kaiāwhina conveyed this situation succinctly when referencing that the Crown/Council have a treaty relationship and therefore cross-cultural understanding in these frameworks should be equitable. However, Kaiāwhina H suggested the current power imbalance was more a case of the Crown/Council adopting the approach of

*'You do you, and then you do you in the way that I can understand you doing you'*

As a result of the above perceived deficiency and power imbalance, one Kaiāwhina acknowledged having such little faith in the decision-making capacity within councils that they were forced to 'trick the system' to ensure adequate skills were accessed to ensure fairness within the process.

*I'm involved with something at the moment...where there's three different layers of wāhi tapu that requires pretty much no one with any skill to make a decision on the impact. Or who I would deem to be expert enough to stand up in court. Let alone in front of a marae and say that they knew. We are having to try and trick that process so the decision of the impacts on the wāhi tapu is considered by an independent. We are having to trick the system so it goes through the Māori Heritage Council, of everyone involved we believe they are the ones with the only skill set, outside of ourselves, to make a decision on that. (Kaiāwhina E)*

Thus, it is perhaps fortunate that the Heritage New Zealand Pouhere Taonga Act provides space for such a Māori focussed entity within the statutory framework. It is also of some concern that although Councils are the responsible authority in accordance with the RMA provisions, they are perceived to be inadequately resourced to fully appreciate the significance of the role.

#### **5.5.10 IWI CAPACITY LIMITATIONS**

Findings identify that the capability of iwi to be able to respond to consenting workloads as mana whenua is variable and often tied to the financial status of the tribes related to treaty settlements. This is reflective of discussions within the wider literature presented by Thompson-Fawcett et al. (2017) and Gooder (2018).

*And so that's also with Iwi, we find that a lot of iwi are under-resourced and are doing it for love ... Some iwi can't afford to pay people to do that so resourcing on that side is really tight. ... but I'm sure it's everywhere, but iwi have got so much going on with the city being constantly developed (Kaiāwhina F)*

*it's very uneven across Auckland, some tribes have settled, some haven't. Those that have tend to be in a better situation for doing this kind of work. But even then, for others, the work is their income. So, they do the best they can, but they are not resourced to run around after resource consents to find out what happens to them, if their recommendations are reflecting in proposals or their input. (Kaiāwhina A)*

Another limiting factor is the lack of depth of technical experience of iwi to operate within the regulatory frameworks, as well as the depth of heritage knowledge. There were also limitations expressed about the tribal in-house capacity familiar with tribal histories.

*And to be fair, that's the same at our end as well, I mean I've come into this post pretty much ignorant, I mean as a rookie into this business of heritage protection and I'm having to learn as I go...so again, our capacity, our capability at that level changes with whomever is in that post. (Kaiāwhina B)*

*And that at the moment, it probably is...a weakness in our front and the way we deal with things at the moment, you know we don't have that knowledge of our own kōrero within Orakei to actually pass it on. And of course, if you don't know it, it's hard to protect it. (Kaiāwhina B)*

Thus, as can be recognised, Kaiāwhina indicated the pressure facing iwi and hapū in operating within the consenting and heritage sectors, when considering the lack of capacity to do so within iwi. However, such a situation is not uncommon in indigenous resource management (Thompson-Fawcett et al., 2017); (Gooder, 2018).

### **5.5.11 POWER- THE NZ HERITAGE LIST**

The NZ Heritage List is the primary mechanism for protecting heritage in New Zealand, although the composition of the list demonstrates attributes of the authorised heritage discourse, as will be established below:

<p><i>a lot of council do tend to rely on the heritage list a lot, therefore what's on their list is what they're going to protect in their district, and they often don't go outside of that and do their own identification of more locally significant places, and the problem within Otago and Southland, and probably overall the NZ heritage list, is that its heavily skewed towards pakeha built heritage, rather than other types of heritage, so it's not that helpful for trying to protect Māori heritage. (Kaiāwhina D)</i></p>
<p><i>Um I know Wellington doesn't just cut and paste their list into their heritage list, but a lot of the other smaller councils especially whatever heritage NZ have got, they've got. That's a 10 -15year cycle to update. (Kaiāwhina E)</i></p>
<p><i>So, if you've got councils relying on that list for how they are going to protect their heritage, you are missing a lot. And you are missing stuff that might not qualify, stuff that may not have ever been nominated but could be really significant, um, might not meet the nationally significant threshold but would still be really important to the local community. (Kaiāwhina D)</i></p>

Heritage New Zealand suggest that councils that only allocate significance in their plans to the features on the list are negligent in their responsibilities to protect heritage features (Heritage New Zealand, 2015). For one, there is a 10 -15year cycle for plan reviews which is a long period of time for a feature not on a protected schedule to be unprotected. Secondly, the composition of the list is representative of a specific type of heritage worth, whereas the pre-1900 threshold for heritage protection as of right does not acknowledge many forms of cultural heritage. Thus, the themes that the Kaiāwhina convey suggest that the list and plans that rely on it represent instruments of power, domination and exclusion.

### 5.5.12 POWER- LEGITIMACY IN PARTICIPATION

*They might be inviting you to sit in the tent, but really, we should be helping put up the tent (Kaiāwhina G)*

The role of participation in the heritage regime was recognised during the interviews, although not to any significant extent, beyond the mechanisms discussed in the next subchapter. Despite the small number of references some of the insights offered from the Kaiāwhina were particularly powerful in expressing the underlying issues. Kaiāwhina H stated that the nature of engagement in the Māori heritage protection space in Auckland was characterised by the following:

*There's still an Institutionalised and operationalised process of consultation and notification ... 'hey, this is happening, let me know your thoughts, not that we'll give them much weight anyway'. Just to sum it up its about not recognising and giving effect to the partnership part of the treaty, and not recognising and giving due weighting to Māori/Iwi values and tikanga and kaitiakitanga.*

In a similar tone another Kaiāwhina expressed the characteristics of participation as conforming to tokenism at best, at least in the context of urban statutory processes in Auckland. This assessment was related to engagement of mana whenua with large governing institutions such as the Auckland Council and Auckland Transport.

*I find generally, and this isn't just heritage but across the board, there's a kind of growing willingness to try and include iwi in what's going on, but when it comes to the real core of the decision making, it's still a closed shop. Yeh, they make all the key decisions well before they come to us. Just this last few months in Auckland they've revised the Auckland Plan, they've done the 10year budget plan, they've done a regional land transport strategy. All these things have been through these mana whenua consultation exercises but what's happening is...the policy direction has been set well before they've come before a mana whenua group...ok they talk to us before they talk to the wider public but... (Kaiāwhina B)*

Besides the implication that institutional stakeholders manipulate the participatory frameworks for their own purposes, thus conforming to (Purcell, 2009) there was also evidence of participation being used by lesser parties to achieve their own specific interests. In one instance it was suggested that development interests can be selective in who they engagement with dependent on the financial and technical capacity of the iwi interest. This corresponds with the notion expressed by (Gaventa, 2004) that participation imposes boundaries and therefore facilitates exclusion.

*Other people can see the potential in engaging with iwi that are resourced and that sort of thing. And you might find that they engage with some, and not others.*

Perhaps more concerning is the reference to the degree that through participation, proposals can change as a result of organised interests groups exerting inequitable influence within decision making processes. In doing so it speaks to inequity in the participatory processes and reinforces the notion that financial capacity has a bearing on the degree of influence in such processes. Kaiāwhina D gave such an example:

*It's really amazing I've found how much plans can change through the process, like from a draft plan, to the proposed plan to the decision's version of a plan and then the appeals version of a plan. And sometimes I'm just left shaking my head going what the hell. Certain submitters have a very specific interest, like mining or something like that. And so you'll get provisions that apply to everything else, but exemptions or carve outs for mining. So, I don't like those kinds of inconsistencies. I think what you should be looking at is what the effects of any activity are, rather than treating different industries or activities differently.*

### **5.5.13 PARTICIPATION - PUBLIC ROLE IN HERITAGE**

Public participation in heritage management processes was considered by Kaiāwhina D to be a necessary element in achieving protection of heritage features. The basis for this assertion was that Heritage New Zealand effectively functions in an advocacy role, and a lack of a public presence in support of nominated heritage could be interpreted as a lack of wider support.

*I also think that the Public have a role to play because it's their heritage and it's really difficult for bodies like Heritage New Zealand to argue for the protection of a place, as an affected party or a submitter, when there isn't any apparent public support behind it. If people value their heritage they need to participate.*

When considering the above subsections, it is obvious that heritage management in New Zealand is a complex, contested and politically charged space where multiple interests are jostling for position. This corresponds to the assertion by Lee (2016b) that interactions between indigenous and governing bodies are fraught with competing interests, power imbalances and potential flashpoints. Kaiāwhina identified numerous variables which impact upon the effectiveness of all interests operating within the system, from cultural competency, technical capacity limitations to a lack of understanding of elements of the system by the public. Therefore, when reflecting upon the factors required for an effective legislative

framework referred to by Pearson (1995) being the legislation itself, the subsequent implementation and the systems and resourcing to support it, there are some real concerns for Māori to be able to protect their heritage within the existing legislative framework. However, the weight of the evidence suggests that the key element that can bridge the gaps between the framework and Māori interests is participation, which speaks to the importance of participatory planning theory in effecting change in the heritage space. As such, the following subsection will review and discuss the nature of participatory mechanisms utilised within the heritage management regime. In doing so I will review and discuss various perspectives as to the effectiveness of the existing mechanisms provided by the research informants. The objective will be to understand which mechanisms provide the best opportunities to protect Māori heritage, and whether traditional forms of participation are even adequate. For, as has been established above, the existing frameworks do not appear to be able to acknowledge the significance of Māori heritage in an equitable manner, let alone the treaty partnership. The question then becomes, if traditional approaches only serve to reinforce the status quo, is an insurgent approach a possible response to disrupt the bases of power?

## **5.6 PARTICIPATORY MECHANISMS- EFFECTIVENESS**

Kaiāwhina referred to their experiences of the existing participatory mechanisms and their effectiveness to facilitate protection of Māori heritage and values. As has been established in chapter three most of these mechanisms are enabled through existing legislation, in particular the provisions of the Resource Management Act and settlement statutes.

One Kaiāwhina suggested that fundamentally, practitioners tend to forget the core principles of heritage management and subsequently there is too much focus on the mechanisms for management as opposed to the purpose of the management approach. In doing so this informant alluded to a broader issue of heritage planners and practitioners not necessarily having intensive training in heritage, archaeology or conservation and thus not having the breadth of knowledge against which to deviate from the technocratic approach. This

Kaiāwhina suggested that the focal point of decision making should be the heritage feature to be addressed and therefore:

*It's what's at the centre of the management... so the focus is on individual tools, but the focus in my mind should always go back to first principles for heritage management, which is what's being managed for why. I mean you identify and record. To me, we focus too much on the management tool, and not on the holistic item which is to be managed. If you work out say for that*

*site that its low pressure and low risk, and you could keep it at a level of slight deterioration but stabilisation, then manage it as such. You need to work out why, and you need to be clear, and I think we are particularly bad at that here. (Kaiāwhina E)*

It is apparent from the above that there are differing standards of heritage specific knowledge being applied within the heritage management regime. The differences appear to be based on the lineage and quality of education that practitioners have, as well as the different heritage sectors that they have built their professional experiences on. Given that there is no cohesive professional body to ensure minimum performance standards are met, first principle approaches are not necessarily going to be applied.

### **5.6.1 IWI MANAGEMENT PLANS**

Informants conveyed some hope for the use and value of iwi management plans as a mechanism to effect participatory functions. However, they were clear that historically the potential efficacy of iwi management plans was limited through a lack of use, and limited understanding of the concepts by various councils' planners. Also, of interest was the perception by one Kaiāwhina that the iwi management plans had been left behind to an extent, a tool that has been disregarded by iwi and decision-makers.

*Relationship agreements, Iwi management plans. One of the problems with those is they were worked on and then left on the shelf, but there's a little bit more momentum again around those now. (Kaiāwhina B)*

*I don't know that those were actually had any regard for by your normal typical planner processing a resource application anyway, it probably sat in a drawer. (Kaiāwhina H)*

*I've come back around to thinking that Iwi management plans are a good thing. I think that we could get better protection for Māori heritage through iwi management plans and that's because iwi can say for themselves, what areas matter, and what has Māori value within that, or what do you value within those areas. So yeah, I support the iwi management plans. I'm looking back and thinking hey we could go back to these you know. (Kaiāwhina F)*

Reference was made to Ngāti Whātua o Orakei undertaking a new approach to preparation of the iwi management plan through undertaking a co-design approach to their new plan. In doing so Ngāti Whātua o Orakei were hopeful of relationship, regulatory and cross-cultural benefits.

*The iwi management plan, we went to Auckland council and asked them to help us do that as a sort of co-design exercise, so that they were actively involved in producing our iwi management plan...so that it gets the buy in into the product, so there you have a sense of ownership of that iwi management plan and hopefully they'll start to use it, because across the country the iwi management plans they get written and then they just get put on the shelves and forgotten about...so to try and overcome that we actually actively involved the council in designing that thing, helping us to write it, and that's been a pretty good success story and its helped to start to forge a relationship with the planning side of the council. (Kaiāwhina B)*

Specifically, there was hope that the new co-designed example of an iwi management plan will provide for more efficiency in the overall decision-making process, by way of functioning as a more effective mechanism to bridge the communication boundaries between Council and iwi.

*hopefully the iwi management plan will help with that as well as the council will be able to transcribe what we have written into a kind of filter so that we are only getting the kind of information that we need to be getting, they are very willing to do that to the best of their ability. (Kaiāwhina B)*

Thus, it is hoped that the joint approach should have transformative qualities on several levels. In a practical sense, the filtering effect will help to alleviate some of the resource constraints facing this iwi, who conveyed that:

*so, every week we are faced with 400-500 resource consents ...so up until now it has been [just] me looking at it, it's not humanly possible (Kaiāwhina B)*

Other transformative qualities that could be realised are the ability of the iwi management plans to convey cultural values to decision makers and the general public. However, this assertion is tempered with some concern expressed by an informant with regard to the inherent compromise associated with conveying Māori terms, and values into a western statutory framework and mechanism (Majurey et al., 2010). This Kaiāwhina in referencing all statutory plans suggested that:

*One of the biggest issues or constraints, is obviously the plans, so unitary plans, or district plan, it's not a Māori plan, it's not a Māori structure, and so it always comes with a criterion, so straight away you've having to compromise themes to fit into that structure. And so obviously you take one culture to try and fit into another culture, somethings got to give. It's not an easy direct fit. So, off the bat, I think that's always a big one, like what to you compromise and is that compromise worth it (Kaiawhina F)*

So, the implications of that for heritage protection can be seen in 'fixing' a specific concept of heritage within these frameworks and therefore not providing an opportunity for

conceptualisations of heritage to evolve in accordance with the evolution of cultural practices and values.

*Sometimes that flexibility for it to be reinterpreted and evolve with our culture becomes lost because we must give it that definitive, we had to give that definitive answer, so it fits in that box. (Kaiāwhina F)*

A key finding of this research is the optimism shared by informants that iwi management plans are a valuable tool for relationships between local government and iwi authorities. Provided the relationship between these interests is meaningful, iwi management plans appear to be a prominent mechanism for iwi to achieve influence over the environment and resources such as heritage. Therefore, this research supports the findings of Thompson-Fawcett et al. (2017) which also refers to the potential for iwi management plans to be an effective tool for advancing iwi aspirations. However, findings suggest there are some key matters that need to be addressed to ensure the plans have the best chance to reach their potential. Of key significance is the need for planning officers to have a level of cultural competence compatible with their decision-making functions and correspondingly, for iwi to formulate ways for the communication of cultural values to be expressed in such a way that their inherent qualities are apparent and not compromised. According to one Kaiāwhina, the co-design of iwi management plans, whilst new, appears to be a sound approach to developing relationships, ensuring cultural concepts are understood and facilitating efficiency in the statutory process.

### **5.6.2 TREATY SETTLEMENTS**

The settlement process was acknowledged by Kaiāwhina as a positive means to initiate the retention of heritage knowledge and discourse, and therefore provide the basis for a strengthening of identity. In doing so settlements can contribute to an enhanced appreciation of Māori heritage and values, as well as the places and spaces that heritage may relate to.

*those settlements are an awesome resource that we are not using enough' but they weren't meant to be the final point about who we were. (Kaiāwhina E)*

The value of the treaty settlement process was evident in other ways, in one instance Kaiāwhina suggested that it allowed iwi to participate through taking a lead in developments and initiatives whilst aligning with Māori values within their rohe. Obviously, there is still potential for enhanced participation and power transfer, but the settlement process does appear to demonstrate transformative and emancipatory outcomes for iwi Māori. Kaiāwhina

B suggested that the settlement process provided a means for their iwi to assume a leadership role based on:

*...the growth of the skill base and the knowledge base of the tribe itself, which is great, I think that's probably what the settlement process was intending to stimulate, and certainly here it tends to be happening, there's a strong sense that I pick up that the worst of the dark times have passed, there's a kind of sense of renaissance.*

A significant feature of the settlement process is the return of traditional whenua to iwi. This allows for innovative governance arrangements to be implemented that provide invited space for participation and negotiation of management functions. In terms of the protection and management of Māori heritage, Kaiāwhina suggested that this provides enhanced opportunities to exercise and express values of kaitiakitanga and rangatiratanga.

### **5.6.3 CULTURAL VALUE ASSESSMENT CIA**

The value of cultural impact assessments for communicating cultural values has been established (Morgan, 2017), but the degree to how effective they are remains to be seen. This is evident in one statement that implied the Council planners do not know how to interpret the values within the CIA which limits their effectiveness within the process.

*its only mana whenua who can give them that information, they [Council planners] still don't necessarily know what to do with it once they do have it, so what does it mean for their final decision? (Kaiāwhina A)*

In one instance, a Kaiāwhina conveyed the use of mechanisms and associated processes to impose insurgent participation, that is, to give expression to a challenge to the system.

*mana whenua are sick of all the water being taken but it's a permitted activity to drill a hole for a water bore... so every hui we go to there's a challenge around the water ...so mana whenua use the cultural values and cultural assessment space to challenge the system. Even if the system can't hear what they are saying. (Kaiāwhina A)*

The interviews correspond to the assertion in literature that a key limitation of the use of cultural impact assessments in decision-making frameworks has been the variability and intelligibility of them. Beyond that, the issue of power and dominance of western science and expert evidence was also expressed, as was questions as to the capability of the decision makers to interpret the values, as referred to by Butterly (2017).

*planners need those [CIA] to do their job well, so there has been talk about intelligibility of these documents for planners. So, they get these documents, and do they know what they mean? Can they get recommendations out of*

*them? And that varies across the region in terms of who's providing them. It's definitely something we are looking at within our research, how effective the CIA as a document is in conveying those values. Part of the issues is that the weight or the gravity, or the mana of that document. You put it alongside a hydrologist and or a marine specialist...(Kaiāwhina A)*

#### **5.6.4 CO-GOVERNANCE**

Probably the most positive reference to the participatory mechanisms came through discussions about the value of co-governance arrangements. Two examples of positive co-governance steps were presented by Kaiāwhina which enabled Māori values to be expressed in accordance with tikanga Māori at a strategic policy and operational level. When questioned about examples of effective mechanisms for governance of Māori heritage Kaiāwhina suggested that:

*yeh I think the Maunga Authority holds out some hope in that regard.  
(Kaiāwhina G)*

*...the best example, one of the very early ones, Takaparawhau, the Ngati Whatua reserve at Orakei, the headland by the Marae there at Bastion point. That's co-governed with Auckland council, we own the land but its cogoverned with council, so that came back in 1990, so that's a bit of time. One thing it's still held up around the place, an outstanding example because it has worked. The basic way it works is the public still have access onto that, it's a park, it's a reserve, but the management plan was led by us and so within the settlement there are caveats around things like that public access but otherwise the direction of that was informed by Ngati whatua o Orakei. (Kaiāwhina G)*

The Tūpuna Maunga Authority was discussed as an effective mechanism for expression of kaitiakitanga values with respect to cultural heritage protection, as well as providing enhanced opportunities to undertake cultural heritage practices.

*we are the owners, of the Maunga, even though there's constraints on that. There are provisions within it that allow for expressions of Kaitiakitanga, and that as a right, so for example things like interring koiwi on the mountain. If that required archaeological disturbance then we'd have to go through that process, but if we can identify a way to do that which doesn't require archaeological disturbance, so an example might be a lava cave or a Tomo, which were the traditional repositories. If we tried to do that in the public domain (a), we'd have to get other people's permission, and you can imagine there may be difficulties with that. Would council agree to that, say in a park landscape? And the other one is how secure would you be in that that place*

*can be managed or protected? It wouldn't be iwi doing that again it would probably be council staff and rangers...on the Maunga where we are both the owners, are co-governors, and through that co-directing the operation on the ground, as of right, we could do something like that, so I think there is a greater degree of confidence that we can do that, actually protect and manage that site in a way that we couldn't out in the public domain*

The above response contains several points that are significant to this research. It speaks to the way that the agreement empowers Māori interests to apply their cultural heritage practices beyond the contemporary constraints and dominance of the archaeological paradigm. Thus, this mechanism conveys an emancipation from the reach of the effects of the authorised heritage discourse. It also speaks of the willingness and enhanced ability of an iwi to express kaitiakitanga and rangatiratanga values within a framework that also acknowledges the public and local government agencies interests. Notably, the two interests can arguably co-exist without impinging on each other, akin to a partnership, as envisioned by the Treaty. But it also demonstrates that there are some matters for Māori alone to control and make decisions about, cultural matters and practices that other agencies should leave for Māori to navigate unimpeded.

The other co-governance example is that of the Takaparawhau co-governance arrangement. This agreement allowed for iwi priorities to be envisioned and implemented by way of an iwi led reserve management plan, albeit within certain constraints such as covenants on the transferred land. However, whilst the Takaparawhau agreement has potential as a positive example, there was still a sense of inequity expressed regarding staff resourcing and the funding for these resources. Kaiāwhina G describes how this arrangement developed over time in such a way that better reflected a more equitable co-governance agreement and better reflected the values of empowered participation.

*they've always had budgets, we need to have a dedicated officer from our side rather than the tribe paying for me as our heritage and environmental officer to attend, while there's always a dozen Council officers available to attend because they are salaried, and you can always draw on as many troops as you want, you know thousands of staff, they can always draw on a planner, an ecologist, an engineer or whatever. We need some capacity on our side. We started to get capacity funding so that we could dedicate resources to that, and take more an active role in developing those yearly management plans, and implementing projects rather than just Council guys running off implementing other projects, so we would then have the capacity to give time to someone, so we've agreed this is a good project, daylighting a stream that's a good project, but we're not going to just say that's the plan now, Council now go and implement it, actually have some resources so someone from our side lead it, leads that contract, directs the contractors.*

This expression of Māori priorities implemented through the enhanced participation realised additional social capacity outcomes, and in a physical sense demonstrated kaitiakitanga in action. Therefore, the potential for transformative outcomes as a result of co-governance arrangements is apparent, particularly in the form of pockets of community empowerment.

*So, the major project there was habitat and restoration, so there's been massive scale replanting of native bush up on the headland, so Ngāti Whātua not only led that conceptually, but then established a planting team that's now worked for 15 years, undertaking that planting. So, it trained our people, got formal qualifications, a lot of our people have been employed doing that, then have moved on to DOC, or Council after getting the tickets, the qual[ification]s and environmental experience. (Kaiāwhina G)*

The benefits of Māori being able to function as kaitiaki was acknowledged by Kaiāwhina A in the statement that:

*there is a lot of really positive, especially environmental impacts mana whenua have on Aotearoa and in Tamaki specifically, it's not just the more intangible stuff, it could be quite tangible, like water, stormwater or sediment.*

This co-governance agreement also provided the foundation for tourism ventures to be established from the iwi, thus it displays elements of emancipation from dependency in terms of being able to innovate and create their own opportunities for employment on their traditional lands. The arrangement also provides wider opportunities for development of a collective Auckland identity, as well as social learning through the transfer of histories of the mana whenua and place associations amongst tourists and locals alike.

*The tourism's side is starting to grow up there for us. Always large numbers, especially to the Michael Joseph Savage Memorial, last year we established a presence there with a coffee kiosk, but from that you take a self-guided tour using an app and also the guided tours of the headland itself, and [then] onto the Marae... (Kaiāwhina G)*

### **5.6.5 CHAPTER CONCLUSION**

Overall, Kaiāwhina identified that the main limitation on Māori in influencing the decision-making process in protection of their heritage is the lack of understanding and implementation of the mechanisms and wider statutory frameworks. A key element of this deficit is the apparent unwillingness of controlling authorities to share power which is not necessarily an unanticipated finding of this research. However, what did deviate from expectations was the lack of reference to tools such as the RMA section 33 Transfer of Powers and the cultural impact assessments. It appears from this finding that practitioners

have disregarded the section 33 mechanism to be of any value, perhaps due to the lack of prior uptake and the corresponding difficulty in progressing such approaches.

In terms of cultural impact assessments, or cultural values assessments, the main issues raised by informants were the uncertainty of their effectiveness, and how this was likely related to the ability of planners to interpret the values and accommodate them within the decision-making framework. A further possible explanation for the lack of depth in responses regarding cultural impact assessments may be the focus of my questions being on broader heritage regime issues as opposed to more case specific applications of such mechanisms.

Regarding the implications for this element of my overall research, it appears that the participatory mechanisms with the most potential to protect Māori heritage are iwi management plans and co-governance agreements. This is perhaps unsurprising given the function of iwi management plans being to present iwi aspirations and values in such a manner that they are incorporated into decision making frameworks. Similarly, co-governance agreements appear to provide the best opportunities for iwi to express tikanga Māori concepts such as kaitiakitanga, and also give effect to a relationship close to a treaty partnership. Thus, this mechanism has transformational potential in that it allows for forms of participation that can realise social learning, empower communities and in a practical sense, protect Māori cultural heritage.

The following chapter now presents the findings and discussion relating to two case studies, each situated within the wider heritage context, as conveyed within this chapter. As will be evident, many of the same issues of power are prevalent, however, the key focus for analysis in each case is the nature of the participation of the relevant Māori interests, and the subsequent role of power, social learning and empowerment.

## 6 'A TSUNAMI OF THE STATUS QUO'

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The previous chapter elaborated upon the main issues within the heritage management framework as interpreted through the lens of the lived experiences of the Kaiāwhina. Significantly, there are synergies with the literature, particularly regarding the role that power imbalances, iwi and council capacity constraints, privileging of both expert knowledge and an archaeological paradigm has in constraining Māori ability to protect their heritage. With this wider context in mind, I will now present the results and supporting discussion relating to the two discrete case studies previously introduced in chapter four, where many of the wider issues discussed in the previous chapter five are played out.

Chapter one defines the methodology for this research and refers to the theoretical framework being adopted in this chapter. In brief, the case studies will be analysed against the four parameters demonstrated in Figure 1-C in chapter one. The intention is to understand the nature of participation in these cases, and what value each approach achieves regarding power, social learning, ability to influence decisions and empowerment. As mentioned in chapter one, these parameters have been derived from the literature review of planning theory, participation theory and heritage theory.

The first case study to analyse is that of the ancestral landscape of Te Ihu o Mataoho, and specifically the effects on an area called Te Ihu o Mataoho, or the nose of Mataoho. This will be followed with analysis of the participatory responses to SHA62 at Puketapapa, Ihumatao. As previously conveyed in chapter four, there are multiple mana whenua interests within Te Ihu o Mataoho, however, this research only focuses on two divergent approaches to participating within (and beyond) the statutory frameworks and participatory spaces in two specific locations. As such the participatory approaches of the main recognised mana whenua interests are the ones to be evaluated.

## 6.1 TE IHU O MATAOHO

### 6.1.1 NATURE OF PARTICIPATION

When discussing the nature and value of the mana whenua participation regarding Te Ihu o Mataoho, Kaiāwhina described their view of the general nature of the participation in this area as:

*There's still an institutionalised and operationalised process of consultation and notification ...hey, this is happening, let me know your thoughts, not that we'll give them much weight anyway (Kaiawhina H)*

This statement suggests that the nature of participation in the area corresponds to the traditional participatory approach (Monno and Khakee, 2012) thus is indicative of closed participatory spaces as described by (Gaventa, 2004). The traditional participatory spaces referred to by Monno and Khakee (2012:87) are characterised by the 'legislative-sanctioned participation' which 'accords with the principles of representative democracy' and participation which 'has come to include various forms of consultation and informing'.

The primary mechanisms by which the mana whenua participated in the current proposal, being the designation process for the Auckland International Runway upgrade, was a Tangata Whenua Cultural Impact Assessment and a Cultural Values Assessment commissioned by the developer, the Auckland International Airport Limited. These mechanisms were part of a resource consent process under the RMA that also included technical reports pertaining to landscape, noise, geotechnical, coastal processes, archaeological, and ecological impacts. The reports provided background material to inform the cultural impact assessment. Mana whenua interests were also represented in a subsequent Hearings Committee Process speaking to their submission.

The intent of the Cultural Impact Assessment, as stated by the mana whenua, was:

*to provide the applicant and Council with some insights into whether there are any cultural impacts associated with the development of the Northern Runway Extension, and if so, how they might be addressed (TKITA, 2016:5)*

For the mana whenua, the value of this mechanism of participation is in the potential to influence the decision in a substantive manner, therefore potentially being able to protect the more sensitive parts of the ancestral landscape. In a social sense, the value of participating in this manner can also be realised through the establishment of two-way dialogue, social

learning associated with increased awareness of indigenous knowledge and associations with the area and strengthening of stakeholder relationships.

In the cultural impact assessment it stated that the mana whenua:

*do not support the development due to the number and nature of significant adverse cultural effects but are open to working in good faith with AIAL subject to the below recommendations. (Ibid, 28)*

Such recommendations promote enhanced engagement with mana whenua in participatory spaces:

*as partners in the decision-making process regarding matters which directly impact upon their cultural interests and rights, as provided for under the Treaty, in legislation (Ibid,29)*

Other recommendations generally related to participation in various forms, including cultural engagement in culturally sensitive matters such as discovery of koiwi tangata, and ceremonial matters for example. Furthermore, the mana whenua requested ongoing investigative works to mitigate risk of damage to cultural heritage, including archaeological sites, as well as other environmental and design matters.

In effect, through this mechanism mana whenua sought further engagement, through requesting ongoing participation and engagement throughout all phases of the proposal. Their requests corresponded to that of a partner, but not to an extent that decision making functions or significant influence was transferred. The evidence indicated that by this stance the mana whenua had accepted the inevitability of the proposal, and thus focussed on achieving ‘tiny empowerments’ (Sandercock, 1998) within the invited spaces that kept alive their voice and expressions of mana whenua interests within the proposal.

Thus, by partaking in this traditional tokenistic form of participation, as characterised by Monno and Khakee (2012), mana whenua had no real choice but to participate in a process designed to ‘reinforce the political–economic status quo and produce democratically legitimate decisions’ (Purcell, 2009:148). Now that I have established the nature and value of the participatory approach in this case, I shift focus to analyse the evidence of the role that power has played to date.

### **6.1.2 ROLE OF POWER**

The dominance of the archaeological paradigm had previously been exposed in a significant way within the participatory framework for the Airport extension works. As was asserted by

some Kaiāwhina, this was evidenced by way of professional archaeological advice being given greater weighting than mana whenua information particularly in relation to advice regarding the location of urupa and subsequent potential for uncovering koiwi tangata:

*So 88 koiwi came out of the ground during earthworks there. Te Warena said there's a burial there, they ignored it, they said no, the archaeologist says there's nothing there. They pull out 88 bodies, there'll be more there, and we've made the argument. (Kaiāwhina H)*

When considering this incident in the context of the legacy of harm experienced within Te Ihu o Mataoho, it brings into question the legitimacy of the participatory frameworks. The legitimacy of the process could be questioned on the grounds that despite mana whenua using the invited spaces, their information was afforded no value, thus implying that the participatory space was in fact closed and tokenistic in nature. This incident tends to support the view of Cornwall (2008:270) who suggested that engagement can be 'a means of legitimating already-taken decisions, providing a thin veneer of participation to lend the process moral authority'. Kaiāwhina H expressed frustration with the apparent symbolic nature of the engagement, which provided no substantive ability to influence the decision from within the invited participatory space as stated below:

*Its negotiating the whole power politics of things, but they had a designation for a small runway, they want a bigger runway now. When is enough enough? So, you've got a nationally significant cultural landscape here, papakāinga, you've got the story of Mataoho, you've got the pa, cones, you've got the gardening so you've got the Manukau. The whole thing tells a story and then you've got all of this stuff, all of this industrial stuff, you've got the airport there you know the first runway at the airport was created out of the quarrying of Maungataketake, and the scoria from it, and it included burials and it was desecrated to build the first runway. Now they are coming back to build a second one. They had a designation, they want more again. And so this landscape is being eaten alive.*

What is clear is that some Kaiāwhina considered this lack of influence in this setting to be indicative of systematic exclusion, with corresponding adverse cumulative effects on the wider ancestral landscape.

### **6.1.3 DECISION MAKING INFLUENCE**

Power and influence are also expressed through the establishment of boundaries, in terms of shaping the boundaries of participation (Gaventa, 2004) and also through shaping boundaries associated with accountability. This is evident in the powerful creating the participatory spaces in such a way that they impose boundaries on the nature of influence within the

process, ‘what is possible within them, and who may enter, with which identities, discourses and interests’ (Gaventa, 2004:34). Thus, these spaces are not necessarily neutral.

The 2016 CIA report listed a number of effects upon significant features within a table, as well as measures for mitigation where possible and the need for offsetting where mitigation was not possible. It is noted within the court submission by the cultural impact assessment author that none of the measures were subsequently reflected in the Notice of Requirement conditions, nor were engagement recommendations given effect to (Ashby, 2018b). Thus, the use of the cultural impact assessment within the process appeared to have had limited to no impact or influence within the decision-making process, at least with respect to the nature of mitigation measures and associated engagement.

As mentioned in the 2018 Statement of evidence, the mana whenua had requested in 2014 that:

*site wide proactive cultural heritage survey and investigation programme to be developed, so as to establish the archaeological baseline of AIAL lands and provide in depth risk mapping which could then be utilised in informing design. (Ibid,22)*

This was never done in a comprehensive manner, rather Auckland International Airport Limited proposed to undertake a baseline survey at the detailed design stage. The mana whenua suggested that such an approach was ‘out of keeping with international best practice’(Ibid,23) and also stated that ‘[a]ssessment by bulldozer is not respectful, appropriate, strategic or forward looking’(Ibid,23).

It appears from the evidence collated to date that the mana whenua have limited to no ability to influence the outcome of this notice of requirement proposal through traditional participatory approaches. The adoption of a baseline survey approach at detailed design stage immediately defaults to modification and ‘partial mitigation’ as opposed to avoidance. This is reminiscent of the ‘heads straight for mitigation’ approach mentioned in the literature review, whereby the hierarchy of avoid and remedy is disregarded (Thompson-Fawcett et al., 2018). Arguably, adopting a more robust baseline data approach may make it harder to progress with a preferred design, given that discovery of cultural and archaeological features of significance would make it harder to avoid accountability. Thus, I argue, this is an example of power-imbances manifest through setting boundaries around the control and distribution of information therefore limiting transparency, and correspondingly the ability of mana whenua to influence the decision.

Finally, despite various statutory provisions providing avenues to participate and exert influence, Kaiāwhina H suggests that the impacts of private property rights and societal pressure limits the ability of mana whenua to influence decisions and protect their interests. This was summed up in the following statement:

*You can't underestimate societal pressure, even when you've got legislation and policy. If you've got the HNZ act that protects by default any remains pre-1900, theoretically, you should be able to if its valuable go no, you can't, the legislation [says] you actually could. But it very seldom happens. Particularly if a resource consent has already been granted, under a different Act. Then the pressure of defending a 'no go sorry' on private land would be enormous. So, you get these cultural, institutional, societal pressures that all of the legislation and policy in the world may help take some of the energy, and maybe bounce it slightly in a direction. It's like a tidal wave, or a tsunami of the status quo. A tsunami of the status quo.*

Thus, this case study is a clear example of the challenges facing Māori ancestral landscapes, and Māori cultural heritage when dealing with private land, significant infrastructure providers, and trying to exert influence in invited spaces. The question then becomes, if you cannot influence outcomes and protect your heritage, then what is the point? Why bother? One possible answer to this is because there may be opportunities for incremental gains and knowledge production, that is, emancipation through 'tiny empowerments'.

#### **6.1.4 EMPOWERMENT**

The degree to which tiny empowerments have been realised in this instance has not been obvious, given the clear evidence of the lack of an ability to influence decision making. However, one of the subtle, although potentially powerful ways in which the iwi was indirectly empowered was achieved through simply participating within the system and therefore gaining an enhanced understanding of what is necessary to be successful within the system. A primary learning was the realisation on the part of the mana whenua of the somewhat limited value of the current format of the cultural impact assessment to hold decision makers and project proponents to account. In this regard they refer to the way in which the assessment document portrays the values to be impacted upon and the subsequent way that these values are linked in the document to statutory provisions. An example of two elements of the current structure are shown below in Figure 6-A and Figure 6-B.

**Table 2: Summary of cultural sites and resources within the Study Area**

Name	Description	Cultural value
Te Ihu a Mataoho	Cultural landscape that encompasses the western part of the land between the Airport and Puketutu Island. Associated with the wider origin story and cultural-volcanic landscape of Mataoho. 'The nose of Mataoho'. This is the correct name for Ihumatao, and in particular the land around Maungataketake. The tradition is an integral part of the cultural landscape. This area held numerous kainga and wahi tapu, and was extensively cultivated by Maori in a 'coast to cone' horticultural system.	High
	The area roughly corresponding to the eastern part of the lower Ihumatao	

Figure 6-A: Cultural Impact Assessment Summary Table (Source:(TKITA, 2016:17)

**Table 3: Summary of potential cultural impacts**

Name	Summary of impact	Level of Impact	Significance of effect	Proposed mitigation	Offsetting
Te Ihu a Mataoho	Direct and indirect impact through land take, land use change, earthworks, and impacts to the setting of the resource (visual, auidal, aural, spiritual). Cumulative impact through land take and changes to character of landscape.	Major	Large Adverse	Avoidance. If not avoided landscape and built design to help mitigate severity of impact. Cultural Monitoring and design.	Required as cannot be fully mitigated.

Figure 6-B: Cultural Impact Assessment Summary of Effects (Source (TKITA, 2016:22)

It is apparent that the use of these table formats in the cultural impact assessment is valuable to portray the relevant values and impacts in a succinct manner, yet as demonstrated above, there is no assurance that this information will be able to influence the decision (O'Faircheallaigh, 2010). Despite this, mana whenua recognise that there is a need to explicitly demonstrate the linkages between the impacts on the values and the statutory provisions that apply. Thus, if this format was retained, the addition of columns identifying the relevant statutory instruments and degree to which the proposed works and subsequent cultural impacts comply with the instruments would add value. In effect, adopting this approach would ensure that some of the obscure(d) elements of statutes would have to be 'taken into account' and in the case of the Coastal policy statement 'given effect to'.

Cumulative Effects would be one such area where the above amendments would have an impact, which was recognised by Kaiāwhina H below:

*But there's also cumulative effects, out here. I've never once seen them seriously 'taken into account' in any single RMA process when it comes to Māori cultural values, not once, in five years I've not once seen it. Cumulative effects aren't even a topic that's even raised quite often in an Environmental Court proceeding, or commissioner hearings. And I've been in probably 15 different hearings. It's a key argument out here, no it's the straw that broke*

*the camel's back. The camels already broken in fact. You are just taking the mickey now.*

A further Kaiāwhina also referred to cumulative effects as:

*It's been described as a death by a thousand cuts...so they all add up. And mana whenua always talk to us about the cumulative effect of all these small changes. And there's not really much being done to manage that. (Kaiāwhina A)*

By forcing cumulative effects more prominently into the decision-making framework via cultural impact assessments, perhaps some of the incremental Māori heritage losses can be arrested. But the question then becomes how one demonstrates the cumulative effects when the heritage statutory framework only provides for site specific impacts to be considered, as demonstrated in *Greymouth Petroleum Ltd v Heritage New Zealand*, Decision No 2016 NZEnc 11. In this regard discussion with Kaiāwhina illuminated the concept of cultural landscapes as an international management tool which may be of benefit to Māori heritage protection. A definition of the concept of cultural landscapes was observed by Kaiāwhina H to be:

*So cultural landscape for me, first of all people will have their own definitions, and definition of things from a different lens, but for me, a cultural landscape is made up of its constituent parts. So that might be the awa, the forest, the archaeology, the maunga, the papakāinga it might be everything. It's given value from its constituent parts. It might be the narrative of the atua, the origin of it, like Ihumātao here, and all of that coalesces into embedding value and meaning into a landscape, the whole landscape is interconnected. So you can look at one Pa over here and say oh, this is just a Pa, how do we manage this Pa? But actually the whole landscape, the value, identity and the meaning rests in the landscape, and the constituent parts together give that unique meaning. Not any one by itself can do that.*

If this conceptualisation was adopted within statutory frameworks then, Kaiāwhina H proposes that it would be a robust mechanism for monitoring and assessing the cumulative effect of proposals. From a Māori perspective, there is natural alignment with a holistic world view as opposed to the consideration of features of significance being discrete spatially isolated elements of a disconnected landscape. In fact, as discussed in the literature review, Kawharu (2009) contends that cultural landscapes could be a fitting framework for considering Māori ancestral landscapes as a tool. In a practical sense, the mapping of broader cultural landscapes would have transformational qualities in terms of informing and strengthening Māori and the local community's identity and attachment to place, legitimising statutory processes and ultimately protecting heritage. As arguably an internationally

significant cultural landscape (Gravis et al., 2017) Te Ihu o Mataoho would be an ideal area to apply the concept of cultural landscape, even ancestral landscape to and produce ancestral landscape maps as a means to monitor and assess cumulative effects. There would also be value in doing so retrospectively, as this will provide definitive evidence of the cumulative impacts so far.

However, the adoption of this concept as a tool has been resisted thus far in New Zealand including in the proposed unitary plan process and Environment Court decisions relating to Te Ihu o Mataoho. Correspondingly, the lack of uptake was mentioned by Kaiāwhina H:

*it's a useful tool that is used everywhere else, but for some reason chuck it in New Zealand and for some reason brains malfunction, we can't even figure out what we are dealing with. UNESCO uses them, for Christ sake, world heritage sites. These are well defined, not that they can't be better defined in a Māori context, but they exist, they are management tools that exist. But in NZ, we have a problem with them for some reason.*

Potential reasons for lack of consistent uptake of the concept of Māori cultural landscapes in statutory frameworks have been detailed as being:

*'described too broadly, insufficiently identified, not supported by appropriate planning mechanisms, and that they generate uncertainty for landowners, land managers and resource consent applicants' (Murdoch, 2014:23).*

Regardless of the lack of current uptake to date the perspectives of the Kaiāwhina would suggest that the adoption of the concept of cultural landscapes, with associated mapping will enhance Māori ability to participate in heritage protection spaces with a degree of evidential support. Such an approach would be hard to ignore in an evidential based system.

### **6.1.5 ROLE OF SOCIAL LEARNING**

When questioned about the extent to which there have been positive learning outcomes for mana whenua during interactions with decision makers, Kaiāwhina H was not so positive.

*again, it's quite telling that I can't think of them, to be honest with you. There's ones I can think of where we've had an outcome, but it was still a... confrontational process to deliver that outcome, and the learnings weren't shared by the other party, by the other-side. So, I think that's quite telling. Given my background both as an archaeologist and someone working for an Iwi, that I can't answer that with a list, is an indictment I think.*

Thus, within the context of Auckland International Airport Limited proposals, I can derive no evidence of social learning. I suggest this is due to preferred outcomes being pre-determined by the decision makers, and thus participatory spaces and associated boundaries are created

so as not to significantly disrupt such agendas. So, what this suggests is that perhaps one of the only means to disrupt the existing hegemony is to undertake an insurgent approach.

## **6.2 SPECIAL HOUSING AREA 62- MANA WHENUA RESPONSE**

*'Sometimes you've got to work with better the devil you know, but sometimes you don't, you've got to hold a line no matter what' (Kaiāwhina H)*

### **6.2.1 NATURE OF PARTICIPATION**

The case study of the nature and value of participation with respect to the SH62 area is interesting, in that it identified two distinct approaches to participation, and in doing so highlighted a number of underlying tensions. As identified in chapter four public participation was limited by the Housing Accords and Special Housing Act, which provided boundaries (Gaventa, 2004) around who could participate and to what degree. The use of the cultural impact assessments mechanism was again one way that the mana whenua interests of the area could engage in the statutory process. In this respect both Te Ākitai Waiohū and Te Kawerau ā Maki submitted cultural impact assessments regarding the proposal and according to the text of the special housing area decision, both entities submitted in favour of the application. The decision (Council, 2016:20) stated that each entity:

*supported both the plan variation and the qualifying development application and stated they represent the people who hold Mana Whenua of Ihumātao and who reside at Puketapapa papakāinga (Ihumātao village).*

The decision subsequently stated that:

*Overall, no issues were raised in either of the CIA's that would preclude consideration of the applications or result in a finding that they should be declined (Ibid,24)*

On the surface, these suggestions imply that the mana whenua groups that participated in the invited spaces were comfortable with the proposal as it was presented to them, but further investigation has identified that this is not necessarily the case. Kaiāwhina H described the context within which they made the decision to participate:

*we had a judgement from the former Manukau City Council, and the extension of the MUL [metropolitan urban limits] at the time, fighting against that, failed against that, it came up again for another future urban zoning, fought against that, failed against that, went to the unitary plan, to get future urban zone in that, fought against that, lost against that. SHA comes along, we did fight against that, lost against that.*

Hence, the implications of these numerous defeats in the statutory processes effectively compelled the mana whenua to reconsider the strategic value of resisting the developments, especially given the imbalance in financial resources and technical capacity to support a response within these participatory forums. In this instance, Kaiāwhina H implies that they were informed by recognition of the apparent futility of full resistance, as to be outside of the participatory spaces raises the possibility of not having any ability to influence outcomes at all:

*but you are forced into... There's a whole battle, and a whole series of battles that were lost one after the other to the point where you are forced to either occupy, and protect which some people have taken that [option], or to try and mitigate, to mediate, to participate to try and get an outcome from the inside. And they're two legitimate ways of doing something. One speaks strongly perhaps to the heart, and one speaks stronger to....*

Further justification of the decision to participate in the available participatory spaces is detailed in the special housing area decision (Council, 2016:29). This illuminates the adoption of a pragmatic response of the mana whenua based on the opportunity to negotiate potential benefits, particularly on behalf of the mana whenua who want to return to the papakāinga area:

*there are at least 200 families who could come back and live in the village. We've had children who could not be brought up here because there's no room. That's nothing to do with Fletchers but there are many who want to come back and they have a right to do so. It's up to us. If our people are able to return to these [newly proposed] houses then we have done something.*

The nature of this approach comprised of use of a standard participatory mechanism in a 'traditional' (Monno and Khakee, 2012) participatory process, such as cultural impact assessments for example. When referencing this approach against the typology of Pretty (1995), initially I had anticipated that it corresponded to 'participation for material incentives', given the underlying intent to negotiate benefits for the iwi. However, Pretty suggests that this typology of participation is common where actors participate 'knowing it will not lead to action' and is therefore unlikely to have any lasting effect of participants lives (Ibid,1253). Thus, further analysis suggests that the closest fit is that of 'functional participation' given that mana whenua involvement 'may be interactive and involve shared decision making but tends to arise only after major decisions have already been made' (Ibid,1252). The corresponding rung of Arnstein's Ladder of Citizen participation is that of 'Placation', whereby 'citizens begin to have a degree of influence though tokenism is still apparent' (Arnstein, 1969:220). However, there is also arguably elements of 'partnership' in

that this form of participation enables the mana whenua ‘to negotiate and engage in trade-offs with traditional powerholders’ (Ibid, 261).

Thus, the nature of participation is such that it allows a degree of influence to be exerted yet is arguably still a tokenistic gesture given the major decisions have already been made. Regardless, this approach provides an enhanced opportunity to mitigate adverse effects on Māori heritage in this instance and provides for other social benefits as discussed below.

### **6.2.2 POWER**

Thus, the conventional participatory approach adopted by those with ‘mandate’ provided the opportunity to negotiate benefits for the iwi within the constraints of the existing ‘traditional’ (Monno and Khakee, 2012) participatory framework. Arguably, by participating in such a manner, they could influence those specific matters that are of most significance to them. In this case, (although not quite meeting the definition of insurgent participation) they were able to pursue pragmatic design compromises that mitigated some of the most significant effects on cultural values, thus resisting the original scope from within the participatory spaces. Gains were detailed within the decision as described below:

*Fletchers came to realise how much this land means to us. The proposal was 520 houses which came down to 480 ... then it agreed to move a fence back by 80 metres which is a sizeable area and that land will come back to us in fee simple. This is the first time since the confiscations that land, including the toe of the maunga, will come back to us’.*

As alluded to above tangible ‘gains’ were negotiated between the mana whenua and Fletchers the developer, including preservation of a viewshaft from the papakāinga to the ancestral maunga of Puketāpapa, with the 80m fence offset representing an 80m buffer zone from the base of the maunga. Furthermore, reference was made to the developers incorporating a garden area into the development proposal which would serve to provide for cultural practices such as the harvesting of medicinal species and for growing flax. It is apparent that without participating to some extent within the limited spaces available, it is unlikely that the mana whenua would have negotiated what is arguably a relinquishment of some control by the developer, albeit in the form of design elements.

Although the development is likely to proceed, the values that the mana whenua prioritised are to an extent reflected in the proposal. Furthermore, the fact that the developer has removed 40 houses from the development indicates a significant compromise, given that 40

dwellings at an indicative median Auckland house price of \$852, 000 (Sept, 2018) represents in excess of \$32 million dollars revenue for the project. So, the question remains, to what extent does this traditional participatory planning approach allow for the protection of Māori cultural heritage? In this instance mana whenua have negotiated the 80m buffer around the Maunga, which may mitigate some of the worst impacts on features such as lava caves or undiscovered koiwi, and therefore arguably some protection has been secured. In a wider lens though, the impact on the ancestral landscape will still be significant, and the incremental degradation of the remaining ancestral landscape continues. Thus, any further adverse impacts on the landscape correspondingly transfer to a degradation of the cultural and social wellbeing of the tangata whenua of the area.

### **6.2.3 DECISION MAKING INFLUENCE AND EMPOWERMENT**

As suggested above participation by the mana whenua in the manner that they have has provided an opportunity to influence the outcome in a tangible sense. The resultant urban form should the development proceed will be informed by representative elements of resistance by the mana whenua to the overall development scope, as represented by the urban form. Specifically, such elements in a physical sense will be seen in the limiting of the height of the buildings within the viewshaft from the papakāinga to the Maunga, for example, or the development boundary being delineated by an open space buffer at the toe of the Maunga. Therefore, it is argued that the mana whenua has been empowered to some degree by this form of participation and resistance, with the impact of this being recognised by Kaiāwhina A in the following statement:

*It's also I guess the layers...so whatever does get built there in the future will in some way be a representation of that resistance, whether that's a monoculture that tried to wipe out that resistance or whether its incorporated in some sort of representative form of who it was that has lived there and what their interests are in that place, it takes not just social forms but varied built forms too.*

Thus, it is argued that an expression of mana whenua empowerment will be evident in the urban form, and in a tangible sense, that is a good pragmatic outcome when considering the overarching issue of the development being on privately owned land.

#### **6.2.4 SOCIAL LEARNING**

Social learning outcomes as a result of conventional participation (Monno and Khakee, 2012) are initially not that apparent. However, it can be argued that the amended urban form of the development, in response to mana whenua participation, may eventually lead to a degree of social learning as described by (Reed et al., 2010) through new residents gaining a wider understanding as to the historical and cultural significance of the area. Furthermore, the close proximity to the papakāinga and the negotiated gardens, as a defining cultural connection to the area provides opportunities for collective and cross-cultural knowledge transfer.

### **6.3 SPECIAL HOUSING AREA 62- SAVE OUR UNIQUE LANDSCAPE RESPONSE**

*The tactical failure of these struggles does not mean that the effort was wasted. Resistance is never wasted (Friedmann, 1987:67)*

#### **6.3.1 NATURE OF PARTICIPATION**

This section analyses the characteristics of an alternative insurgent participatory approach by other parts of the community with whakapapa links to Ihumātao. Due to the constrained participatory spaces imposed by the special housing area legislation, a separate group of whanau from the Puketāpapa papakāinga (Ihumātao village) formed Save Our Unique Landscape or SOUL as described previously in chapter four. According to Kaiāwhina C, this group challenges the mandate of the representative trust that participated in the manner discussed above, not on the grounds of whakapapa, but due to the idea that they were not elected by democratic means as representatives of the Marae. This was summarized by Kaiāwhina C in the statement that:

*so the way these trusts are formed, totally contravenes with tikanga Māori. we were never involved in that process...some of these trusts are not elected by the people, they were elected by themselves...that's not tikanga, that's not right, they're confined by these pākehā laws...and that frustrates me...for certain people to speak on our behalf, without even speaking to us*

Such a statement observes the 'who speaks for country' dynamic mentioned regarding indigenous Australians and their struggles in participatory heritage spaces (Butterly, 2017). SOUL subsequently adopted an insurgent approach to participating. I argue that the perspective and methods they adopted is an expression of radical planning principles, and thus is an approach which shares lineage with transformative theory.

Although participation by way of resistance was undertaken on a local scale, a significant indicator of the underlying radical or insurgent ethos, was illuminated in the following statement which spoke to the perceived illegitimacy of the special housing area legislation:

*We talk about the housing crisis, what about the poverty crisis? We're very high up in terms of child poverty and obesity, compared to other OECD countries but we're not... but we're not reserving spaces to grow healthy affordable kai. And you look at Ihumātao, one of the lowest socio-economic areas in Auckland, and then south Auckland, one of the worst in the country, but we're freeing up of fertile land for developments. To me it makes no sense. (Kaiāwhina C)*

Thus, radical planning's lineage to civil rights movements and the 'perspective of agonistic democracy and social mobilisation' is reflected in the Kaiāwhina statement above (Monno and Khakee, 2012:86).

The nature of participation comprised operating in all participatory spaces available, including the creation of new or less obvious spaces. For instance, SOUL utilised the United Nations forum for Indigenous peoples to present a case on their behalf. The reason for this was to ensure that SOUL was:

*Constantly keeping govt and council in check. 'Cause there's been a lot of breaches to our constitution, and important international covenants, which New Zealand are signed up to in the facilitation of this special housing area, (Kaiāwhina C)*

The subsequent UN report suggested that the Crown had not adequately consulted and sought consent with the affected Māori interests in this situation.

*'The UN Committee made a clear distinction between consultation and consent and it became obvious to its members that Māori most affected by the proposed housing development have not been properly consulted, nor have they given their consent.' (Radio NZ, 2017)*

Although such recommendations are not binding, they do serve to cast the Crown in poor light within the international community should their practices be found to be discriminatory, thus imposes pressure.

SOUL initiated actions to mobilise social groups aligned with the kaupapa, in such a way that it 'raised people's consciousness; built a sense of human solidarity in the teeth of corporate profits' (Friedmann, 1987:63). Of interest in this regard is the physical (re)occupation of the contested area for in excess of 650 days so far, as a means to demonstrate a physical presence in the area, but also to reconnect in terms of strengthening of cultural identity.

Traditional means of participating were also adopted such as the lodging of submissions within local government frameworks and utilising the appeal provisions of statutory processes to disrupt the development process. Other participatory methods to effect change have been:

- *Presentation to Auckland Heritage Advisory Panel, Māngere-Ōtāhuhu Local Board and many groups and organisations of Māngere and wider Auckland.*
- *Complaint laid to Ombudsman, Overseas Investment Office*
- *Letters delivered to every single MP in Parliament with the Labour Party, Green Party and, Māori Party co-leader Marama Fox, showing support to SOUL.*
- *Presentation of a 4,000+ signature petition to Auckland Council meeting in August (more than 250 SOUL supporters in attendance).*
- *Meetings with then Mayor Len Brown, Ken Lotu-Iiga of Fletcher Residential, Deputy Mayor Penny Hulse and Auckland City Councillors.*
- *Proposal of Land Swap tabled to Council and local board, followed by a SOUL visit with Watercare Treatment Plant in Māngere.*

However, adopting this means of asserting pressure through insurgent action ‘means to swim against the stream, to mobilise for action, and to always struggle against the resistance of powerful forces’ (Friedmann, 1987:79). The struggle to sustain such an approach was mentioned in the following statement:

*[It’s a] choice that we made to participate in this system as well, in these processes, knowing they facilitate this development is frustrating, but it’s also like necessary....sometimes I think what is the point in participating in it when it’s just, it’s not working for us....How stress free it would be to not have to go to court cases or hearings, or write submissions, and instead just be here...defending it?....But we recognise it is necessary, and like we said at the beginning...we would always, we were always going to exhaust every means available to us...(Kaiāwhina C)*

The effect of taking this approach has not been lost on theorists, as suggested by Friedmann (1987:80) who stated that:

*‘Radical practice does not come dear in terms of money. It is more demanding on time: time for countless meetings that may last long into the night, or for the sweat equity that many jobs demand’*

The above nature of participation is difficult to sustain (Friedmann, 1987:79) and there is no guarantee of successful outcomes in the protection of Māori heritage. It relies on relationships, creating new ones and re-affirming existing ones, whilst mobilising, cross linking, networking and building coalitions (Friedmann, 1987). Thus, the value of radical

practice may be most evident in its socially transformative value. The lineage of this approach in this context is clearly evident to the agonistic and emancipatory social movements of the 1960s onwards. Although, as discussed below the benefits may not always be as anticipated.

### **6.3.2 POWER**

The role that power relations have had in the formation of SHA62 cannot be understated. Power is clearly evident in the way that the Housing Accord and Special Housing Areas Act legislation defines the ‘boundaries that delimit the fields of possible action’ (Gaventa, 2004:34). The subsequent limitation of participatory spaces in effect forced SOUL to create participatory spaces outside of the traditional governance frameworks, thus try and find ways to disrupt the existing power boundaries. Consequently, perhaps the most significant ways that power is conveyed in this instance is in the power to exclude, specifically exclusion from meaningfully participating in such a manner as to be able to influence decisions. Power is also expressed in the control of information distribution, and the timing of such releases, as well as the perceived selective nature in which information was made available when it was released. Furthermore, power was demonstrated in the disregard for statutory provisions that advocate for the protection of Māori rights to participation and consultation.

These representations of power were best acknowledged by Kaiāwhina C in the following:

*SHA ACT- passed under urgency, they didn't consider Māori in the passing of that law, so where was our participation upheld according to Te Tiriti o Waitangi, New Zealand's founding document upheld in that process?...and then you've got the HAASHA S29- which says that we do not have the right to make a submission against SHA's unless we are a recognised, identified affected party...So how is it that they can choose which houses to consult with? Like, for my nans house for example, they did all the houses on her street up the street, skipped her house and then did the empty barn on the right side of her house. And then 9 of the 11 submitters opposed the development, so, and even things like the right to petition, our first petition had 5000 signatures, more than the number of people that are standing up and saying this housing development should go ahead, how is it that all those people's views are ignored? And they say we are a democracy, but yet how is it that we're not allowed to appeal or participate in the process? The community were never told about whether or not this development should go ahead we didn't even know it happened until the survey pegs turned up...And to me that just goes against our human rights, our democratic rights...that we are so called proud to have here in New Zealand.*

It is obvious that there is a significant power imbalance within the confines of the special housing area processes, and I argue, this is even more clearly identified in the case of Ihumātao. Besides the power to exclude and the power to control of information, they also retain the power to disregard and ignore, as evidenced by the disregard of the 5000 strong petition. Thus, they maintain an existing hegemony that is very difficult to disrupt by conventional means, let alone from the outside.

A further display of power was the impact of a predominant archaeological paradigm and the privileging of expert opinions. The tension that has created for this Kaiāwhina was apparent, in the doubts that caused in terms of themselves questioning the validity of traditional knowledge, and oral histories of the old people.

*But also the conflict between western science & traditional stories, so I've constantly had to question this scientific evidence goes against what our stories tell us. So, I've been conflicted in some ways...I struggle with it all the time actually. What archaeologists say and what I've been told. (Kaiāwhina C)*

An interesting observation regarding the discovery of the 88 koiwi tangata mentioned elsewhere was expressed whereby 'expert' western knowledge was discredited by the discovery of the koiwi as suggested by oral histories:

*...But there's a sense of relief too when our kōrero was supported by scientific evidence because ...the systems are more likely to favour western science over our traditional stories (Kaiāwhina C)*

Thus, despite the power of the overriding archaeological paradigm and the subsequent desecration of the urupā, it could be argued that an outcome on a small scale was the vindication of the value of traditional knowledge, and on a personal level, the reassurance provided a restoration of faith in the traditional stories, thus enabled a strengthening of identity.

### **6.3.3 DECISION MAKING INFLUENCE AND EMPOWERMENT**

*And a lot of people say that this whenua is really healing, but so too is this kaupapa. (Kaiāwhina C)*

When taking into account all the previous legal decisions, property rights, statutory frameworks and corresponding formal avenues to resist SHA62, it is unlikely that this development will not proceed. Thus, the ability of the radical approach of SOUL to exert any significant influence over this development proposal is limited to perhaps an advocacy role. I

suggest it is too far progressed in legal terms, and the financial implications for the Crown or Council to intervene will be too significant to justify to a public given the dominant rhetoric of a housing crisis. So, the question becomes, if the SOUL campaign cannot influence and completely stop the development, to what extent can the community be empowered through taking a radical planning approach? The weight of evidence suggests in fact that there have been significant indications of empowerment, transformation and social growth observable on multiple scales.

Friedmann (1987:67) claimed that an objective of radical planning is ‘a more self-reliant, politically active community’ which I consider is recognised within this case study. Furthermore, empowerment can be realised through the interaction between individuals and their environment in such a way that the individual acquires socio-political awareness, a critical political consciousness, and the enhanced skills and capacity to struggle for influence over their situation (Kieffer,1984). Hence SOUL’s campaign provides evidence of transformative action through the transformational effects upon some of the more marginalised members of society that have participated within the campaign.

*‘I guess that’s what we are doing here...we have people who have been failed by the system, ...they need an alternative, and living here at kaitiaki pa is an alternative for them because we operate differently I suppose, we want to be independent, and have our mana motuhake or our tino rangatiratanga, and so , I see myself gaining all that matāuranga, and using that or seeing how we can change and then apply that to here, to this rohe. One of our visions, we want to be independent and make decisions for ourselves (Kaiāwhina C)*

Whilst members of the community have been empowered in a socio-political sense, they have also been empowered through a strengthening of an individual’s cultural identity, and reconnection to society. Furthermore, there is evidence of a shifting of traditional dependencies, referred to by (Friedmann, 1987).

*highlights of this kaupapa has been to see how empowered our whanau have become by us taking a stance, and reclaiming their history, their whakapapa and their sense of belonging here to this whenua (Kaiāwhina C)*

*We've had whanau here that needed an e-bail address, not knowing much about the campaign, but us willing to take them under our wings, in line with, manakitanga, aroha and kaitiakitanga. So its not just for the whenua but for each other... and so getting them on board, they're on home D, you know home arrest for 6 months. And in that time we work with them, reconnect them back with the whenua, we're enrolling them in classes at the wānanga, we're trying to find them a job, we're working through some of their behavioural issues or addictions. And a lot of people say that this whenua is really healing, but so too is this kaupapa. So that's definitely been a highlight, is seeing some of my uncles or my cousins lives transformed just by being here. And that's about reclaiming their whakapapa and their connection to this whenua...so yeah, its been really transformative. (Kaiāwhina C)*

*'but our whanau...they've come back , they've seen our kaupapa they have varying reasons to come here and occupy, and be part of the kaupapa, but it's been amazing to see them come here, not know their whakapapa, not know their pepeha, but are learning it through this kaupapa... and connecting back to their turangawaewae and that's been amazing.(Kaiāwhina C)*

Empowerment is also evident in the manner in which the group make decisions through seeking consensus:

*A lot of our whanau here... they've been so conditioned to that top down approach. But here we have a different way of making decisions for ourselves, we're very much about collectivism and when we are making decisions about our papakāinga here, we constantly consulting with each other, we'll have a wānanga about a decision, we always aim for a consensus...I feel like, we always walk away empowered after our decisions have been made, our approach is, we're not about taking peoples mana away, where about enhancing each other's mana, and that's a way that we've found best works for us....(Kaiāwhina C)*

On a personal scale, Kaiāwhina C identified growth through taking the radical stance to protecting the whenua. However, the growth was tempered with challenges associated with navigating cultural boundaries:

*I've been tested and challenged a lot in this Kaupapa. So we talk about tikanga, the relationship between tuakana and teina, and I've had to speak out of line sometimes in order to push forward our agenda which is not really in line with our tikanga...And I was conflicted in many ways to not speak out of*

*line...but we have stories, whakapapa that allow us to behave in that way. When I think about Maui who constantly challenged his brothers or the Atua and the outcomes that he achieved, good or bad. Or I think of what is my stance in this world? And I guess I find strength in that...(Kaiāwhina C)*

When considering the above I suggest that the true benefits of an insurgent approach in this instance can be observed in the increased capacity of the community to maintain control over their destinies (Friedmann, 1987), as well as the creation and transfer of discursive knowledge.

#### **6.3.4 SOCIAL LEARNING**

The weight of evidence suggests that SOUL's campaign, meets many of the normative practices of radical planning as developed by (Friedmann, 1987, Friedmann, 1989) and (Sandercock, 1998). One such synergy is the extent to which the SOUL campaign sought out and established connections and networks within the wider community.

*A lot of people say they have been inspired to start campaigns in their communities, we've seen rangatahi go to the UN, following in our kaupapa and we only followed in the footsteps of our tupuna who went before us, and continuing their legacies...perhaps whanau also being empowered to have a say in decisions that affect them, maybe case precedence that has been set in this kaupapa, you know, challenging the status quo.(Kaiāwhina C)*

Thus, also apparent is Friedmann's (1987) concept of the driver for the radical approach being situated in historic memories whereby the actions are undertaken with:

*'a critical consciousness of history that is useful in negotiating present needs and aspirations'.*

The Kaiāwhina references this notion above through their recognition of their whakapapa empowering them within the campaign.

Characteristics of moral development as described by (Webler et al, 1995) are also evident in that community members have developed a sense of solidarity with the group and adopted collective interests as their own. The Kaiāwhina was particularly enthused by the extent to which the wider community had supported the campaign. The mobilisation of various community members in support of the resistance provided a conduit for collective and cross-cultural learnings. Thus, the leaders of the resistance mediated the transfer of knowledge to action. Kaiāwhina C made the suggestion that the SOUL campaign represents how:

*biculturalism should look like in Aotearoa, because you have this community group that is led by mana whenua members, and supported by non-Māori*

*members, who are umbrella'd by a kaupapa Māori approach, by tikanga Māori, and that's something that I am very proud of from this campaign... so transferring that knowledge.*

Consequently, as suggested by Kaiāwhina C, the resistance could provide an example for inter-cultural relations in New Zealand.

### **6.3.5 CONCLUSION**

In a social sense, although the two different approaches taken may seem at odds with each other, I suggest that there are in fact more transformative outcomes to be gained by applying both a traditional and radical participatory stance. This assertion is based on the following facts. Firstly, if the traditional response was not pursued, and the radical approach failed completely, then the mana whenua would have absolutely no ability to negotiate concessions, undertake insurgent participation, and thus influence the urban form around their cultural values. They would simply be observers, unless of course they can operate in a technical or labouring capacity within the construction of the development. Conversely, if a radical approach was not pursued, and the outcomes of the traditional approach were the extent of benefits for the mana whenua, then many of the wider social transformations would not have been possible. Thus, the sheer 'reach' of transformative qualities achieved through these two distinct approaches has in effect been positive for the mana whenua, although not necessarily in a manner as was likely to have been anticipated.

In terms of heritage protection, it can be argued that the Mana whenua have achieved all that they reasonably can out of a significantly constrained process given the nature of the land title being private. This can be evidenced by the altered urban form from that of the original proposal which limits through the buffer zones any further encroachment onto the maunga and some of the higher risk archaeological areas. From a cultural perspective, maintaining the viewshaft to the maunga would no doubt be a significant gain, as Kaiāwhina G has suggested:

*I think that culturally that's an important touchstone for our identity*

Recognition of such cultural elements can be recognised as a positive outcome negotiated through a conventional participatory approach. The following subsection analyses another approach, in quite a different setting. What is interesting is that as Friedmann alluded to, radical planning approaches need to be context specific, thus indicating that context can make all the difference between a radical approach that successfully disrupts power and an approach that does not.

## 7 'IF THE FOREST GOES, SO DOES THE IWI'

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*To rebuild relationships between citizens and their local governments means working both sides of the equation- that is, going beyond 'civil society' or 'state based' approaches, to focus on their intersection, through new forms of participation, responsiveness and accountability' (Gaventa, 2004:27)*

The final case study references the mana whenua response to being excluded from participating in the management of Te Wao Nui a Tiriwa, the Waitākere Forest, an area subject to a treaty settlement process. The lack of subsequent engagement with mana whenua, particularly regarding the 'Kauri Dieback Disease' response forced the mana whenua to create new participatory spaces through insurgent action to disrupt the existing power structures.

### 7.1 NATURE OF PARTICIPATION

As observed in chapter three, there are statutory instruments that provide for enhanced participation of mana whenua that are relevant to the management of Te Wao Nui a Tiriwa. The settlement process is one such instrument that confirms statutory acknowledgements and deeds of recognition over specified areas, within the recognised area of interest of the settlement. However, despite the statutory provisions, innate relationship of mana whenua to the forest, and the potentially catastrophic impacts of the Kauri dieback disease, Kaiāwhina evidence demonstrates that the mana whenua have effectively been excluded from participating in any collective response to this disease. This is a significant issue for the mana whenua, given their existential relationship to the forest and the corresponding roles as kaitiaki.

Correspondingly, the intrinsic depth of association of the mana whenua had been expressed by Kaiāwhina during interviews, whereby Kaiāwhina I proclaimed that:

*And I said you know the mana of the forest, in Māori terms, in tikanga, belongs to us. Not you. It's still our forest, I don't care what sort of paper you have, or what sort of ownership paper you have. ...a lot of that area was gifted by my great, great, grandparents to the Crown for hospitals and schools that never eventuated. And now we've got townships and bloody forests under some QE2 thing.*

Consequently, frustration was voiced regarding the nature and value of the participatory spaces open to mana whenua with respect to management of Kauri dieback. The mana whenua had been exercising a kaitiaki function over Te Wao Nui a Tiriwa by way of

engaging with scientists, identifying and documenting heritage for example, although this was outside of the formalised management channels because they were otherwise excluded. This led to frustration on the part of kaitiaki as suggested below in this recollection of communication about this lack of engagement between the mana whenua and the Council:

*We're already doing your job for you, you are failing to protect us. Which is one of the things you are supposed to do. When you occupy a country under a treaty, you're supposed to protect us, and our taonga and you are not doing it. So how does that sit, when we are meant to be, seeing as we are doing it anyway, and we are the governors, and we've shown that we are, we need that to be formalised. We don't need it to be, but it should be.*

Mana whenua experiences suggest that engagement with controlling authorities under the Heritage Act could be described as 'just a window-dressing ritual' (Arnstein, 1969:219) with Kaiāwhina H suggesting that no meaningful engagement has occurred in the ten years of being in force. In terms of Arnstein's typology, the nature of participation would be characterised as non-participation situated between the rungs of manipulation and therapy. In this respect Arnstein (1969:217) conveys that 'the real objective is not to enable people to participate in planning or conducting programs, but to enable powerholders to "educate" or "cure" the participants'. Hence, Kaiāwhina evidence suggests that the nature of participation in this instance is also a mechanism to reinforce the remnants of a paternal and colonial approach where Māori statutory interests are disregarded, and indigenous knowledge systems devalued.

In a similar vein, the typology of Pretty (1995) identifies this type of participation as corresponding to the lowest rung of the ladder, 'manipulative participation'. Pretty (1995:1252) defines this as where participation 'is simply a pretence, with "people's" representatives on official boards but who are unelected and have no power'. Kaiāwhina H identifies this characteristic in the statement that:

*...in terms of unpacking this example with Kauri dieback, is sometimes the Crown can use Māori against Māori and set up committees, that are essentially box ticking committees, again the partnership part of the treaty. In this whole thing we've had no relationship with the Ministry of Primary Industry, or anyone about managing Kauri. Never had more than a 20sec conversation with them, and when we raise it with them, 'oh no, no, no, your interests are dealt with by this group that we set up full of Māori, that we don't even know, 'and that's where your interests are' ... it's not the individuals, it's the structure, and it's nothing to do with Kawerau or our forests, but its 'oh no, no, your treaty interests are dealt with through these people' who aren't even from here.*

Hence, this alludes to ‘manipulation’ in terms of the typology of Arnstein (1969) whereby ‘people are placed on rubberstamp advisory committees for the express purpose of “educating” them or engineering their support’. Another indication of the minimal nature of participation at the time was the interaction between Council and the mana whenua over the 5 yearly heritage area report. The report is intended to describe achievements, priorities and issues associated with the management of the area within the previous 5 year period. When questioned about the extent of Māori participation within the heritage area itself, as well as representation within that document the Kaiāwhina observed:

*No there’s none. There’s a mihi, and about a page and half historical, associative summary ... So that report, every 5 years. That act goes back till 2008, it has deeds in it for us to essentially co-manage, which haven’t been done yet. We were asked, I was asked, as I was 5 years ago as well in 2013 to review the whole document. [emphasis added]*

It is apparent that this level of engagement corresponds to ‘non-participation’ and thus is representative of an attempt to appear to satisfy treaty partnership obligations and other statutory obligations. Arnstein (1969:217) portrays this as participation that has been ‘contrived by some to substitute for genuine participation’. The nature of this request to ‘review’ a pre-prepared document by the Council was not lost on our Kaiāwhina H who understood that by participating in the proposed manner that the mana whenua could potentially be complicit in supporting a hegemonic agenda (Purcell, 2009). In terms of participating as requested the mana whenua responded in the following manner:

*And I said, I actually don’t want to [review the document] for a number of reasons. One, we haven’t been engaged with the process, we haven’t co-designed what the measures are, what it is you are even measuring. There’s no baseline for half this stuff, ‘cause you haven’t established it with us. I don’t want to. I don’t want to support your process, by participating in it. I’d rather write a statement about what needs to change...and that was about co-designing the metrics, establishing a baseline and moving to a co-governance / co management model, the deeds. And so that’s what we did.*

Consequently, recognition of the role and value of mana whenua participation in the management of the forest was deficient, and arguably a breach of the Treaty of Waitangi. As an alternative approach the mana whenua proposed the use of a rāhui, a matāuranga Māori approach to resource management. A rāhui imposes a temporary exclusion from an area with one purpose being to let an area or resource recover or regenerate without human induced pressures. Therefore, in a bid to ensure mana whenua interests were heard and the forest was protected the mana whenua suggested the rāhui to the Council.

*I said we've got one simple way. They said what's that? I said have a Rāhui where you just leave the bloody forest alone. No-one enters, it knows how to look after itself. We did that with the water out at Karekare Beach and after 5 years everything returned en-masse, I mean more than we'd ever known, and I said, that's what you need to do.*

Initially the Council failed to comprehend the benefits of the Māori-led approach of rāhui and their subsequent response exposed what appeared to be a concerning neoliberal agenda given the conservation and preservation function of the Council within the forest.

*'Oh we can't do that, we've got tourist buses', we've got this, we've got that.*

The subsequent lack of an ability to influence the decision within the limited participatory spaces forced the mana whenua to create their own. The mana whenua considered that they had no choice but to take insurgent action to express their kaitiakitanga, and protect the interests of the iwi, the forest and community. This was achieved by way of implementing:

*a rāhui over Te Wao Nui a Tiriwa, the Waitākere forest, in terms of trying to protect the ngahere and kauri because it's an obligation, but also an existential thing, if the forest goes so does the iwi. So we didn't ask permission, it was the responsibility of the iwi that did it, and sort of forced Council to, in this case, rather than ask permission we did it, then tried to bring them to understand our way, rather than the other way around.*

Consequently, the mana whenua undertook an insurgent approach in imposing the rāhui whilst being situated outside of the formal governance frameworks. Revealingly, it was acknowledged by Kaiāwhina H that the action of imposing a rāhui was an insurgent act, with anarchist undertones.

*There's a bit of anarchy to it, just actually, just ignoring the state, ignoring it. Just as well, it's not doing anything so it's irrelevant. It's not achieving the purpose or the outcome so therefore it's irrelevant... so let's ignore the state, the machinery of the state and do what needs to be done.*

Consequently, the mana whenua mobilisation against 'one of the many faces of the state' referred to by Sandercock (1998:41) is representative of an insurgent practice, as was the act of imposing the rāhui with the underlying intent of 'structural transformation of systematic inequalities' (Ibid, 97-98).

### **7.1.1 POWER**

The degree to which power was demonstrated in this case study is not clearly evident. Upon reflection, the act of applying a rāhui could be interpreted as an act of power, albeit outside of formalised structures, in that it forced the power dynamic to be altered. This was apparent

whereby Council had previously created boundaries around participation and decision making, and yet the rāhui had forced Council to engage, and as will be observed, implement change.

Given the past performance of the Council and Crown, achieving a degree of control through insurgent actions was always going to be resisted. As observed by O'Faircheallaigh (2010:23) 'it is unlikely that those who hold power will yield gracefully to groups pushing for a share of it'. Correspondingly, mana whenua had the following experiences:

*A point about technocrats, bureaucracies. Cause it's what we came up against, after the Rāhui trying to work things through. Every meeting we would have I would have the Local Government Act thrown at me. I would go in to discuss about how we'd placed this Rāhui, and how does our treaty partner wanna support us, to protect an outcome for the benefit of everyone? And then I would have a tier 3 Manager, throwing the local government act at me and all these other things. (Kaiāwhina H)*

Thus, the responses of the Council appear to have failed to acknowledge the transformative intent behind taking insurgent actions by imposing the rāhui. That is, transformation in terms of participation, enabling the exercise of kaitiakitanga and rangatiratanga, and saving the kauri for subsequent generations, albeit through an indigenous knowledge-based approach.

Whilst it may be observed to be a direct challenge to Council's power, equally it could be interpreted as an attempt to hold the Crown and Council to account for their obligations under various statutes, including the Treaty of Waitangi and the principle of partnership. In response to the Council managers 'throwing' the Local Government Act at them, Kaiāwhina H had the following argument in reply:

*And I would say what the fuck about our Treaty Settlement Act and our Treaty. What about the Act over the forests that demands, in statute, that you protect and enhance, what about these acts? Who gets to decide what acts are relevant and what ones aren't? To the point where I almost threw him out of his own room. So, you know, there's that, those barriers within the system.*

Thus, the existing power imbalance was disrupted by mana whenua implementing the rāhui, as Council was forced to engage in dialogue that had previously not occurred. In doing so the power that was 'used to coerce, constrain and control' mana whenua became a dynamic where the power to enable the 'individual, social and political empowerment of the oppressed' came to a head (Friedmann, 1998:141). That dynamic and subsequent dialogue unsettled the power imbalance and prompted change as discussed below.

### 7.1.2 SOCIAL LEARNING

Social learning can be recognised in this case by way of the community response, and the degree of engagement and support by other community groups. Kaiāwhina H conveyed some initial misgivings that the community would react negatively to the imposition of the rāhui and the insurgent approach. Regardless, imposing the rāhui was considered necessary as suggested:

*it was just Kawerau saying 'I don't give a stuff about whatever your process is. We're gonna do what we're gonna do... and it was good that we're at a time when I thought we'd get about 10% of the public supporting us, we ended up more or less getting 50/50. I thought we'd get an absolute slaughtering, and we didn't, and we had the Community pick it up and defend it for us... and so that was quite good actually.*

So, evidence suggests that the rāhui prompted a shift in the social consciousness that engaged the wider community with the need to respond directly to the Kauri dieback disease. Thus, it took an insurgent act of applying a tikanga Māori approach to challenge the status quo and initiate change.

*And I think, in NZ, in 2017/18 for some reason that seemed to resonate with half the population, but when you can come together for something that benefits all it sort of transcends that, those cultural boundaries I think.*

More significantly, given the predominantly euro-centric demographic of the Waitākere area, is the recognition by the wider community of the value of mataūranga Māori in the form of a rāhui. So, the fact that parts of the community got in behind the rāhui as a legitimate environmental management tool, and therefore 'adopted' a Māori worldview is an expression of social learning. In my opinion the potential for this cross-cultural learning could be a milestone event in Māori- and non-Māori relations and the enhanced legitimacy of kaitiakitanga as an appropriate environmental management mechanism. A sitting Cabinet Minister recognised and commended this insurgent action in a speech to Parliament on the 21 February 2018. In doing so the Minister issued a challenge to the government to follow the leadership of Te Kawerau ā Maki in the fight to save the Kauri.

*My speech today, therefore, is focusing on a celebration of the leadership of Te Kawerau ā Maki in persevering through and making sure that they did all they could to rally the community to protect the kauri in the Waitākere Ranges. We all have to follow that leadership here in this House. We now have to look honestly at what we can do and what has and has not happened where the kauri have become so sick today. Could this have been prevented, and what do we need to do from here?*

*I want to talk about the rāhui as a tool, as an attempt to do the right thing. That is all that the rāhui is, and Te Kawerau ā Maki have been working for five years with leading scientists to answer the question: what is it that we have to do to make sure we are stepping up to our whakapapa obligations? Those scientists and community experts came back and all said the same thing: "We must close the forest." They all said the same thing, and Te Kawerau ā Maki put their cultural whakapapa tool in place to do exactly that.(Davidson, 2018)*

The rāhui had a definitive impact on a raised social awareness, and therefore is a form of social learning that can lead to transformative outcomes. As such the rāhui can be interpreted as a radical action undertaken with a transformative intent that successfully leveraged social learning to empower and transform. The nature of that empowerment is now discussed below.

### **7.1.3 EMPOWERMENT**

A number of transformational outcomes have been realised as a result of the radical planning approach taken by the mana whenua. In one respect through the rāhui mana whenua were empowered to participate in a more meaningful way which corresponded to Council ceding a degree of control. Furthermore, in an operational sense potential empowerment is evident by way of a redistribution of some power:

*for example, we got council to agree, given that there's a rāhui over [the forest] that public access, if there's ever going to be some form of public access, it has to be agreed with us, we have to both agree, not [be] consulted, we have to agree. we've got a key to one door, they've got a key to another door. Both doors have to open for someone to pass through... so we are moving towards that, but we're just not there yet (Kaiāwhina H)'*

Arguably the most transformative outcome of this insurgent approach was the potential for change that the significant increase in budget allocation provides for the management of the kauri dieback response. Granted it may also be interpreted as fortuitous timing, but regardless, the new 10-year plan raised the budget allocation for the following 10-year period from \$50,000 per year to \$1.1million per year (Auckland Council, 2018a:10). Debatably, the increase may be due to the increased community awareness of the futility of Council and Crown responses to the disease to date. Thus, the corresponding societal pressure that places on the governing body in terms of accountability and responsiveness could not be ignored anymore. It can also be due to a culmination of enough scientific evidence to demonstrate that insufficient financial resources had been committed previously. Such an increase indicates that the disease will get a level of attention it needs, which is a hopeful outcome for

the wellbeing of the forest. Regrettably, despite the budgetary gains, Kaiāwhina H conveyed the continuation of the status quo, in terms of a lack of mana whenua power to access or control any financial resources for contributing to the management response:

*It doesn't mean we got any co-governance or co management over the spend of that. Including for Matāuranga Māori or our own Kaitiakitanga. We certainly asked, but... we're still working through that with them.*

#### **7.1.4 CHAPTER CONCLUSION**

As can be identified in the evidence presented above, differing contexts require differing responses, and thus one function of radical planning practice is the mediation between knowledge and strategic context-specific action (Friedmann, 1987); (Sandercock, 1998). In the contexts discussed above, the traditional participatory approaches achieved differing outcomes and realised varying transformative properties. However, in both the Ihumātao Airport and Ihumātao housing instances which adopted this approach, mana whenua were significantly constrained by way of an inability to influence what appears to be predetermined policy objectives and outcomes. Consequently, mana whenua were unable to protect their cultural heritage, their ancestral landscapes to any significant extent. Granted however, that there were some material gains in terms of protecting the toe of the maunga and view shafts in the Ihumātao context.

However, this does not account for the cumulative effects on the ancestral landscape though. As such, within these conventional state or industry sponsored participatory processes, evidence suggests that despite the appearance of legitimacy, fundamentally mana whenua cannot challenge the existing imbalance in power. Therefore, in this instance the traditional participatory approach 'reinforces existing power relations rather than transforms them' (Purcell, 2009:141).

The radical approach on the other hand, demonstrated varying degrees of transformational 'success' and in quite different ways. The SOUL approach (to date) appears to have been unable to disrupt the existing hegemony of the state sponsored special housing area directive. However, on a social level, the radical /insurgent approach displayed significant transformational qualities. These included wider collective cross-cultural understanding and relationship building, down to individual empowerment in terms of rebuilding their cultural identity and gaining skills to being able to control one's own destiny. The 'success' therefore is manifest in the 'tiny empowerments' within the community, the networking, the enhanced

collective consciousness and the common grassroots struggle against the ‘teeth of corporate profits’ (Friedmann, 1987:63).

The example at Te Wao Nui a Tiriwa was somewhat different, in that radical action gained more traction in terms of the ability of the mana whenua to engage within the management of the Forest, the management of their ancestral landscape. Empowerment and social learning were still realised, but the real difference was the disruption of the power-imbalance, which forced the controlling agencies to engage with mana-whenua in a meaningful manner.

Finally, these case studies have provided a wide lens to analyse the interface between cultural heritage protection, Māori, Crown and Council relationships, and the forms that power, empowerment and social learning can assume in such cases. The closing chapter will now provide some further discussion and recommendations as to insights gained from this research and the implications for relationships in the heritage management space.

## **8 CONCLUSION AND RECOMMENDATIONS**

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### **8.1 INTRODUCTION**

The ground this thesis has covered has enabled the recognition of a multitude of interconnected variables and elements which impact on Māori participation in the heritage space. As such the complex relationships between such elements, including power, perception, property rights, participation, identity and governance for example speaks to the difficulties apparent within the heritage management regime in New Zealand and world-wide.

Consequently, this thesis adopted a broad perspective to addressing the overall research objectives, which was to identify and evaluate constraints to effective Māori participation in the protection of their cultural heritage and to evaluate alternative approaches that might assist to counter or mitigate these limitations. This aim has been explored through a number of actions. These have included a review of literature relating to planning, participation and cultural heritage theory; an analysis of relevant statutory and policy frameworks, and an assessment of two case studies in terms of the theoretical framework derived from the literature review. The nature of the two case studies provided lived examples of participatory approaches adopted by Māori to defend their heritage, in this case their ancestral landscapes. Accordingly, this broad lens has provided for a select range of recommendations, or focal points to assist iwi, Crown, councils and the public to interact more effectively in the management of cultural heritage in New Zealand.

### **8.2 SYNTHESIS OF FINDINGS**

Chapter one combined a brief introduction to the research and then a more comprehensive methodology to justify how the research was going to be undertaken. A critical social science paradigm was employed as an appropriate method of critique, given the overarching focus on issues of social transformation and power. One qualitative method used was the Kaiāwhina interviews which subsequently provided a forum for ‘others’ voices to be heard, offering an opportunity for perspectives from within the system to be captured. These interviews provided rich data to inform the chapters five and six results and discussion chapters, whilst on a personal level allowing for my awareness of underlying systemic tensions to be heightened. The other method used was that of a descriptive case study method which identified two contact zones where Māori and private and public authorities interacted. This

method provided the opportunity to evaluate a diverse range of data sources, whilst also satisfying my intent to analyse real, applied, politically charged situations being played out in various spaces of interaction. These case studies included a wealth of official material to draw upon, like cultural impact assessments, planning commissioner reports and decisions and stakeholder submissions. Thus, when combined with the lived experiences of the interviewees it resulted in quality data for analysis.

Chapter two comprised a literature review that provided the theoretical basis for the research methods to be utilised, as well as the theoretical framework for analysis of the interview data and the subject case studies. What was interesting as a researcher was the varying depths of literature. Planning, participation and heritage theories were well developed. Conversely, the theory on insurgent and radical planning was less developed, which necessitated a more concentrated analysis of some of the original theoretical writings, as opposed to being able to draw on a wider range of theorists and literature. Also, of interest was the relative synergy of core themes that permeated each of the different theories including themes such as power, identity, empowerment and transformation. This provided a robust structure to apply when analysing the case studies in chapters five and six, however the breadth of the heritage framework data necessitated a different approach. A final observation relating to this chapter was the degree to which it evolved in scope over the duration of the research. By this statement I refer to my original focus being primarily on participatory mechanisms like cultural impact assessments for example. However, during the course of the research it became clear that the mechanisms should be a secondary consideration, and the context in which they were applied, like the heritage sector for example, should be the main focus.

Chapter three included analysis of the statutory frameworks related to heritage management in New Zealand, whilst also covering the legislative provisions that provide for Māori participation in the New Zealand planning system. The breadth of coverage within this chapter demonstrates the statutory complexity of the heritage management frameworks, as well as the operational difficulties with multiple pieces of legislation having a controlling stake in heritage. What is also evident from this analysis of heritage provisions is the undercurrent of the authorised heritage discourse as represented through the composition of the heritage list for example, and the archaeological bias of the regime in general. An example of this bias would be the composition of features on the heritage list, typically built or archaeological heritage, as opposed to intangible elements like landscape for example. Also identified was the evidence that district plan schedules often fail to accommodate Māori

sites of significance in their schedules, which leaves Māori heritage exposed to loss. Another indicator of the predominant hegemonic view of heritage was shown through case law that limited Heritage New Zealand's reach to a site specific, evidence-based advocacy role, completely at odds with a more integrated, holistic conceptualisation of the significance of landscape. Subsequently, this chapter also conveyed the notion that there will be no easy fix for the heritage regime, without significant structural, statutory and stakeholder shifts.

The following chapter provided a contextual analysis of the two case studies, being Te Ihu o Mataoho and Te Wao Nui a Tiriwa. In doing so I hoped to portray what Kaiāwhina H has referred to as the 'legacy of harm' that has been imposed upon the mana whenua of the Ihumātao peninsula since the colony of New Zealand was settled. Contributing to the narrative were various excerpts from participatory mechanisms such as cultural impact assessments, and relevant case law. Te Wao Nui a Tiriwa was detailed as the second case study, or ancestral landscape where issues of power, exclusion and empowerment were played out. Overall, this chapter provided the basis for considering applied instances where heritage related tensions were expressed.

Chapter five is the first of the three combined results and discussion chapters. This chapter analysed regime wide issues and the supporting mechanisms utilised by Māori at an iwi/hapū or whanau level. The structure for analysis involved four components, concepts of heritage; the heritage framework; the role of power in heritage management in New Zealand; and the mechanisms for participation. Each of these themes were discussed in detail, with the largest portion of evidence being offered by Kaiāwhina relating to power and capacity limitations for both Māori and councils.

The final two combined results and discussion chapters discussed the two separate contact zones on the Ihūmaatao Peninsula, and Te Wao Nui a Tiriwa. These two chapters addressed the final two research objectives which sought to identify and evaluate innovative ways of participating within the heritage space, as well as analysing the nature of social outcomes associated with each approach. As detailed in chapter one, the theoretical framework adopted for each included first, the nature of mana whenua participation, and then the extent to which power, empowerment and social learning was expressed within each participatory space. This framework provided the basis for comparing divergent participatory approaches in a systematic way that evaluated key themes as they applied to quite different contexts.

In the case of chapter six relating to Te Ihu o Mataoho, participation within invited spaces was observed to have variable socially transformative results, which corresponded to the degree to which powerholders shaped the boundaries of invited participatory spaces. It also demonstrated the ingrained systemic issues between Māori interests and governing agencies, be they Crown or Council, with evidence of institutional and archaeological bias in decision making also apparent. However, there was also evidence of social empowerment, despite the nature of the constrained participatory spaces available to the mana whenua.

The insurgent approach to participation adopted by SOUL was also demonstrated to realise transformative outcomes, albeit more evident in a social sense than a political and physical sense. However, it should be stated that the special housing area process is not fully finalised to date, and therefore there is still a residual chance that SOUL can achieve their main objective of halting the development. What this chapter identified overall was that there can be transformational gains achieved through both invited and created participatory spaces, that is, by adopting either a compliant or insurgent approach. As Friedmann (1987) and Sandercock (1998) suggest, the effectiveness of either approach is context specific.

Chapter seven demonstrated a more effective adoption of a radical or insurgent approach to disrupting the status quo, to an extent. Although the mana whenua did not manage to achieve a redistribution of power, they did however manage to exercise their kaitiakitanga function in a real and deliberate manner, from outside of the formalised governing structures. Therefore, their insurgent action facilitated empowerment, which demonstrated that as a mechanism for change, radical and insurgent planning approaches can be effective mechanisms for change and protection of Māori cultural heritage and ancestral landscapes.

The complexity of the heritage management regime is an evident theme throughout this thesis which speaks to the difficulty in adding value to existing theory in this field. However, this research did manage to address the overall objective of identifying constraints within the heritage management regime that limit the ability of Māori to defend their heritage. However, in doing so some findings are concerning in that many of the issues are already well recorded in academic literature. Although disappointing to observe, this research still adds value in that it again 'calls out' the deeply entrenched nature of the power imbalances, the archaeological and institutional bias and cultural and technical capacity deficits for Māori and decision makers. Theorists from the fields of planning and heritage have tended to suggest that there is empowerment and transformation to be gained from both citizen participation in decision

making frameworks as well as engaging with cultural heritage. This research supports this assertion and therefore adds to the body of evidence of these fields of knowledge. It also adds to the limited amount of literature relating to insurgent practices of indigenous peoples in an urban planning context. Despite being ‘context specific’ the evidence of this research suggests that insurgent practices can realise transformative change, although change may not be in the manner as originally pursued or anticipated.

### **8.3 RECOMMENDATIONS**

This research has demonstrated that heritage matters are complex, and many of the issues that need to be addressed are systemic and context specific. As such, this alludes to the difficulty in formulating definitive recommendations that would be of benefit across the heritage regime in New Zealand, particularly given the radical planning element to this research. However, there have been a number of insights that have allowed for some recommendations to be made.

The maintenance of the knowledge, histories and stories associated with Māori heritage places is critical to their retention and protection (Heritage New Zealand Pouhere Taonga, 2017:8). Thus, whilst there are some complex data sovereignty and retention issues to be worked through, the evidence suggests that the most robust way to protect and nurture Māori heritage is to record, monitor and defend it.

**Recommendation 1:** Undertake an extensive Māori Heritage recording and mapping programme to inform a multi scale knowledge base.

Iwi might like to consider prioritising a programme of formulating Māori Heritage policies, objectives, management and implementation plans for their rohe with the objective of recording and mapping their cultural heritage knowledge, histories and stories.

Elements of the above could include the following:

- Formulating a multi layered approach to physically identifying, recording and evaluating Māori heritage values within their respective rohe, from ancestral landscape to site specific scales as well as whanau/hapū/iwi scales.
- Formulating a comprehensive funding plan, leveraging Treaty obligations, current and future Treaty settlements, iwi capital and Crown/Local Government capacity building obligations to facilitate the above programme

- Establishing iwi and nationwide heritage data sovereignty strategies and frameworks to address security issues

### **Recommendation 2: Iwi Capacity Building Programme**

Iwi might like to consider prioritising targeted capacity building programmes for iwi/hapū/whanau members aimed at the following:

- Inter-generational knowledge transfer regarding tribal histories and ancestral landscapes
- Targeting technical and operational skillsets to facilitate effective participation in statutory contexts, for example preparing and giving submissions in council forums, district plan reviews, notified resource consent applications.
- Targeting continual development of participatory mechanisms like cultural impact assessments and actively promoting co-management agreements for heritage and resource management matters.
- Targeting complementary career paths where Māori are under-represented, including, but not limited to Planning, Policy, Local Governance, Law, and Archaeology for example. The objective of this approach would be to normalise Māori values in these sectors as a mechanism to force change from the inside.

### **Recommendation 3: National Heritage reform**

- The Crown could consider the preparation and implementation of a National Policy Statement for Historic Heritage. In the case of *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd [2014] NZKS 38* a policy statement was deemed to be able to give primacy to the protective element of sustainable development. Furthermore, actions such as ‘avoidance’ and ‘prohibition’ can be enabled in plan policies which could provide a further defence for significant heritage features and landscapes.

### **Recommendation 4: Local Government Capacity Building**

The research evidence suggested variable standards in the cultural competency of council planners and consenting officers, as well as limited in-house Council officers with heritage expertise. Therefore, all councils performing heritage functions, including the Department of Conservation should have obligations to accommodate and adopt the following:

- A programme of ensuring performance standards are met by council regarding treaty compliance, and recognition and understanding of Māori values in decision making frameworks and functions
- A programme of education as to council officer roles under the RMA regarding heritage, particularly with regard to understanding the relationship (and limitations) between the RMA and the Heritage New Zealand Pouhere Taonga Act 2014
- Councils should employ or engage external professional support of a Heritage professional to ensure that heritage matters are treated like any other resource that council has authority over.

## **8.4 FUTURE RESEARCH**

The findings of this thesis provide evidence of further research needs for enhanced capacity to protect Māori cultural heritage and ancestral landscapes. Firstly, a research programme relating to strategies and cost-effective methods for mapping and recording of ancestral landscape knowledge, stories and locations could provide the foundation for iwi/hapū/whanau to undertake this mahi. This programme could enable the retention and transfer of knowledge, which could then provide an enhanced evidential basis to use in decision-making processes. This mahi would also support iwi ability to monitor and assess cumulative effects and present such evidence into decision making frameworks in a tangible way.

Second, Māori heritage values are not given equal standing in decision making frameworks due to the prevalence of the authorised heritage discourse in the heritage management regime. Therefore, research to evaluate the role of the authorised heritage discourse in the heritage framework in New Zealand, and the impacts of this on the uptake of the concept of ancestral landscapes would be of significant value. The outputs of this research could help to inform decision making frameworks especially through identifying the benefits of a more holistic integrated approach, in the form of a cultural or ancestral landscape, to managing heritage.

The evaluation of examples of insurgent practices of indigenous peoples to protect their taonga, heritage and ancestral landscapes is the final suggested field of research. This approach could serve indigenous interests by providing context specific insights into each practice, potentially empowering iwi/hapū/whanau in their defensive efforts.

## **8.5 CLOSING REMARKS**

The initial seed for this research was the sense of injustice I felt in recognising that our governance systems were not adequately protecting Māori heritage on behalf of Māori, and our nation, regardless of ethnicity. Throughout the research process I have come to understand the heritage management regime better, and therefore the words of Kaiāwhina G resonate strongly ‘it is easy to be smug and get angry...but it is complex’. This mahi has identified the need for a technical and statutory response to the issues our nation faces in the loss of our collective heritage. It also demonstrates alternative, innovative ways for communities to disrupt the status quo and realise social transformation and emancipation. In this respect, I return to the word ‘staunch’. I now understand that our communities need to be staunch, radical and insurgent. We need to stand our ground to defend our heritage, with our brains and when necessary, our brawn.

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