

Right of First Refusal Calling the Crown to Act with Honour

In 1840, Ngāti Whātua invited Governor Hobson to establish his seat of government on their land adjacent to the Waitemata Harbour. Their intention was a flourishing centre, bringing advantage to Ngāti Whātua and new settlers. Sadly, the Governors and the Government soon lost sight of working in partnership with Ngāti Whātua. Decisions were made and legislation passed that caused Ngāti Whātua huge losses of land. The injustice of what happened is well recorded in the Waitangi Tribunal's *Orakei Report*. Similar processes by the Crown meant that Waikato-Tainui wrongfully lost land in South Auckland. As part of the Crown's recompense to these iwi, they were granted right of first refusal on Crown properties in their respective territories.

What is the "right of first refusal" and what lies behind it? Put simply, a group with right of first refusal on a property has the first option to buy the property when it becomes available for sale. If they turn down that option, then the property can go on the open market. The Crown's Settlements with any iwi are acknowledged to be very small in relation to the value of the lands originally taken. Legislation in 1992 had established that private land could not be used in the settlement of treaty claims, and often the amount of Crown land immediately available is limited. That is why a number of the Settlements include a clause stating that an iwi will have right of first refusal over Crown property before it is put on the open market.

In this year's Budget the Government announced that it would be making Crown land available to private developers for the purpose of housing. In doing this they overlooked the iwi with right of first refusal. The Prime Minister and the Minister of Housing have since claimed that the Government has the legal right to go ahead with their proposal. This is obviously going to be tested in the Courts. However, their emphasis on being legally in the right completely ignores the issue of whether what they propose is morally right. The Courts have made it very clear that the Crown, that is the Government, is obliged to act as a Treaty partner. On this the Crown's honour depends.

Partnership means entering into conversations with your partner about future developments long before they are presented as settled policy; it means working together on common concerns. Ngāti Whātua have made it very clear they are interested in being part of housing development that will benefit a wide range of people. They are committed to the welfare of Auckland city. Those of us who are not Māori might well find that solutions proposed by Ngāti Whātua are much more in line with our sense of common good than those put forward by a government situated in Wellington. Certainly, if the Government had taken seriously its Treaty partnership with Ngāti Whātua and Waikato-Tainui, some of Auckland's housing issues would not be facing the present delays.

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