Submission on publicly notified proposed district plan

Clause 6 of Schedule 1, Resource Management Act 1991

Privacy Statement

Your submission must include your name, and an address for service (preferably email, but you can use a postal address). All information you include in this submission, including your name and address for service, will be provided to other submitters and published on Hutt City Council's website. Paper copies may also be made available. Hutt City Council is required to collect and publish this information to carry out its functions under the Resource Management Act 1991 and to enable others to take part in the district plan process. The Council, other submitters, and the Environment Court may need to contact you during this process.

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To: Chief Executive, Hutt City Council

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

1. This is a submission from Cook Strait Properties Limited ('CSPL'), c/- Ernest Gartrell, in-house solicitor on the Proposed Lower Hutt District Plan 2025.
2. Email address for service is ernie.gartrell@cspl.co.nz.
3. CSPL could not gain an advantage in trade competition through this submission.
4. The specific provisions of the proposal that CSPL's submission relates to, CSPL's submission on those provisions, and the decisions CSPL seek are shown in the below table. CSPL also seek all further, alternative, necessary, or consequential relief as may be necessary to fully achieve the relief sought in this submission.
5. CSPL wishes to be heard in support of its submission.
6. If others make a similar submission, CSPL will consider presenting a joint case with them at the hearing.

#	Chapter	Provision	Position	Reasons	Relief Sought
1	SASM - Sites and Areas of Significance to Māori	1st Paragraph	Oppose	The general statement is that there is an obligation imposed on Council by s 8 of the Resource Management Act (RMA) to apply the principles of the Treaty of Waitangi, that forms the underlying justification for the reduction of land ownership rights of all owners undertaken by the proposed imposition of this zoning by the Council. The submitter does not accept that s 4 of the Local Government Act 2002 (LGA) imposes the obligation as suggested and that this is a gross overreach by the Council. The submitter refers to a recent decision in the Blenheim High Court, *Hart v Marlborough District Council* [2025] HZHC 47. The ratio of that decision is accepted as being that it is law that local authorities are not directly bound by the Treaty as they are not part of the Crown and therefore not a party to the Treaty. In part, the issue was addressed in s 4 of the LGA. The decision followed the decision in *Smith v Attorney-General* [2004] NZCA 692, which held that under the Climate Change Response Act framework there was no room for a claim that sought to directly enforce the Treaty through an independent duty as Parliament had given effect to the principles of the Treaty by requiring that representation of a person with relevant expertise be on review panels in order to take into account impacts on iwi and Māori. The first cited decision expressly determines whether Councils have Treaty obligations, the extent is set out in s 4 of the LGA. Therefore, the imposition of the planning ordinances to the sites and areas of significance to Māori, it is submitted, is ultra vires of the Council and its empowering legislation.	That the proposal does not proceed because Council does not have the jurisdiction / obligation to impose Treaty Principles.
2	SASM – Sites and Areas of Significance to Māori	SASM-P1	Oppose	Secondly, without resiling from the above argument which is capable of fully determining the matter, it is urged on behalf of the submitted that the imposition of the proposed zonings would have considerable financial penalties for land owners and on any test fails to balance the rights of the land owner with any residual rights vested in the original occupiers.	Not to rezone the properties

3	SCHED 6 – Sites and Areas of Significance to Māori	Pito One Precinct (category 2)	Oppose	Thirdly, without resiling from the above grounds, it is submitted that the statement regarding the existence of certain features and in the submitters case, allegedly a pā site, that there is absolutely no concrete evidence adduced to support the existence. The commonly accepted writings are that original pā sites were situated on natural features which made them capable of defence which is why so many New Zealand hill tops bear the forms of trenches and ditches. Constructed with the advent of the musket, palisades were lifted to give a firing path between the trench edge and the bottom of the palisade. Again, even with careful examination of the ground there is no visual evidence which will support the prior existence of a pā site. Allied to that contention is that the conditions in the Petone area were so poor that the earliest European settlors decamped to Wellington rather than remain in the Petone area. As this is not only a fundamental and practical limitation on the titles there must be an exactitude of description and at least some archaeological basis for activity in the area. This is especially so in terms of the purported requirement to support access to these properties. Again, since the properties have been owned by the submitter there has been absolutely no activity and the imposition of these ordinances and maps carried out without any opportunity for input from the registered proprietor. This is an assault on the doctrine of non-defeasance of title.	Not to rezone the properties
4	*General comment*			Fourthly, it will not have escaped the Councils attention that it is proposed by the current government to abolish the RMA and in particular advance notice has been given that the newly drafted Act will not make any provision along the lines of this scheme change. It is suggested that it would be entirely wasteful of Council funds if this matter was to proceed with the looming approved certainty that the Act is to be withdrawn. That obviously has implication for the Council outside the provisions dealt with in this submission and must be a question for the Councils own advice.	Not to proceed with the proposal