RMA Form 5

Submission on publicly notified proposed district plan

Clause 6 of Schedule 1, Resource Management Act 1991

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To: Chief Executive, Hutt City Council

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

1. This is a submission from Terry Verhoeven on the Proposed Lower Hutt District Plan 2025.
2. My email address for service is terry@rightsinstitute.org
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 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.
5. I wish to be heard in support of my submission.
6. If others make a similar submission, I will consider presenting a joint case with them at the hearing.

Introduction

7. I, Terry Verhoeven, am a New Zealand citizen, property owner, and ratepayer. I am the author of the book *Rights: Rediscovering Our Means to Liberty* and the founder of the Rights Institute initiative, an educational website dedicated to teaching an objective philosophy of rights in the tradition of Enlightenment thinkers.

8. This submission supports recognising and providing for the relationship of Māori with their culture, traditions, and taonga when such efforts are pursued without coercion. However, it strongly opposes the Sites and Areas of Significance to Māori (SASM) regime in the Proposed District Plan (PDP), as currently worded, because it undermines private property rights, which should take precedence for the reasons outlined below.

9. Private property rights are deeply rooted in common law and form a fundamental pillar of a free, just, and prosperous society. Historical evidence shows that when respect for these rights erodes, a free and just social order tends to give way to escalating conflict among competing interests, a culture of corruption, and/or authoritarianism, where "order" is imposed according to the ideology or predilections of those in power. Recent examples include Venezuela, Argentina, and Cuba, while the most prominent historical case is Germany, from the Second German Empire to Nazi Germany. As a result of experiencing significant erosion of private property rights, all these countries transitioned from relative freedom and prosperity to dictatorship and crippling poverty.

10. While statute law—such as the Resource Management Act—can override private property rights, any such powers must be exercised with great care and restraint. Bylaws and district plan rules, though legally valid, should not be used to undermine the fundamental freedoms inherent in private property ownership. In this context, councils act as gatekeepers of the free, just, and prosperous social order that private property rights help sustain. They uphold the public good not by creating rules that erode these rights, but by showing restraint. It is through the careful and judicial use of regulatory powers—respecting the foundational role of private property rights—that councils act in the best interests of both current and future generations.

11. Today, environmental legislation is being used by the Council to "empower Māori", with it seeking broader and more formal recognition of Māori cultural and spiritual values, as well as ancestral connections to the land, through the district plan—without due regard for private property rights.

12. With few exceptions, the SASM chapter prevents owners whose properties are within a SASM from developing or improving their land, infringing on their rights and causing other adverse impacts.[1]

13. As outlined in the following table, changes to specific Objectives, Policies, and Rules in the SASM chapter of the PDP are sought to reaffirm private property rights, provide relief to affected property owners, and help preserve our relatively free, just, and prosperous society.

[1] If permission is required to act, the act is not recognized as a right, even if permission is granted. The right to improve one's property is a subset of the broader right to use one's property. Other adverse impacts include significant costs, uncertainty, risks, and loss of property value.

Decisions Requested

For a detailed outline of the reasons for opposing the provisions, refer to the attached supplementary sheet.

#	Chapter	Provision	Position	Reasons	Relief sought
1	Sites and Areas of Significance to Māori	SASM-O1	Support, subject to adopting the change for SASM-O3 in #3 below, otherwise oppose		
2	Sites and Areas of Significance to Māori	SASM-O2	Support, subject to adopting the change for SASM-O3 in #3 below, otherwise oppose		
3	Sites and Areas of Significance to Māori	SASM-03	Oppose—replace	Giving effect to this provision—which recognises tangata whenua as having the right to exercise authority over all SASMs, and by implication, over any private properties within a SASM—would seriously violate the sanctity of private property rights and democratic governance.	Replace with: "Tangata whenua have self-determination over SASMs that do not involve private property, while private property owners each have self-determination over their own properties, including those within a SASM. All other Objectives in this chapter are secondary and subordinate to this primary Objective", or something to that effect.
4	Sites and Areas of Significance to Māori	SASM-O4	Support, subject to adopting the change for SASM-O3 in #3 above, otherwise oppose		
5	Sites and Areas of Significance to Māori	SASM-P1	Support, but only with amended wording, otherwise oppose	SASM boundary identifications should be made as objectively and precisely as possible, which is demonstrably not the case with the current PDP mapping of SASMs.	Reword to: "Identify sites and areas of significance to Māori with tangata whenua in accordance with tikanga Māori, and objectively delineate boundaries using the scientific method", or something to that effect.

6	Sites and Areas of Significance to Māori	SASM-P2	Support, but only with amended wording, otherwise oppose	Waterways, along with their use and development, should remain under the control of the respective property owners, especially where privately owned.	Reword to: "Protect sites and areas listed as Ngā Awa o te Takiwā in SCHED6 – Sites and Areas of Significance to Māori from inappropriate subdivision, use, or development, only to the extent that such protection does not subordinate private property rights".
7	Sites and Areas of Significance to Māori	SASM-P3	Support, but only with amended wording, otherwise oppose	Land, along with its use and development, should remain under the control of the respective property owners, especially where privately owned.	Reword to: " Protect sites and areas listed as Category 1 in SCHED6 – Sites and Areas of Significance to Māori from inappropriate subdivision, use, or development, only to the extent that such protection does not subordinate private property rights".
8	Sites and Areas of Significance to Māori	SASM-P4	Support, but only with amended wording, otherwise oppose	Land, along with its use and development, should remain under the control of the respective property owners, especially where privately owned.	Reword to: "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, only to the extent that doing so does not subordinate private property rights".
9	Sites and Areas of Significance to Māori	SASM-P5	Neutral		
10	Sites and Areas of Significance to Māori	SASM-P6	Support, but only with amended wording, otherwise oppose	As worded, this provision fails to respect the sanctity of private property rights.	Reword to: "Where the prior agreement of the property owner is obtained, enable tangata whenua to carry out tikanga Māori (including mahinga kai) within sites and areas of significance to Māori.
11	Sites and Areas of Significance to Māori	SASM-P7	Neutral, but only with amended wording, otherwise oppose	Encouragement of private property owners to engage with tangata whenua should not attract penalties for them not engaging with tangata whenua.	Reword first line to: "Without penalising private property owners for a lack of engagement with tangata whenua, encourage landowners to:".
12	Sites and Areas of Significance to Māori	SASM-P8	Neutral		

13	Sites and Areas of Significance to Māori	SASM-P9	Oppose—remove	This provision undermines the sanctity of private property rights and is the most egregious and onerous of the policies. Its wording even implies that maintaining or repairing a private property within a SASM should necessitate input from tangata whenua.	Remove this provision entirely and allow the listed aspirations to be pursued through voluntary means. In the first alternative, exclude private property.
14	Sites and Areas of Significance to Māori	SCHED6 - Sites and Areas of Significance to Māori	Support, subject to additional wording, and adopting the change for SASM-P1 in #5 above	Following the publication of the PDP, a clear threshold should be imposed on further historical identifications being added to Schedule 6.	Add: "This list is full and final with respect to historical identifications, except in cases where archaeological discoveries establish new sites or areas of significance".
14	Sites and Areas of Significance to Māori	SASM-R1	Support, but only with amended wording, otherwise oppose	As worded, this provision fails to respect the sanctity of private property rights.	Reword to: "Undertaking tikanga Māori within a Site or Area of Significance to Māori with the prior agreement of the property owner".
15	Sites and Areas of Significance to Māori	SASM-R2	Support in part—amend	This provision fails to respect the sanctity of private property rights, although SASM-S1: Accidental discovery protocol is a reasonable exception.	Retain only R2.1, 2.2, and 2.3.b. In the first alternative, exclude private property from the remainder of this provision.
16	Sites and Areas of Significance to Māori	SASM-R3	Support		
17	Sites and Areas of Significance to Māori	SASM-R4	Oppose—remove	This provision fails to respect the sanctity of private property rights. Furthermore, 200m2 (or any square metre size) is ostensibly an arbitrary threshold for cultural relevancy.	Remove this provision. In the first alternative, exclude private property, and replace "is/are less than 200m^2" with "does not increase the footprint of the pre-existing building by more than 200m^2".
18	Sites and Areas of Significance to Māori	SASM-R5	Support		
19	Sites and Areas of Significance to Māori	SASM-S1	Support		

SUPPLEMENTARY SHEET STATING REASONS FOR SUPPORTING THE SUBMISSION BY TERRY VERHOEVEN

1. Under the current wording of the PDP, the sanctity of private property rights—cherished 'taonga' for most New Zealanders—would be violated by the regulatory taking resulting from SASM designations on private land.[2] Democratic governance, also a cherished 'taonga', would be undermined by the Council's recognition of tangata whenua as an "equal partner" in decision-making over these properties, as implied in SASM-O3 and the Section 32 Evaluation Report, which effectively grants them the influence of an unelected territorial authority.

2. The Council must, as required by s6e of the RMA, "recognise and provide for … the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga", but it should do so without undermining private property rights, and without doing away with democratic processes. The Council can achieve this balance by adopting the relief sought in this submission.

3. Notably, s6e of the RMA does not say that the culture and traditions provision for Māori must be total and/or achieved at any cost, which is what the PDP, as it is currently worded, seems to be trying to achieve. As the courts have found, it implies a duty to make genuine and reasonable efforts to provide for the relationship—not absolute provision.

4. To meet the requirements of s5(2) of the RMA—*which takes priority over s6(e)* and is directed toward ensuring people and communities have their "social, economic, and cultural well-being" provided for, as well as health and safety—private property rights should act as a constraint on how far rules may extend to support the cultural aspirations of any one ethnic group. This is especially important because social and economic well-being come first,[3] and cultural well-being encompasses all cultures, not just Māori culture.

5. As for the requirement to "take into account the Principles of the Treaty of Waitangi" (s8), these principles have yet to be defined by Parliament. Legally, "take into account" means to consider it as one factor among others through careful thought and deliberation. It does not mean treating it as the overriding consideration, which appears to have occurred in the formulation of the SASM chapter of the PDP.

6. Points 2–5 are supported by subparagraph 150b of the recently released *Report from the Expert Advisory Group on Resource Management Reform. Blueprint for resource management reform: A better planning and resource management system 2025*, which says, "Importantly, the provisions [of the RMA concerning Māori

[2] The word taonga is used here deliberately and respectfully, not merely to convey value or sacredness, but to express the idea of something of profound importance and enduring value that is so deeply embedded in the social and moral fabric of society that it serves to define a people's sense of identity and belonging. There is no exact equivalent in English that captures this depth of meaning. This is not an attempt to appropriate or dilute the cultural meaning of taonga within Te Ao Māori, but to recognise that Māori do not hold a monopoly on values of deep societal importance. In a multicultural democracy, it is appropriate to use shared language to express shared principles.

[3] Private property rights are essential for economic well-being. They protect the link between effort and reward, giving people the incentive to create, invest, and innovate—key drivers of economic growth. Secure private property rights are also essential for social well-being by giving people control over their lives, which fosters independence and self-respect, and by fostering peaceful cooperation: when rights are clearly defined and protected, people can deal with each other voluntarily, through trade and consent, rather than conflict, graft, or force.

interests] do not create a veto power. Māori interests must still compete for the attention of the final decision-maker against other interests and can be set to one side, where appropriate".

7. The SASM chapter of the PDP, as currently worded, effectively grants Māori interests a de facto veto power over land development and property improvements within SASMs, once a certain threshold is exceeded. Allowing this de facto veto power to be exercised over private property is highly inappropriate.

8. Under the current wording of the PDP, property owners whose land is subject to a Category 1 or 2 SASM designation will face significant costs, uncertainty, risks, and restrictions in any (re)development involving a new building, or, in the case of commercial properties, any alteration or addition greater than 200m²—200m² being an ostensibly arbitrary threshold for what is deemed culturally relevant. Remarkably, Section 7 of the Section 32 Evaluation Report asserts that the costs, uncertainty, risks, and restrictions imposed on private property owners by the stated objectives of the SASM chapter are "acceptable" and "not unjustifiable"—without quantifying these impacts or considering the views of affected property owners.

9. The absence of meaningful consultation with private property owners prior to the publication of the SASM chapter, and the immediate effect of its provisions—especially when contrasted with the extensive prior engagement with tangata whenua—further illustrates a marked disregard for the rights and interests of private property owners by at least some at the Council.

10. Mike Horsley, a Wellington valuation expert at Colliers, a leading commercial real estate firm specialising in property valuation and advisory services, confirmed in a letter to me dated 1 May 2025, after reviewing the SASM chapter and its likely impact, that: "In summary, the SASM chapters [sic] impose an additional layer of compliance that will result in a reduction in value, the extent of which will vary by property but will be *considerably more than minor*. As drafted, these impacts cannot be avoided, remedied, or mitigated" (emphasis added). Affected property owners are expected to absorb this sudden—and, in some cases, substantial—loss without compensation: an outcome that is both unfair and unjust, and, for some, intolerable. The drop in property values resulting from a SASM designation and its impact on affected property owners should not be underestimated, overlooked, or dismissed by the Council.

11. If the SASM regime proceeds as currently set out, subordinating the established private property rights of some to the preservation of cultural and spiritual values by others, it will set a dangerous precedent—acting as the thin edge of a very large wedge, undermining property rights, eroding trust in property law, and inviting continuous challenges to lawful land use.

12. In response to those who claim that overriding private property rights is necessary to right past wrongs, my answer is that one does not right a wrong by committing a new one. If there is an unaddressed wrong, the challenge lies in finding solutions that don't create new injustices. It is important to address past wrongs, but not by infringing upon current rights.

13. Just as customary title is extinguished when the Crown grants a fee simple title—reflecting the doctrine that customary interests cannot coexist with fee simple ownership (except where expressly preserved by statute, a rare exception)—so too are other legal recognitions of customary interests over private land incompatible, as they invite conflict, corruption, or authoritarianism.

14. Many SASM boundaries appear to have been set arbitrarily, leading to the inclusion of numerous private properties. This is supported by the *Sites and Areas of Significance to Māori Information Sheet*, which notes that Category 2 SASMs are either less significant or "their location may be less certain". For example, the Hikoikoi Pā SASM encompasses sixty-three acres, even though the original pā is known to have occupied only a few acres, simply because its exact location is unknown. SASM boundaries also frequently align with modern roads and property lines—features that did not exist when the sites were in use by iwi and hapū. This approach lacks objectivity and rigour, giving the impression of being motivated more by administrative convenience or even unjustified self-interest than by historical accuracy or respect for affected property rights. While the identification of sites and areas of significance should involve tangata whenua in accordance with tikanga Māori, the boundaries of SASMs should be determined using objective, evidence-based methods—ideally grounded in the scientific method—or not defined at all.

15. The SASM regime, as currently drafted, is open-ended in its historical scope, allowing for the future addition of historical sites to Schedule 6 without clearly defined, objective criteria. This creates unnecessary uncertainty for property owners and planners, and may allow for interpretations that are overly broad in identifying sites. To safeguard the integrity of the regime, if it must continue, historical additions should be limited to cases where new archaeological evidence demonstrates historical significance, as sites not previously identified based on known narratives cannot reasonably be considered significant based on the information available at the time.

16. In light of the current government's announced repeal of the RMA, proceeding with implementing the SASM regime—a costly and impactful framework—represents poor stewardship of ratepayer funds and councillors' time. The RMA is set to be replaced by two new pieces of legislation that will prioritise private property rights, remove the use of a general Treaty principles clause, and introduce compensation for restrictions or designations that significantly reduce land value. Details of the reform are expected before the end of this year. Furthermore, the current government's willingness to spare people from such waste was demonstrated by its suspension of SNAs in last year's interim reform legislation.

In summary, this submission principally opposes the enactment of the SASM chapter of the PDP, as it is coercive and infringes on private property rights—rights that are fundamental to a free, just, and prosperous society. Substantial changes to many of the chapter's provisions would be required for this submission to adopt a position of support. The necessary changes are outlined within this submission.

Submitted by email by:

Terry Verhoeven

Date: 2 May 2025