PDP/324

Submission on the Hutt Valley City Council Proposed District Plan

30 April 2025

Part 2 – District Wide Matters / Historical and Cultural Values / Sites and Areas of Significance to Māori (SASMs)

Submitted by: Sean Rush Law and Policy
Date: 30 April 2025

RMA Required Information

1. I, Sean Edward Rush make this submission on the Proposed Lower Hutt District Plan 2025 ("Proposed Plan") on behalf of Sean Rush Law and Policy Limited.

2. My email address for service is sean@seanrush.co.nz.
3. I could not gain an advantage in trade competition through this submission.
4. I am not directly affected by an effect of the subject matter of the submission that—
   (a) adversely affects the environment; and
   (b) does not relate to trade competition or the effects of trade competition.
5. The specific provisions of the proposal that my submission relates to, my submission on those provisions, and the decisions I seek are shown in the below table. I also seek all further, alternative, necessary, or consequential relief as may be necessary to fully achieve the relief sought in this submission.
6. I do not wish to be heard in support of my submission.
7. If others make a similar submission, I will not consider presenting a joint case with them at the hearing.

Introduction

This submission opposes the inclusion of Sites and Areas of Significance to Māori (SASMs) in the Proposed District Plan on the basis that the provisions lack legal justification, historical accuracy, and fairness in their application. The proposed framework imposes undue restrictions on private property rights without clear statutory authority and fails to acknowledge the full historical context of land ownership and occupation in the Hutt Valley.

My name is Sean Rush. I am the owner of Sean Rush Law and Policy Limited and was a Wellington City Councillor from 2019 to 2022. My legal practice includes advice on public policy and town planning.

I am also a descendant of an early settler, Cecelia Rush (formerly Rodgers) who was a passenger on the *Oriental* that landed at Pita one in January 1840. The departure from Britain, arrival to Pita one, as it was called, and the integration of the settlers into the Te

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Whanganui a Tara region is documented in our family history, *A Humble Beginning.*[1]Detail on the events relating to arrival and settlement are set out in an Annex hereto entitled **"**Background to the Early Settlers and Manu Whenua Relations."

1. The Resource Management Act (RMA) Does Not Empower Councils to Impinge on Existing Property Rights

Section 6 of the Resource Management Act 1991 (RMA) outlines matters of national importance, including the relationship of Māori with their ancestral lands, water, sites, and taonga. However, the Act does not grant councils the authority to override existing property rights or impose restrictions beyond justified limitations.

- The RMA does not empower any group, Māori or otherwise, to impose restrictions on private landowners beyond what is necessary for sustainable management.
- The proposed SASM provisions fail to establish a clear legal basis for restricting development on private land.
- The Council must ensure that any limitations on land use are justified, evidence-based, and consistent with property rights protections under New Zealand law.

2. Lack of Clear Criteria for Determining Sites of Significance to Māori

The Proposed District Plan does not provide transparent criteria for identifying SASMs.

- The definition of "historic heritage sites" under Section 2 of the RMA lacks specific guidance on how sites of significance to Māori should be determined.
- The absence of clear methodology raises concerns about subjectivity and inconsistency in the designation of SASMs.
- The status of Te Ātiawa as having ancestral links to whenua in the Hutt Valley is historically questionable, given their arrival in the 1820s, the subsequent sale of land to the New Zealand Company in 1839 under the Port Nicholson Block Purchase and the defence of the rights of the settlers, in alliance with British troops and police, against dissident Māori groups.
- There is an absence of a correlating right for early settler groups to similarly identify historic sites of significance per the RMA.

4. The Port Nicholson Block Purchase and Treaty Considerations

The Port Nicholson Block Purchase involved two key documents:

1. The 1839 Port Nicholson Block Deed
2. The 1844 Deed of Release

[1] A humble beginning: the story of the Rush family, 1730-1999 / 4th edition (2024) [by Steve Rush and Dale Hartle] available at the National Library, see https://natlib.govt.nz/records/22064159

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The purchase opened the door for early settlers to travel to New Zealand with confidence that they could obtain land title.

The Spain Commission, established under Article 2 of the Treaty of Waitangi, reviewed pre-Treaty land sales and determined that an additional £300[2] should be paid to Ngāti Toa's paramount chief, Te Rauparaha, as full satisfaction for all claims.

- This settlement was deemed practical and necessary, given Wellington's population had grown to 3,000, making land restitution impractical.
- Ngāti Toa had not occupied the Hutt Valley directly, instead installing Ngāti Rangatahi from Whanganui to hold the territory while Ngāti Toa focused on expansion in the South Island.
- In the absence of a court determination or over-riding statutory reference, the Port Nic Purchase remains valid today, although the Deeds of Settlement negotiated by the Crown provides new rights for Māori in the area, that must be discharged by the Crown, given in the absence of a statutory basis otherwise, local authorities do not have capacity to do so.[3]

4. Historical Conflicts and the Expulsion of Ngāti Toa

Following the Spain Commission's settlement, tensions remained due to Ngāti Rangatahi's resistance to settler occupation, leading to violent incidents:

- The murder of Richard Rush (15 June 1846)
- The Boulcott Farm Massacre (16 May 1846)

These events prompted military reinforcements from New South Wales, culminating in the Battle of Battle Hill (6 August 1846).

- A coalition force of British soldiers, militia, armed police, Te Ātiawa (led by Wiremu Kīngi Te Rangitāke), and dissident Ngāti Toa permanently expelled Ngāti Toa from the Hutt Valley.
- This new alliance, rather than Te Ātiawa alone, represents the true mana whenua of the region under tikanga and common law.

5. The Validity of Settler Occupation and the Waitangi Tribunal's Limited Jurisdiction

The Port Nicholson Block Settlement Trust lodged a claim with the Waitangi Tribunal in 1987 (Wai 145), challenging the validity of the Port Nicholson Block Purchase.

- While the Tribunal concluded the purchase was invalid, it lacked jurisdiction to make determinations on contract validity.

[2] Curiously, this figure is different to the £400 figure reported by New Zealand History. See footnote 4.
[3] See **Hart v Marlborough District Council [2025] NZHC 47**

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- In the absence of a court determination or statutory basis, the Port Nicholson Block Purchase remains legally valid**,** reinforcing the fact that Te Ātiawa willingly sold the land, thereby indicating, subject to those areas of urupa, pa/marae and others that have been identified over time, they had no ancestral connection to the area before the 1820s.
- Whilst the Port Nicholson Block Trust Settlement Package provides additional rights for the Trust, they are relevant only to the extent they displace the Crown's title to land to which the settlement applies. It cannot apply to private property.

6. Lack of Equivalent Recognition for Early Settlers' Historic Heritage

The Council's approach to historic heritage excludes recognition of early settler sites, despite their significance.

For example, Rush Grove in Alicetown, where Richard Rush was murdered, lacks a street sign or memorial acknowledging the events of 1846.[4]

The Council's omission of equivalent provisions for settler heritage raises concerns about historical bias in the Proposed District Plan.

7. Legal Limitations on Council Authority Under the RMA

The Resource Management Act 1991 (RMA) establishes a framework for managing land use and environmental effects, but it does not grant councils unlimited authority to impose restrictions on private property. For example:

Section 5 – Purpose of the RMA

- The purpose of the RMA is to promote the sustainable management of natural and physical resources.
- Sustainable management is defined as enabling people and communities to provide for their social, economic, and cultural well-being while safeguarding environmental resources.
- This means that restrictions on private property must be justified within the scope of sustainable management.

Section 9 – Restrictions on Land Use

- By implication, section 9 states that landowners may use their land as they see fit unless restrictions are imposed by a district or regional plan.
- However, councils must ensure that any restrictions align with the purpose of the RMA and do not arbitrarily limit private property rights.

[4] This was pointed out to Hutt City Council staff firstly on 27 April 2023 and more recently on 27 March 2025. I am told a sign has been ordered but it does not appear that it will recount the events of 1846.

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Section 85 – Protection of Property Rights

- Section 85 explicitly states that a district plan must not render land incapable of reasonable use.
- If a rule in a plan unreasonably restricts land use, the affected landowner may apply for a plan change.

Common Law Principles

- Property rights are protected under common law, meaning that restrictions must be proportionate and justified.
- Courts have ruled that local authorities cannot impose excessive restrictions without clear statutory authority.[5]

The RMA does not empower councils to impose restrictions on private property beyond what is necessary for sustainable management.

- The Council's proposed SASM provisions exceed its legal authority, imposing unjustified limitations on landowners.
- Any restrictions must be grounded in clear legal principles, ensuring fairness and consistency in heritage recognition.

In application to the SASM proposal, the breadth of the proposal and the unreasonable fetters it may create on private property rights, is not supported by the RMA framework. It is over-reach and likely to be successfully challenged.

Conclusion

The Proposed District Plan's SASM provisions lack legal justification, historical accuracy, and fairness in their application.

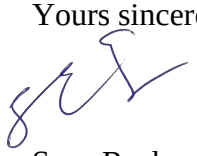
- The RMA does not authorise restrictions on private property rights beyond justified limitations and this submission asserts that the proposed limitations are not justified.
- The historical basis for Te Ātiawa's mana whenua status in the Hutt Valley is questionable, given their lack of ancestral footprint before the 1820s.
- Given the Port Nicholson Block Settlement Trust settlement package, Hutt City might reasonably conclude that section 6(e) of the RMA is already catered for under the settlement package.
- The Port Nicholson Block Purchase remains legally valid, despite the Waitangi Tribunal's findings, and gives some insight to the historic value of the sites of significance had for Māori at the time of its conclusion.

[5] See for example: Waitakere City Council v Lovelock [1997] NZRMA 205; Falkner v Gisborne District Council [1995] 3 NZLR 622; Attorney-General v Ngāti Apa [2003] NZCA 117.

- The Council's failure to recognize settler heritage raises concerns about historical bias and whether the RMA is being fairly applied.

For these reasons, the Council must reconsider its approach to SASMs, ensuring that any heritage designations are legally sound, historically accurate, and fairly applied.

Yours sincerely



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ANNEX: 1. Background to the Early Settlers and Manu Whenua Relations

A *Humble Beginning* records that:

> "*The population of Britain had increased from 16 million in 1801 to 26 million by 1841. People were being driven from their land, and the introduction of machinery had reduced the demand for agricultural labourers. There was overcrowding, disease and pollution in the cities*."

Advertisements enticing applicants to come to the new land promoted as *"a Britain of the South",* a fertile land with a benign climate, free of starvation, class war and teeming cities. As added inducement, the New Zealand Company offered free passage to *"mechanics, gardeners and agricultural labourers".*[6]

Charles Rodgers claimed to be an agricultural labourer and secured free passage for he and his wife, Cecilia, to the "town of Wellington." Title to lands in Wellington had been acquired by the New Zealand Company by way of the Port Nicholson Block Purchase and it was claimed that it had been cleared in preparation for the arrival of the early settlers. Edward Gibbon Wakefield described New Zealand to the House of Commons committee in 1836 as follows:

> "*Very near to Australia there is a country which all testimony concurs in describing as the fittest in the world for colonization, as the most beautiful country with the finest climate, and the most productive soil; I mean New Zealand."*[7]

Charles' arrival with his wife and my tīpuna wahine, Cecilia Rodgers, into Port Nicholson, on the Oriental on 31 January 1840, must have presented as a shock as she, heavily pregnant with her first child, saw the raw native bush which hadn't been cleared at all.

It had been decided, presumably by officers of the New Zealand Company and Te Atiawa to settle the new arrivals on the banks of the Hutt River, about a mile up from the mouth at "Pito-one" beach. The area hadn't been surveyed, no title documents were in force, the Treaty had yet to be signed. It seems clear though that the arrival was expected and welcomed by local Māori, given the sale negotiations from the prior year. Family history suggests the settlers were alive to the flood risk, asking whether the flotsam seen halfway up the trees on the riverbanks was something they should be concerned about.

The last of the passengers were living ashore by February 15th 1840, and by the 6th of March the last of the cargo had been unloaded and ferried ashore. Until bush could be cleared, and shacks built, the new settlers lived under canvas supplied by the "Oriental" and were supported by Te Atiawa, who had recently migrated to the area, after fleeing from Waikato tribes invading their homes in Taranaki.

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[6] From *A humble beginning* Part 2.

[7] Quoted in A. J. Harrop, England and New Zealand: from Tasman to the Taranaki war. London: Methuen, 1926, p. 39.

As recorded by Wai 145, Te Atiawa's paramount chief, Te Puni, acknowledged to the Spain Commission (hearings from 1842-1844), that he considered the land settled by the settlers to have been legitimately sold to the New Zealand Company, although he did not envisage the numbers of settlers that were to come. New Zealand History[8] records that:

> "In 1844 Spain told the company that further compensation would 'complete' the transactions for the land he now ruled it had claim to. Spain believed this would be fair to both Māori and the settlers who had bought land from the company in good faith. While Te Rauparaha and Te Rangihaeata were paid another £400 by the company, Ngāti Tama and Ngāti Rangatahi received neither land nor money. Te Rangihaeata insisted that any final deal was conditional on reserves for Ngāti Rangatahi being set aside in the upper valley."

From that point the Port Nicholson Purchase was broadly accepted as consistent under Article 2 of the treaty and valid under British common law that was introduced under Article 3 of the treaty.

Despite the supplemental payments, the Waitangi Tribunal found in Wai 145 that the terms of the sale were not adequately explained and overturned the New Zealand Company's claims to lawful title under English law pursuant to the Port Nicholson purchase in 1839.

Wai 145 concluded on the validity of the Port Nicholson purchase:

> "The Tribunal finds that the 1839 deed of purchase was invalid and conferred no rights under either English or Māori law on the New Zealand Company or on those to whom the company subsequently purported to on-sell part of such land."

It went on to find that Spain's uplift payment favoured the settlers and was accordingly a breach of article 2 by the Crown.

However, the Waitangi Tribunal has no jurisdiction to rule on the validity of contracts and so, while its findings are interesting, they have no effect under New Zealand law. In the absence of a court determination or some form of statutory instrument, the purchase remains valid.

Further, the position of the settlers, as being welcomed and embraced by the tangata te whenua who embedded one or two assistants in to each family,[9] was never articulated in Wai 145, although the Tribunal[10] made the following comment that I submit fairly reflects the intentions of the time:

[8] See https://nzhistory.govt.nz/war/wellington-war/return-to-hutt-valley.
[9] See L Ward's *"Early Wellington"* Chapter 4, National Library https://natlib.govt.nz/records/21042719.
[10] Section 3.8.2 Wai 145.

> "Te Puni and TeWharepouri probably saw in Wakefield a useful new ally who would help to stabilise their position at TeWhanganui a Tara in relation to Ngati Kahungunu on their Wairarapa flank and Ngati Toa and Ngati Raukawa on the Kapiti coast."

This is indeed what eventuated in the years that followed.

The Crown took the view that it had no remit to challenge pre Treaty activities and does not appear to have advocated for the position of the early settlers, and their descendants, with any vigour.

The early settlers were welcomed, helped and embraced by Te Atiawa as providing positive benefits, including as protection from rival Māori groups. The Taranaki Whanui Deed of Settlement[11] records: "*The settlers were dependant upon Taranaki Whanui ki Te Upoko o Te Ika trade and for goodwill during the early years of the Wellington settlement.*"

This is ably demonstrated by the support Cecilia received upon the birth of her son, Thomas Rodgers, on 29 February 1840. *A humble beginning* records that:

> "Cecilia's poor diet during the long sea voyage, (which from all accounts consisted of a great deal of "hard-tack", or ship's biscuit), left her with a very poor milk supply, so a Māori woman was hired to suckle baby Thomas. This presumably had more than a little to do with his tremendous rapport with the Māoris in later years."

Thomas was the first white child born in Wellington and would live until 1933, aged 93. He was fluent in te reo and well liked amongst the Māori community.

The settlers put together their shacks made of raupo and manuka, raised families, even intermarried, all of which with the consent and support of the area's mana whenua. They established their own settlements constructed under English standards according to engineering standards of the times, appointed a Mayor and organised themselves into governance structures for which today's City Councils descend. After 185 years, surely they could be said to have 'ahi ka' which in Wai 145 was used to "refer to those areas which a group resided on or cultivated, or where it enjoyed the continuing use of the surrounding resources, provided such occupation or use was not successfully challenged …"

On 25 August 1840 Charles drowned in a boating accident. The story was reported on August 29th in the *New Zealand Gazette and Britannia Spectator*, which concludes with the following praise for the local Māori who tried to save Charles and 8 others that perished:

> "The natives showed their attachment to the colonists by the efforts used to rescue them. The following individuals were particularly active:- M Hau, E Wanga, E Pake,

[11] Available at https://www.tearawhiti.govt.nz/assets/Treaty-Settlements/FIND_Treaty_Settlements/Taranaki-Whanui-ki-Te-Upoko-o-Te-Ika/DOS_documents/Taranaki-Whanui-ki-Te-Upoko-o-Te-Ika-Deed-of-Settlement-19-Aug-2008.pdf. See clause 2.12.

> E Ware and E Pouni; to these names of men we have to add the names of three females who equally exerted themselves to save our fellow countrymen. E Tutu, E Wa, E Ui. Such eager and ready assistance is proof that we have not disappointed their expectation of receiving benefit from a British population residing among them."

The deceased were buried in the Te Puni Urupa in Te Puni Street, the first place where Māori and Pakeha were buried together. These early interactions show a collective partnership between the settlers and Māori that seems to have been lost amongst the more recent, popular narratives and academic scholarship.

In 1841 Cecilia married Richard Rush, who had spent 7 years as a prisoner in New South Wales for stealing a pig, as part of the Victorian white slavery policy. He had been sentenced in an Essex court in 1833 and left behind four children, whose Mother had died in child birth. Richard would only see one of his children again, John George, who was a sailor and found his Father living in New Zealand in 1842.

It was a harsh life but Richard and Cecilia were making it work with the birth of four additional children. But on 15 June 1846, Richard was ambushed and murdered,[12] where the Lower Hutt railway station now stands, by allies of Te Rangihaeata of Ngati Toa, the other iwi that had similarly migrated to the area from 1820 – 1830, and is recognised by the Crown as 'mana whenua' in parts of the Greater Wellington region. There followed other attacks in the area, including what is known as the Boulcott farm massacre on 16 May 1846, which involved an attack on a garrison of British troops.

The permanent expulsion of Ngati Toa from the Hutt Valley area is recorded as follows:

> "The arrival of British reinforcements enabled an assault on Te Rangihaeata's new position, now known as Battle Hill. The attack began on 6 August 1846 in freezing rain. The assault force comprised 250 British soldiers, militia and armed police. They were joined by 150 Te Ātiawa led by Wiremu Kīngi Te Rangitāke, and 100 dissident Ngāti Toa whom the British distrusted."
>
> "Te Rangihaeata's groups were pursued by their Māori foes. A long retreat into the neighbouring Horowhenua district, in appalling conditions, effectively ended the Hutt Valley campaign."[13]

Clearly, the long-standing collaboration between the settlers, the British military and Te Atiawa is significant but does not appear to have been considered in Wai 145. Under tikanga and common law, the conquest of the area would give rights to the conqueror and allies to establish settlements, as subsequently occurred. Both iwi and settler community, share a common historic heritage that should be celebrated jointly.

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[12] https://www.webgirl.co.nz/RushFamily/richardrush.html
[13] https://nzhistory.govt.nz/war/wellington-war/last-battles

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The suggestion that Te Atiawa have ancestral rights and obligations to the Hutt Valley must also recognise the rights that the descendants of the early settlers have in this regard and pursuant to the Port Nicholson Block Purchase.

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