Submission on Proposed SASM Overlay on 11 Dillon Street, Lowry Bay.

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District Plan Review Team
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1. This is a submission from Sarah Turk, 11 Dillon Street, Lowry Bay on the Proposed Lower Hutt District Plan 2025.
2. My email address for service is sarahturk307@gmail.com.
3. I could not gain an advantage in trade competition through this submission.
4. The specific provisions of the proposal that my submission relates to, my submission on those provisions, and the decisions I seek are detailed below.
5. 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 wish to be heard in support of my submission.
7. If others make a similar submission, I will consider presenting a joint case with them at the hearing.

Introduction

1. I am a resident and joint owner of 11 Dillon Street, Lowry Bay, Lower Hutt. The property comprises approximately 2,588 square metres and has a residential property built in the early 1860s.
2. I am submitting feedback in response to the Section 32 Evaluation of the District Plan, specifically in relation to the Sites and Areas of Significance to Māori (SASM) provisions.
3. This submission is made in accordance with the Resource Management Act 1991.
4. My property at **11 Dillon Street**, **Lowry Bay** is currently designated as a **Category 2 Site and Area of Significance to Māori (SASM2)**
5. I **formally object** to the classification of my property at **11 Dillon Street,** as **SASM2** under the Proposed Hutt City District Plan.

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6. While I fully support the recognition and protection of evidentially established sites of cultural significance to Māori —particularly on **public land where cultural values can be appropriately acknowledged and accessed**—I do not believe that the SASM2 overlay is justified or appropriate in the case of 11 Dillon Street, or other residential property in Lowry Bay.
7. The SASM2 designation infringes on private property rights and imposes significant planning burdens on landowners, including **restrictions on subdivision, additional consultation requirements with iwi, which are not clearly defined and limitations on building development**, as outlined in provisions such as **SASM-R1, SASM-P6, SASM-R4, SASM-R5, SUB-P15**.
8. The report also refers to a **SUB-R6: Subdivision of land containing a Category 1 or 2 site or area of significance to Māori** which is relevant to my property, but the lack of clarity of information provided by Council is such that **no definition** of this rule is included within the report, so I am unable to respond to the impact of this rule on my property.
9. Additionally, **SASM-P6, SASM-R1, & SUB-P15iv** which provide for access and the practice of **tikanga Māori on private land**, also raises serious concerns about the erosion of **property rights and landowner autonomy**.
10. These provisions are **disproportionate** given the **lack of archaeological or historical evidence** confirming the site's cultural use, the **substantial landform changes following the 1855 Wairarapa earthquake**, and the property's **160-year history of uninterrupted private residential ownership**.
11. Additionally, the application of the SASM overlay within Lowry Bay (and within Lower Hutt as a whole) reflects a lack of consultation with affected landowners and **disregards well-established legal precedents** that protect private property rights under New Zealand law and the Waitangi Tribunal's mandate.
12. I am seeking the **complete removal of the SASM overlay and SASM2 designation** from my privately owned residential property.

Summary of Request and Position

I respectfully request that the SASM2 designation be removed from my private property at 11 Dillon Street, Lowry Bay. This overlay imposes significant and unclear restrictions on the use of my land without sufficient evidence or consultation. I believe that planning mechanisms such as SASM designations should be applied consistently, transparently, and based on robust, verifiable evidence.

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While I strongly support the recognition and protection of sites of Māori cultural heritage—particularly in public or unmodified landscapes—I do not believe that the SASM2 overlay in Lowry Bay meets those criteria. My objection is grounded not in opposition to the values underlying the Resource Management Act (RMA), but in concern that the SASM2 designation represents a misapplication of section 6(e), which seeks to protect the relationship of Māori with their ancestral lands, and section 6(f), which relates to the protection of historic heritage.

Furthermore, the imposition of this designation without prior consultation with affected landowners demonstrates a lack of procedural fairness and transparency. It disregards long-standing legal principles in New Zealand law that recognise and protect the rights of private property owners. These principles have also been upheld by the Waitangi Tribunal, which has consistently affirmed that redress of legitimate historical Māori grievances resulting from the effects of colonisation should not come at the expense of private landowners' property rights.

The application of the SASM2 overlay to my land—held in private ownership for over 160 years—fails to meet the standard of natural justice and undermines the confidence that landowners can reasonably expect in the rule of law and consistent application of policy. Any designation with such far-reaching implications must uphold not only the intent of the RMA but also the foundational principles of fairness, justice, and legal precedent.

Reasons for My Objection

1) **Lack of evidence justifying SASM2 designation in Lowry Bay**
    a) Schedule 6, p.78 states: “Whiorau-Lowry Bay (category 2)
    known as a place for harvesting Whio (Blue Duck) the shoreline and bay was also an important fishing site. The area inland also held cultivations associated with Waiwhetū and Hikoikoi Pā”.
    b) Including parts of Lowry Bay as a SASM2 designation appears to rely on broad, unverified assertions rather than specific, well-documented evidence. No archaeological records or historical documentation confirm that the privately owned properties now designated SASM2 were used for duck hunting, fishing, or cultivation.
    c) The 1855 Wairarapa earthquake dramatically altered the landscape, raising the land by over two metres, eliminating the lagoon habitat that would have supported such activities. This makes claims about pre-earthquake Māori use of the land speculative as the land formation post-earthquake bore no resemblance to its pre-earthquake formation. Cultural significance is intangible and based on historical uses that have not been practiced since 1855.
    d) Despite this, the current SASM mapping includes selected private properties without transparent criteria, giving the appearance of arbitrariness.

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e) A more appropriate and defensible approach would limit SASM recognition to public land where cultural values can be meaningfully maintained and where public access can be assured.

f) No substantiating evidence has been provided about:
   i) Which iwi or hapū were associated and when
   ii) Why an historic duck hunting area that ceased to exist after the 1855 earthquake warrants protection under SASM2

2) **The application of SASM mapping within Lowry Bay is inconsistent**

This map of Lowry Bay taken from the Hutt City Council Proposed District Plan shows the red boundary of the SASM2 overlay and the black and white boundary of 11 Dillon Street.

a) The delineation of SASM2 boundaries in Lowry Bay is inconsistent with the cultural value identification in Schedule 6. This suggests a flawed and arbitrary application mapping process.

Submission on Proposed SASM Overlay on 11 Dillon Street, Lowry Bay.

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b) Schedule 6 of the Proposed District Plan refers to Lowry Bay in its entirety as holding cultural values related to duck hunting, fishing, and inland cultivations—yet only a selective group of properties have been given the SASM2 overlay.

c) There is no clear rationale or evidence to explain why the rest of the bay (approximately 40% by area), including comparable residential areas on the right-hand side such as Walter Road, Gill Road, and Taumaru Avenue, have been excluded from SASM2 overlay.

d) These areas are equally accessible and feature similar landforms, including freshwater streams that could have supported cultivation.

e) Given the dramatic land uplift and reshaping caused by the 1855 Wairarapa earthquake, there can be no certainty about the precise location of any pre-European Māori activity.

f) It is therefore unfounded to apply a site-specific overlay with legal and planning implications to only part of the bay. If Māori were present in Lowry Bay prior to 1855, there is no logical basis for assuming their activity was limited to the left-hand side alone.

g) Despite the absence of archaeological evidence or verified historical use for cultivation or duck hunting at 11 Dillon Street my property has been designated as SASM2, while neighbouring properties at 13,15, 17 & 19 Dillon Street, just a few metres away with similar geography, yet closer to a stream that could have provided a water source for cultivations, have been excluded.

h) This selective and arbitrary mapping lacks transparency ignores the transformed geography of the land and fails to apply the SASM designation consistently or equitably. Council should provide full disclosure of:

   i) The methodology used to determine the SASM2 overlay boundaries.
   ii) The evidence to justify the spurious ‘accuracy” of including my property whilst excluding other just metres away.

i) For all the reasons set out above, the SASM2 mapping in Lowry Bay is inconsistent with both the identification of cultural values in Schedule 6 and the principles of fairness, transparency & evidence-based planning.

j) In light of the above, the SASM overlay should be removed from private properties within Lowry Bay that have been designated SASM2 without sufficient evidence or justification.

3) **1855 earthquake fundamentally altered the land — invalidating SASM2 rationale**

a) SASM-O1 confirms that the purpose of the SASM provisions is to protect sites and areas of significance to Māori from inappropriate land use, subdivision, and development.

Submission on Proposed SASM Overlay on 11 Dillon Street, Lowry Bay.

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b) However, in the case of Lowry Bay, it was not human development but the catastrophic 1855 Wairarapa earthquake that irreversibly destroyed the original cultural landscape. The earthquake uplifted the land by approximately 2.1 metres, eliminating the estuarine lagoon once used for duck hunting and permanently altering the shoreline.

c) The current landscape bears no resemblance to its pre-1855 form, and the land associated with the cultural values listed in Schedule 6—such as hunting and cultivation—no longer exists in its original state.

d) The area where 11 Dillon Street now sits was newly created by this natural event and developed for residential use within a decade of the earthquake, beginning a 160-year history of uninterrupted private ownership.

e) There is no archaeological or documented historical evidence that this newly uplifted land was ever used for cultivation, and it could not have been used for duck hunting due to its solid, dry nature. Even if there had been limited use by Māori in the brief 5-10 year period between the earthquake and my property being built, this does not equate to enduring cultural significance when compared to nearly two centuries of residential use.

f) This raises a critical question: <u>How can my land at 11 Dillon Street be deemed culturally significant when the land itself only came into existence after the 1855 earthquake and my current house, in its earliest form, was built shortly afterwards in the early 1860s?</u>

4) **General Fairness and the Protection of Property Rights at Law**

a) New Zealand law has long upheld the principle that private property rights must be respected and preserved. This principle is reflected not only in general legal frameworks but also in the work of the Waitangi Tribunal, which has consistently taken the position that private land should not be used to remedy past injustices arising from colonisation. The Tribunal has recognised that redress should not come at the expense of individual property owners who have lawfully acquired and maintained ownership over time.

b) Hutt City Council's approach in drafting and implementing the SASM provisions under the Resource Management Act undermines these well-established principles. The Council did not consult with affected landowners before identifying and mapping the SASM overlay. Instead, property owners—including myself—received a letter advising that our private land had already been included within the SASM2 overlay and that the associated legal provisions were effective immediately. There was no prior engagement, opportunity for input, or explanation as to the reasoning or evidence supporting this designation.

c) This approach shows a troubling lack of respect for the rights of private property owners and for the basic principles of transparency, natural justice, and fair process. It fails to meet the standards of equity expected in democratic governance and disregards the Treaty principles of partnership, informed

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decision-making, and equal treatment—principles that apply equally to Māori and Pākehā.

d) Imposing immediate legal obligations on private land without consultation or clarity is unjust, especially when the land in question has been privately held and used for over 160 years.

e) If Hutt City Council is to honour both the legal framework of New Zealand and the intent of the Treaty of Waitangi, it must balance cultural recognition with a fair and lawful process that protects long-standing private property rights and treats all citizens with dignity and equality.

5) **Zoning inconsistencies and undefined restrictions raise practical concerns**

a) The rezoning of Lowry Bay from Special Residential to Medium Density Residential Zone (MDRZ) was intended to support appropriate subdivision and development with a clear, consistent, and accessible consent process.

b) However, the addition of the SASM2 overlay introduces a poorly defined and burdensome layer of obligations and expense, particularly around required consultation with Mana Whenua.

c) Under SUB-P15, subdivision is now only considered appropriate if:

i) Consultation has occurred with Mana Whenua;
ii) Cultural values such as historical duck hunting or cultivations are protected;
iii) Alternatives have been explored to reduce cultural impact; and
iv) Practical mechanisms for Māori access are incorporated.

d) These conditions are vague and lack procedural clarity. As a private landowner, I am given no guidance on:

i) Who the appropriate Mana Whenua representatives are;
ii) What authority or expertise they have
iii) What the consultation entails
iv) What timeframe or costs are involved
v) What happens if I disagree with the outcome.

e) There is no dispute resolution or appeals process provided. This leaves landowners like me exposed to open-ended delays, legal risk, and additional expense without clarity or recourse.

f) Further uncertainty is introduced under SASM-R4, where any new building of 200m^2 or more requires additional cultural consultation. The rule provides no definition of whether this area includes total floor space, footprint only, or features such as decks and outbuildings — again leaving developers and property owners without certainty.

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g) Moreover, there is no logical connection between the size of a dwelling and the historic cultural values identified in Schedule 6.

h) Today, Lowry Bay is a neighbourhood of large homes on generous sections. These arbitrary and nebulous rules risk incentivising denser or lower-quality development that is not in keeping with the area's established character, as property owners will naturally seek to avoid the unjustified SASM2 regulatory burden now imposed upon them.

i) In short, the SASM2 overlay undermines the very purpose of the MDRZ by replacing its clear framework with subjective, undefined and unresolvable requirements, creating a planning environment that is unpredictable and fundamentally unfair.

6) **Unjust Economic Impact: Erosion of Property Value, Development Rights, and Legal Certainty**.

a) My property at 11 Dillon Street includes a large section ideally suited to subdivision and development. Its market value has long reflected this potential. However, the imposition of the SASM2 overlay significantly reduces the property's attractiveness to future buyers or developers by introducing undefined obligations and increased cost and risk.

b) This has direct economic consequences. The uncertainty created by the overlay makes the property harder to develop, harder to sell, and less valuable. Particularly with regard to the lack of definition around

   i) who to consult with,
   ii) what cultural values are at stake,
   iii) the extent of additional costs and time delays,
   iv) how any consultation will be assessed or resolved

c) Yet despite this loss of development certainty, my council rates continue to be assessed as though the land remains prime development real estate. This results in a triple economic penalty:

   i) Loss of property value due to regulatory uncertainty;
   ii) Higher development costs tied to cultural consultation obligations and building restrictions; and
   iii) Ongoing excessive rates based on an outdated and now inaccurate valuation.

d) Unlike other MDRZ properties without SASM overlays, my land is now uniquely disadvantaged — with fewer rights, more hurdles, and lower potential, but still paying disproportionately high rates for value it no longer holds.

e) This is fundamentally unjust and inconsistent with long-standing principles of New Zealand property law, which recognises and upholds the rights of private landowners. The overlay imposes retrospective obligations on land that has

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been privately owned and used for residential purposes for over 160 years — without compensation, process clarity, or planning support.

7) **Existing zoning already protects against activities incompatible with cultural values**:
   a) The MDRZ rules already prohibit activities such as crematoria, abattoirs, and urupā—uses that could conflict with Māori cultural values.
   b) These restrictions provide appropriate safeguards without requiring additional layers of regulation. The SASM2 overlay is therefore unnecessary and redundant in this context.
   c) The Resource Management Act should be applied in a manner that ensures landowners are not unduly burdened by overlapping or unjustified planning constraints.

8) **Private ownership and residential use of 11 Dillon Street has continued since 1865**
   a) 11 Dillon Street has been in uninterrupted private residential use since the early 1860's.
   b) The retroactive imposition of a SASM2 overlay on land with such a long and well-documented history of private ownership is unjustified and inconsistent with the intent of the legislation, which seeks to prevent the *loss* of unprotected sites, not to impose vague controls on sites already developed and held privately for over 160 years.
   c) When I purchased the property, it was under the understanding that it was governed by standard residential planning rules and the long-accepted principle in NZ law of respect and protection of private property rights.
   d) As a private landowner, of the oldest surviving private property in Lowry Bay I should retain the same rights under the MDRZ as other private property owners and not be subject to the unclear and undefined obligations introduced by SASM2 that unfairly affect my ability to exercise property rights and create regulatory ambiguity incompatible with sound planning practice or principles of natural justice.

9) **Tikanga Māori Access on Private Land: Legal Ambiguity and Property Rights**
   a) SASM-P6 and SASM-R1 permit the practice of tikanga Māori, including mahinga kai, on land identified as a SASM, regardless of ownership status.

Submission on Proposed SASM Overlay on 11 Dillon Street, Lowry Bay.

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b) While the Hutt City Council's SASM webpage claims that private property rights remain protected, SASM-R1 appears to allow cultural practices across all SASM categories, including private owned land.

c) Further compounding this, SUB-P15(iv) states that subdivision is only appropriate where *"practical mechanisms for Māori access are incorporated."*

d) This creates serious legal ambiguity.

e) I fully support the expression of tikanga Māori on public land or reserves where cultural values remain accessible and intact.

f) However, the situation that my private land may now be accessed for cultural practices and the requirement that access for Māori is a condition of any future subdivision is unacceptable given that:

i) The ecological basis (estuarine habitat) no longer exists.
ii) The land has been in uninterrupted private ownership for 160 years.

Justification for Full Removal of SASM Overlay from 11 Dillon Street and Other Private Residential Properties

1) There is **no archaeological, historical, or documented evidence** confirming that 11 Dillon Street or neighbouring residential properties were sites of Māori duck hunting, cultivation, or other significant cultural activity.
2) **No visible or known cultural features** are present on the affected private land, making the SASM2 designation speculative and inappropriate.
3) The **1855 Wairarapa earthquake** radically altered the local landscape, raising the land by approximately 2,1 metres and eliminating the estuarine habitat, making it **impossible to verify any pre-earthquake cultural use** of the current residential land at 11 Dillon Street or other privately owned property within Lowry Bay.
4) My property has been in **continuous private residential use for over 160 years**, with no prior formal recognition of cultural significance. Other private properties also have a long history of residential use.
5) The **application of the SASM2 overlay appears arbitrary and inconsistent**, with no transparent criteria used to explain the selective inclusion of some properties and exclusion of others.
6) The overlay imposes **unjustified burdens** on landowners, including unclear consultation processes with iwi, time delays, additional undisclosed costs, and significant restrictions on subdivision and development—**all without clear cultural justification**.
7) These constraints conflict with the **Medium Density Residential Zone (MDRZ)** provisions and may **negatively affect property values**, infringing on reasonable development expectations.

Submission on Proposed SASM Overlay on 11 Dillon Street, Lowry Bay.

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8) **I fully support the application of SASM overlays to public reserves, beaches, and other public land** within Lowry Bay where cultural significance is uncontested and access can be managed appropriately.
9) Māori cultural practices such as mahinga kai are more appropriately carried out on **public lands**, where cultural and ecological values can be upheld without compromising private property rights.
10) The **Accidental Discovery Protocol** already provides a respectful, practical mechanism for protecting any cultural heritage that may be unexpectedly uncovered on private land without SASM designation.
11) The imposition of the SASM2 overlay **violates core legal and constitutional principles**. New Zealand law protects private property rights, and the Waitangi Tribunal has affirmed that **redress for historical injustices must not come at the expense of unrelated landowners**.
12) The lack of consultation by Council with affected land owners breaches natural justice and Treaty principles of partnership, transparency, and equal treatment for all citizens.
13) Full removal of the SASM overlay from private residential properties would restore a **balanced, equitable, and evidence-based approach**, upholding both cultural protection and longstanding private property rights.

Relief Sought

1) I respectfully request that the **SASM2 designation be removed entirely from my property at 11 Dillon Street and from all other privately owned residential properties in Lowry Bay**. This SASM2 overlay lacks clear evidential basis, imposes vague and disproportionate planning burdens, and unfairly restricts the use and value of private land. These privately owned residential sites should instead be governed solely by the Medium Density Residential Zone (MDRZ) provisions, and the Accidental Discovery Protocol which provide a fair and appropriate framework for residential development.

2) If the full removal of the SASM2 overlay is not accepted, then as a secondary position, I request that **Lowry Bay in its entirety be reclassified as SASM3**. SSAM3 is intended for areas with uncertain or intangible cultural values, making it appropriate for Lowry Bay, where there is no archaeological or historical evidence of duck hunting or cultivation on the affected private properties. SASM3 would preserve recognition of potential cultural values while removing unjustified planning restrictions and its application consistently across Lowry Bay would be more

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equitable and transparent than the current arbitrary application of SASM2 to selected properties.

3) I also respectfully request full clarification from Council of the apparent legal conflict between the long-established property rights of private land owners and the SASM provisions that permit access for tikanga Māori on all SASM designated land.

Conclusion

In conclusion, I respectfully request that Hutt City Council remove the SASM2 overlay from my property at 11 Dillon Street, Lowry Bay, and from all other privately owned property in Lowry Bay. The SASM2 designation lacks clear justification, conflicts with the transformed geography and private ownership history of the site, imposes vague and disproportionate planning burdens, and has already begun to erode the value and use of my land. As a private landowner of one of the oldest continuously occupied residential properties in Lower Hutt, I strongly object to the retroactive imposition of the SASM2 overlay, which lacks evidential basis, imposes an unfair burden, and undermines both property rights and confidence in the planning system. Moreover, the Council's failure to consult with affected landowners breaches fundamental principles of natural justice and Treaty partnership obligations, and disregards established legal precedent that protects private property rights. I fully support the protection of genuinely significant Māori heritage sites where cultural value is clearly identified and evidentially verified. However, such protection must be applied transparently, consistently, and lawfully. In this case, the SASM2 designation is inappropriate and should be withdrawn—not just for my property, but for other similarly affected private residential properties in Lowry Bay.