

Private property rights vs cultural heritage protection: Lessons learned from *Heritage Lifestyle Parks NZ Limited & David Rowe v New Plymouth District*

The recent Environment Court decision in *Heritage Lifestyle Parks NZ Ltd & David Rowe v New Plymouth District Council* [2026] NZEnvC 68 is a clear example of the tension between the right of landowners to use and develop their property and the obligation on decision makers to recognise and protect culturally significant sites. It's important to understand the implications before you buy, particularly if you're looking to develop the land.

Introduction

Landowners often assume that they will generally be able to use and develop their own land at their discretion. When purchasing property, cultural or heritage notations are commonly treated as background noise. Purchasers may first become aware of these notations in a land information memorandum report (commonly referred to as a "LIM report"), noting a "site of significance" or "wāhi taonga" (cultural significance) and/or an "archaeological site" (heritage significance) on a property. It's important to understand the implications of these notations for land use and development to avoid unexpected consent requirements, associated costs for legal and technical advice, and potential loss in property value.

In broad terms, the Resource Management Act 1991 (RMA) aims for sustainable management of land use and development, while appropriately managing any adverse effects on the environment. Decision makers

must recognise and provide for matters of national importance, including the relationship of Māori with ancestral lands and sites; and the protection of historic heritage from inappropriate subdivision, use, and development.

District Plans may identify cultural and heritage sites. Generally speaking, these plan notations restrict land use, by imposing further consent requirements through rules; identifying specific matters of consideration which may shape or constrain how development occurs; and typically requiring consultation with mana whenua.

The recent Environment Court decision in *Heritage Lifestyle Parks NZ Ltd & David Rowe v New Plymouth District Council* highlights the tension between property rights and cultural heritage protection in a rural context. While the Court notes the presence of the culturally significant site does not create a "no development" scenario, it is apparent that development plans may be substantially constrained and the use of privately owned land seriously impacted.

The facts

The appellant, Heritage Lifestyle Parks NZ Ltd and David Rowe, challenged a decision of the New Plymouth District Council (**Council**) on its proposed district plan, identifying 90% of its 2.9ha rural zoned property located in the Bell Block area of New Plymouth as a Site of Significance to Māori (**SASM**), recognising Te Oropuriri Pā (**Pā**) site.

The Pā is both a SASM and an archaeological site, with excavations uncovering several occupation phases, including a fortified gunfighter pā. Puketapu Hapū hold mana whenua in relation to the property which is part of the Puketapu rohe.

The property has a protracted planning history, including being subject to the uncertainty of a roading realignment for a number of years, which the appellant emphasised impacted its ability to develop the land.

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In 2006, the appellant bought the property with the intention of operating it as a lifestyle village with relocatable homes which could also be moved off the property to other lifestyle villages.

At the time of purchase the property included a wāhi taonga site, identified in the operative district plan, which meant that parts of the property located within 50m -100m of the wāhi taonga site were subject to further consent requirements. At that time the Pā site was identified on adjacent land. The Operative District Plan noted that the sites had not been verified and their location was accurate to +/- 200m.

In 2008 the appellant was advised that SASM sites were being reviewed; and Puketapu Hapū collaborated with Council in this process. A Council plan change to the Operative District Plan then removed the wāhi taonga site from the property.

An archaeological report released in 2010 identified a broader area for the Pā, covering the majority of the property, consistent with the current Proposed District Plan mapping of the SASM. From notification of the Proposed District Plan in 2019, the SASM overlay relating to the Pā was applied to approximately 90% of the property with immediate legal effect.

The appeal argued that the application of the SASM made the property incapable of reasonable use, not only for rural production but also for typical rural lifestyle development, seeking a direction under s85 of the RMA that the Council buy the property.

Environment Court decision

The question for the Court under s85(3B) of the RMA was whether the scheduling of the SASM and applicable historic heritage provisions:

- (a) make the property incapable of reasonable use; and
- (b) place an unfair and unreasonable burden on the property's owner.

The cultural evidence regarding the significance and extent of the SASM was unchallenged at the hearing.

Reasonable use

The Court rejected the landowner's argument that "reasonable use" should enable a more dynamic use of the property.

The Court noted that the number of permitted activities was limited given the SASM overlay, for example grazing, horticulture, fence mending. However, the requirement for resource consent as a discretionary activity for new buildings, house extension or driveway construction, or for land disturbance beyond the first 300-400mm of the surface, was not considered an unreasonable barrier to reasonable use of the property.

Council's evidence was that consent applications in relation to SASMs are typically not notified and the vast proportion of them are granted. It argued that "reasonable use" does not mean the owner's preferred use, or the most profitable use. It simply means the land can still be used in a way that is viable, even if that use is more limited than expected.

Evidence on behalf of hapū stated that the primary concern of hapū and mana whenua is to ensure that the mana, mauri and integrity of the Pā is protected. While mana whenua wished to be consulted on resource consent applications in relation to SASMs to ensure the best outcomes, it was not their intention to stand in the way of development.

The Court concluded that a careful assessment of the appropriateness of a proposed activity against the values of the SASM did not amount to insurmountable obstacles to consent.

Unfair and unreasonable burden

In the event it was wrong on the first ground, the Court went on to consider whether the district plan provisions placed an unfair and unreasonable burden on the appellant. While the Court was sympathetic to the

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appellant's position, it found that the planning history was not relevant to its assessment. The Court found that a requirement to obtain resource consent, with the exclusion of non-complying activities, does not amount to an unfair and unreasonable burden. In fact, if granted, it would improve the value and saleability of the property.

The Court concluded that the Proposed District Plan struck the right balance between the need to recognise and provide for a site of significance and reasonable use of the property. The appeals were dismissed.

Lessons learned

The difficulty in this case did not arise solely from the existence of the heritage overlay. It arose from a mismatch between what the appellant thought it could do and what the planning framework ultimately allowed. That mismatch was compounded over time by evolving understanding of the site's cultural significance, changes to planning maps and overlays and shifting development expectations.

This case therefore highlights several practical lessons:

- *Treat cultural and heritage notations with caution:* Take the time to find out what the practical implications are for your intended use of a property, which may impact how and where you build, whether earthworks are restricted and how easily you can develop or subdivide. Do not assume these will be minor issues that can be worked around later. Review both the operative and any proposed district plan and any relevant plan changes to understand what applies to the property now and what may apply in future.
- *Expect planning frameworks to evolve:* Timing is important for any development. Planning environments change and verbal assurances from Council staff will not hold up over time. Sites can be more accurately mapped, increase in extent or be subject to more restrictive rules over time. This is particularly true for sites of significance to Māori,

where identification and mapping has been progressively refined across many districts.

- *Time well spent in early engagement with mana whenua and Council:* Early engagement or pre application meetings, which can be fairly informal, are often important for building relationships; identifying and resolving issues before they become barriers; shaping proposals in a way that is more likely to be supported and ultimately may clear the way for consenting; reducing cost and potential for delay later in the process.

Closing comments

This case reinforces the position that private property rights are important, but not absolute. The title to a property only tells part of the story. Planning overlays can shape what is realistically achievable on a property.

Sites of cultural significance and heritage sites are often not fully understood at the time of purchase. Their extent can be refined, expanded, or reinterpreted as better information becomes available. From a planning perspective, that is expected. From a landowner's perspective, it can feel like the goalposts have moved.

Going forward, a regulatory relief mechanism proposed in the new legislation to replace the RMA, may provide landowners in similar positions to that of the appellant with the ability to obtain compensation.

The proposed test for relief – whether a rule is reasonably likely to have a significant impact on the reasonable use of land – suggests a lower threshold than that imposed by s85 of the RMA. However this test will rely heavily on future criteria yet to be finalised. Landowners trying to navigate the new system should seek guidance from a trusted legal adviser.

Want to know more?

If you have any questions about cultural or heritage matters, due diligence or property rights in general, please contact our specialist [Environment & Planning](#) and [Property Development](#) teams as applicable.