SUBMISSION ON PROPOSED LOWER HUTT DISTRICT PLAN 2025

To: Chief Executive, Hutt City Council

Via email to district.plan@huttcity.govt.nz

1. I, Sarita Von Afehlt, make this submission on the Proposed Lower Hutt District Plan 2025 ("Proposed Plan") in my own name
2. My email address for service is jetsam@xtra.co.nz
3. I could not gain an advantage in trade competition through this submission.
4. n/a
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.

Background

8. I have lived in Lower Hutt for over 20 years and have been a rate payer for all that time. I oppose the Proposed District Plan's SASM provisions because they introduce vague and unjustified overlays that restrict use of private property, hinder development and limit housing supply. Additionally, I do not support the proposed District Plan changes because they will devalue my property. I am outraged by the Hutt City Council's blatant disregard for the rights of private property owners and residential rate payers. HCC is making Lower Hutt an undesirable place to live and is alienating a significant proportion of its income source (residential rate payers).
9. Key changes required are:
   - Removing restriction on land use for categories 2 & 3 (see especially SASM-P4, SASM-R4, SUB-R6, and EW-R10).
   - Ensure property rights prevail over protection of sites (SASM-O2, SASM-O4, SASM-P6, SASM-P9, SASM-R1, SUB-P15.4).
10. My submission and requested decisions from the Council are set out below.

Plan provision	What the Plan says	General Position	Reasons
Identification of sites			
Schedule 6		Oppose	Category 2 and 3 sites in Schedule 6 of the Proposed Plan are poorly identified, both in respect of their coverage area and in terms of their significance to Māori. Examples include the significance of the Lowry Bay site is defined by reference to (among other things) fishing, but the boundary of the site ends approximately half way around Lowry Bay. Does the HCC truly believe that that Māori only fished in half of the bay? Such as unsubstantiated claim suggests the proposed boundaries are a random guess.
Plan provision	**What the Plan says**	**General Position**	**Reasons**

			• It is undemocratic and highly inappropriate of the HCC to change the rules when no evidence has been provided to support historical human activities. • The proposed rule changes are an infringement on the rights of private property owners, and will result in devaluation of properties for which the HCC has not offered or mentioned monetary compensation. • If HCC considers sites to be of significance due to historical human activities, then HCC should provide monetary compensation in instances where these sites are on privately owned property. • No explanation has been provided by HCC as to why new houses on 200sqm would require additional resource consent and consultation with Māori. How was the size of 200sqm determined? • The HCC's intent to apply these rules lacks any factual supporting evidence.
SASM Objectives			
SASM-O1	Sites and areas of significance to Māori and their associated values are recognised, protected and maintained.	Oppose in part	This clause needs the following deletions to recognise sites and associated values being recognised in instances only where these sites are on existing public land. "Sites and areas of significance to Māori and their associated values are recognised, ~~protected and maintained~~". Further rationale for changing the wording is that HCC has given no indication or information about how such sites would be maintained and who bears the cost of the maintenance if the sites include private property.

SASM-O2	Tangata whenua can exercise kaitiakitanga in relation to sites and areas of significance to Māori.	Oppose in part	I support the Proposed Plan enabling tangata whenua to exercise tikanga Māori on their own land, but the clause should be amended as shown below so that it does not appear to authorise activities on privately owned land. As currently drafted, it appears inconsistent with private property rights and beyond what the RMA allows: "Tangata whenua can exercise kaitiakitanga in relation to sites and areas of significance to Māori, to the extent that this is consistent with private property rights".
SASM-O3	Tangata whenua have self-determination over sites and areas of significance to Māori, and their associated values are recognised and upheld by enabling active participation of Mana Whenua in decision-making.	Oppose	I oppose this objective. It is inconsistent with private property rights and (arguably) with the RMA itself – particularly the reference to "self-determination". Where sites of significance to Māori are on private land, this is close to recognising that Māori have property rights in privately owned land. There is no mention of the rights of self-determination of property owners or any protection of their right to undertake lawful activities on their land. The absence of any reference to or apparent consideration of that interest in this policy brings into question its general validity.

Plan provision	**What the Plan says**	**General Position**	**Reasons**
SASM-O4	The historic and contemporary connection Mana Whenua have with their sites and areas of significance and their associated values are recognised and provided for.	Oppose in part	I submit the following rewording to recognise that only certain sites should be available for protection: "The historic and contemporary connection Mana Whenua have with their sites and areas of significance and their associated values are recognised and (where consistent with private property rights) provided for".
SASM Policies			
SASM-P1	Identify sites and areas of significance to Māori with tangata whenua and in accordance with tikanga Māori.	Oppose in part	The rights of property owners should not be restricted to protect category 1 sites and areas. Sites should only be defined as category 1 if the conditions proposed under the Schedule 6 submission are met. The requirement to consult with mana whenua in respect of important Māori cultural sites shouldn't be imposed on private landowners other than in the clearest of cases – for example, if there is an intact historical artefact on property, or an intact urupā or pā site. I submit the following amendment to this policy: Identify sites and areas of significance to Māori with tangata whenua and in accordance with tikanga Māori, crosschecked against empirical evidence.
SASM-P3	Protect sites and areas listed as Category 1 in SCHED6 — Sites and Areas of Significance to Māori from inappropriate subdivision, use, or development.	Support with conditions	I support this policy, as long as category 1 sites are defined as in my Schedule 6 submission.

SASM-P4	Avoid, remedy, or mitigate the adverse effects of subdivision, use, or development on sites and areas listed as Category 2 in SCHED6 — Sites and Areas of Significance to Māori.	Oppose	I oppose this policy. "Avoid, remedy, or mitigate" is a high standard of protection (and therefore a greater restriction on land use and development). The greater the protection/restriction, the more stringent the Council should be in identifying the sites. The HCC has not followed this principle here. A large number of category 2 sites are defined by reference to large areas (including substantial parts of Petone, Seaview, Lowry Bay, and Days Bay), with the breadth of the area apparently reflecting the Council's inability to precisely define the site. This impression is supported by unacceptably vague language – as an illustrative example, when Schedule 6 justifies covering over half of the Days Bay, it records that: "Ōruamātoro was a Ngāti Ira pā **said to have been located** on the headland between Days Bay and Sunshine Bay at the top of Ferry Road. There were **possibly** cultivations and urupā associated with the pā in the **general Days Bay area**". (emphasis added) This is just one example. It is unacceptable for a Council to impose significant restrictions on land use on such an unsubstantiated basis. If the Council is unable to define the sites (and their importance) with clarity and evidence, it should not impose restrictions on landowners in the general area. In these circumstances, all the Council can do with these sites is recognise their historic importance – it is not possible to protect them if they cannot even be adequately identified. As a result, I submit that this policy be removed from the Proposed Plan. Category 2 and 3 sites should be combined into a single category (as described in my submission on Schedule 6) and SASM-P5 should apply to that category.

Plan provision	What the Plan says	General Position	Reasons
SASM-P5	Acknowledge sites and areas listed as Category 3 in SCHED6 — Sites and Areas of Significance to Māori.	Support	I support SASM-P5. Per my submission on Schedule 6, I propose that categories 2 and 3 be combined into a single category of sites to which SASM-P5 applies.
SASM-P6	Enable tangata whenua to carry out tikanga Māori (including mahinga kai) within sites and areas of significance to Māori.	Oppose in part	It is not within the scope of powers under the RMA to enable one person or group to trespass on another person's land. This must be spelled out explicitly in the plan to ensure there is no confusion. The wording of this policy should be amended as shown below to reduce confusion about the effect of the policy (ie: that it does not enable tangata whenua to trespass on private land to carry out tikanga Maori): "Enable tangata whenua to carry out tikanga Māori (including mahinga kai) within sites and areas of significance to Māori, to the extent that this is consistent with private property rights".
SASM-P7	Encourage landowners to: 1. Engage with tangata whenua where subdivision, use, or development has the potential to adversely affect sites or areas of significance to Māori, and 2. Work with tangata whenua to manage, maintain, preserve and protect sites and areas of significance to Māori.	Oppose in part	I support this policy **only** if this is confined to category 1 sites (as defined as in my Schedule 6 submission).

SASM-P9	Provide for maintenance, repair, alterations, construction and modification within sites and areas of significance to Māori where it is demonstrated that the spiritual and cultural values of the site are protected, having regard to: 1. Whether tangata whenua have been consulted, the outcome of that consultation, and the extent to which the proposal responds to, or incorporates the outcomes of that consultation. 2. Whether a cultural impact assessment has been undertaken and whether the proposal is consistent with the values identified in SCHED6 — Sites and Areas of Significance to Māori. 3. The potential adverse effects on the values of the site or area of significance to Māori, and the relationship of tangata whenua with the site or area, including: a. Loss of cultural values through modification of the landscape,	Oppose	I strongly oppose this policy. At an overall level, this policy is not consistent with use and development of private land that is recognised in the sustainable management purpose of the RMA. It is entirely focused on mana whenua consultation and protection of undefined 'spiritual or cultural values' attaching to sites. Property rights are barely an afterthought – the policy deigns to 'provide' for them only after the self-determination of mana whenua has been entirely satisfied. Given the breadth of private residential and commercial land this policy is proposed to apply to, it is drafted far too broadly. It is not only inconsistent with private property rights; it is inconsistent with Council and Government policies designed to encourage increased housing supply and increased commercial development. More specifically: • Sub-policy 1 comes close to establishing a mana whenua veto over resource consent applications. A consent applicant has two options – they can either include consent conditions 'recommended' by mana whenua, or they can take a risk on not including them. This is a significant risk – neither property owners nor the Council have any external standard to assess how stipulated conditions relate to protecting the 'spiritual or cultural values' of the sites, meaning an obvious risk that the Council will have no option but to rubber stamp such conditions and refuse consents where they are not included. • The requirement in sub-policy 2 for cultural impact assessments adds a significant cost hurdle for resource consent applicants for no clear benefit, particularly for the many sites that have long-since been developed over, or are defined solely by reference to Māori having hunted, fished, or cultivated crops in an area in the past.

Plan provision	What the Plan says	General Position	Reasons

	b. Damage to the integrity of the site or area through disturbance of land or indigenous vegetation, c. Adverse effects on the mauri of water bodies, and d. Reduction in the extent and quality of mahinga kai. 4. Any loss of access to the site or area of significance to Māori for customary activities. 5. Any opportunities to maintain or enhance the ability for tangata whenua to access and use the site or area of significance to Māori. 6. Where the activity will remove indigenous vegetation, the nature of any effects on mahinga kai and other customary uses. 7. The effects on sites or areas where there is the potential for kōiwi or artefacts to be found, including: a. Consideration of the need manage potential adverse effects through an accidental discovery protocol, and b. Whether any particular requirements as part of an accidental discovery protocol, such as the presence of a cultural monitor, have been identified as an outcome of consultation with tangata whenua. 8. Whether there are alternative methods, locations or designs that would avoid remedy or mitigate adverse effects on spiritual or cultural values associated with the site or area. 9. Whether the proposal provides an opportunity to recognise tangata whenua culture, history and identity including the potential to: a. Affirm the connection between tangata whenua and the site or area, or b. Enhance the cultural values of the site or area.		• Sub-policies 4 and 5 have the same problem as SASM-P6: they are drafted to suggest a right of access over private land is a given. These need to be redrafted to make clear that there is no general tangata whenua right of access or use to private property. • The HCC has provided no supporting evidence of the spiritual and cultural values of the purported sites. If this policy is to be retained, it should explicitly balance the interests of mana whenua with landowners, and recognise the benefits to the community of the productive use and development of land and resources, and should be explicitly confined to category 1 sites.
SASM Rules			

SASM-R1	Undertaking tikanga Māori within a Site or Area of Significance to Māori - Activity status: Permitted (Category 1 – 3 sites)	Oppose in part	As with SASM-P6 above, the following change is needed: "Undertaking tikanga Māori within a Site or Area of Significance to Māori, to the extent that this is consistent with private property rights - Activity status: Permitted (Category 1 – 3 sites)".
SASM-R2	Permitted in category 3	Support in part	I am supportive of protections against land disturbances in sites of genuine significance to Māori, and so support protections against land disturbances in category 1 sites, provided that those sites are defined in a way that is consistent with my submission on Schedule 6.

Plan provision	What the Plan says	General Position	Reasons
	Permitted in category 2 where compliance achieved with SASM-S1 – Accidental discovery protocol Permitted in SASM Category 1 where: Where: a. The land disturbance is for: i. Burials within an existing urupā, ii. Gardening, where land disturbance does not exceed 10m in any 12-month period, iii. Riparian planting, iv. Indigenous vegetation planting, v. The maintenance or repair of existing tracks and fences provided the area, extent and volume of land disturbed is limited to that which is necessary to maintain an existing track and fence along its existing alignment, and vi. Demolition or removal of an existing building or structure, where the land disturbance does not exceed 50m in any 12month period, and a maximum cut height or fill depth greater than 0.5m (measured vertically), and b. Compliance is achieved with SASM-S1: Accidental discovery protocol. Any activity that does not comply with the above rules is restricted discretionary resource consent, with matters of discretion confined to SASM P3, P7, and P9.	Neutral	I am not opposed to the accidental discovery protocol applying in the proposed merged category 2 (containing current category 2 and 3 sites) as this appears to require something that is probably already required (either by law or common sense). If the accidental discovery protocol is retained, there should be guidance for landowners about what qualifies as an 'artefact'. For example, the standard could provide a list of examples, or it could be defined by reference to a definition from legislation.
SASM-R3	Maintenance and repair of a building or structure within a Site or Area of Significance to Māori – Activity Status: Permitted	Support	This rule is enabling of the exercise of private property rights and I support it on its current wording.

Plan provision	What the Plan says	General Position	Reasons
SASM-R4	Additions, alterations or new buildings or structures within a Site or Area of Significance to Māori Category 3 – Permitted Category 2 + 1 – Permitted, where: a. The additions and alterations are for an existing residential activity, b. The new building or structure is less than 200m , and c. The addition or alteration to a building or structure are within an industrial/commercial zone and are less than 200m.	Oppose	I strongly oppose this rule. It is fundamentally inconsistent with property rights and with the productive use and development of land. It will restrict residential housing supply in the midst of a housing crisis. First, the way the section is currently written means that no person could ever satisfy activity conditions in category 1 and 2 sites BY using 'and' instead of 'or', it suggests all three conditions have to be satisfied for an activity to be permitted, an impossible task. If read literally, any activity on a category 1 or 2 site would require a resource consent. It could be that this is a drafting error rather than what the Council intended – if it was done intentionally, this would be an absurd outcome. Even if it was unintentional, it speaks to the casualness with which the Council have imposed restrictions on a large host of landowners – I would expect that had the Council's planners and lawyers looked at this properly, they would have picked up this error, so it is very concerning to me that they didn't. Even if the 'and' is read as an 'or', the restrictive effects on commercial property are obvious. In commercial development terms, 200m^2 is not large. The drawing of the boundaries for Pito-One Precinct and sites in Seaview in particular, combined with SASM policies (particularly P9) seems to provide something very close to a mana whenua veto over commercial development. The veto is not limited to commercial properties (notwithstanding what Campbell Barry has said publicly about the policy). Consent is clearly required for new builds on residential land over 200m2. While 200m2 is a healthy size, this rule would apply in cases where, for example, land is subdivided for the purpose of intensification, or where a landowner seeks to demolish an existing building and put up a new one in its place. It is totally unclear to me how protection of the cultural and spiritual values of a site depend on the square metreage of proposed development and the underlying zoning of the site.
SASM-R5	Demolition or removal of buildings and structures within a Category 1, 2 or 3 site or area of significance to Māori – Activity Status: Permitted	Support	This rule is enabling of the exercise of private property rights and I support it on its current wording.
Standards			
SASM-S1	**Accidental discovery protocol** Where kōiwi or other artefacts are unearthed during works, those undertaking the works must: 1. Immediately cease works, 2. Inform the relevant iwi authority, 3. In the case of kōiwi, inform the New Zealand Police, and 4. Inform Heritage New Zealand Pouhere Taonga, apply for an appropriate archaeological authority, and once granted commence works in compliance with the archaeological authority. **There are no matters of discretion if the standard is breached.**	Neutral	See submission on SASM-R2 above.
Other policies and rules			

Sub-P15 and Sub-R6 (Subdivision)	**SUB-P15 Subdivision of land containing a Site or Area of Significance to Māori** Provide for the subdivision of land containing a Site or Area of Significance to Māori where:	Oppose	This rule is yet another restriction on property rights, and will be particularly harmful in the expansion of residential housing supply through intensification. The key problem with this provision is that it makes subdivision a restricted discretionary activity, with the matters of discretion limited to protecting the sites, consulting with mana whenua, and (most alarmingly) practical mechanisms to
Plan provision	**What the Plan says**	**General Position**	**Reasons**
	1. Consultation has been undertaken with Mana Whenua, 2. The values identified in SCHED6 - Sites and Areas of Significance to Māori are maintained and protected, 3. Alternative methods, locations, or designs that would avoid or reduce the impact on the values identified in SCHED6 - Sites and Areas of Significance to Māori have been considered, and 4. Practical mechanisms are incorporated to maintain or enhance the ability of Mana Whenua to access and use the site or area of significance. **SUB-R6 Subdivision of land containing a Category 1 or 2 Site or Area of Significance to Māori** 1. Activity status: Restricted discretionary 2. Matters of discretion are restricted to: 1. The matters in SUB-P15: Subdivision of land containing a Site or Area of Significance to Māori.	Oppose in part	"maintain or enhance the ability of mana whenua to use the site". This means that subdivision consents for land containing Māori sites is totally weighted towards Māori interests, with no attempt to recognise the interests of landowners and the general public in use and development of their land for housing and for commercial activities contributing to economic growth (as the RMA requires). SUB-P15.4 is particularly objectionable, as it appears to require that landowners to accept consent conditions that allow mana whenua to come onto their land as they please and without any compensation for the landowner. As a result: • I do not oppose retention of SUB-P15.1, provided that there are no special rules for subdivision consents in SASMs. • I do not oppose SUB-P15.2 and P15.3 if they are restricted to category 1 sites (provided these sites are defined as described in my submission on Schedule 6) • I strongly oppose SUB-P15.4, which is fundamentally inconsistent with private property rights, and is suggestive of forcing landowners to grant a lease or licence over their land to mana whenua without compensation • I oppose SUB-R6 – land containing Māori sites does not require its own subdivision rules. SUB-P15 (modified as described above) provides sufficient protection for these sites as part of the normal consent process.

EW-P10, EW-R10, and EW-S9 (Earthworks)	**EW-P10 Earthworks on Sites and in Areas of Significance to Māori** Earthworks on sites and in areas of significance to Māori are managed as follows: 1. Enable small-scale earthworks for burials within existing sites or areas of significance to Māori that are urupā. 2. Provide for other earthworks on sites and areas of significance in SCHED6 - Sites and Areas of Significance to Māori where it can be demonstrated that the identified values will be protected, having regard to: a. The extent of the earthworks, b. The manner in which the earthworks are undertaken, c. The monitoring of earthworks, and d. The avoidance of archaeological sites. **EW-R10 Earthworks on Sites and in Areas of Significance to Māori** 1. Activity status: Permitted Where: a. The earthworks are associated with burials within an existing urupā, or b. Compliance is achieved with EW-S9: Earthworks on Sites and in Areas of Significance to Māori. 2. Activity status: Restricted discretionary Where:	Oppose	I oppose these rules and policies in their entirety as they apply to category 2 and 3 sites (which, as described in my submission above, should be merged into a single category). I do not oppose these rules and policies as they apply to category 1 sites, provided these sites are defined as described in my submission on Schedule 6. It is clear that the Council has not properly thought through how these rules will protect the sites they have identified. The rules seem designed for high importance category 1 sites, particularly where there is a strong possibility of unearthing human remains or archaeological/cultural artefacts. But they do not make sense in the broad swathe of other sites captured under category 2 and 3. This is especially so given category 2 and 3 sites are poorly defined in terms of area and many of which have debatable significance. The land disturbance rules for category 2 sites only require following the accidental discovery protocol – in category 3 sites, they are permitted without the protocol. There is nothing to why when a land disturbance becomes an earthwork (ie: when it becomes a permanent alteration to the land), restrictive rules should trigger for all sites. What spiritual or cultural interest does restricting earthworks in an area where, for example, Maori used to hunt whiorau/blue ducks (Whiorau/Lowry Bay)?

Plan provision	What the Plan says	General Position	Reasons

	a. Compliance is not achieved with EWR10.1. **Matters of discretion are restricted to:** 1. The matters in EW-P10: Earthworks on Sites and in Areas of Significance to Māori. **EW-S9 Earthworks on Sites and in Areas of Significance to Māori** 1. Earthworks must not exceed: a. A total area of 50m per site within any 12-month period, and b. A maximum cut height or fill depth greater than 0.5m (measured vertically). **Matters of discretion if the standard is breached:** 1. The effect of the earthworks on the identified Sites and Areas of Significance to Māori.		

Sarita Von Afehlt
1 May 2025