Submission guide and template for My Land Group supporters

SUBMISSION ON PROPOSED LOWER HUTT DISTRICT PLAN 2025

To: Chief Executive, Hutt City Council

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

1. I, [John Griffin] make this submission on the Proposed Lower Hutt District Plan 2025 ("Proposed Plan") in my own name
2. My email address for service is [flotsam@xtra.co.nz]
3. I could not gain an advantage in trade competition through this submission.
4.
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 grown up and lived in Eastbourne now in Lowry Bay my entire life.
   My only dwelling and property I own with my wife is currently in the targeted SASM area of Lowry Bay. I'm very alarmed to hear that our HCC Council has somehow decided to give property rights to a 3rd party seemingly without any warning or suggestion of compensation. It seems this decision has been initiated within council with no regard for the common democratic rights of the affected property owners.
9. It doesn't seem valid the HCC has done nil consultation with landowners before these changes took effect. I understand that the sites were not included in the draft plan that the Council released for consultation in late 2023. It seems that Council consulted within themselves and claimants' before including the sites in the Proposed Plan, but didn't bother to consult with landowners.
10. The first I heard that my property was within a SASM was when I received a letter in the post earlier this year. The letter told me that there were restrictions on my property that took effect immediately, but didn't tell me why this had occurred, or give me any details as to what SASM values were protected by restricting my right to develop my land.

Submission and requested decisions

11. 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 Maori.

Plan provision	What the Plan says	General Position	Reasons
			○ Whiorau/Lowry Bay, where I live: The proposed boundaries in Lowry Bay are literally hearsay. i.e. there is no factual evidence to the proposed area which appear to be hand drawn with a ruler, specifically targeting private properties. What factual evidence has been used to establish these boundaries within Lowry Bay? There has been no consultation or explanation from HCC about how these sites where defined. It seems to be mostly a random estimation. ○ It is very unfair to the affected property owners to apply these rules based on a random guess that some peoples **may** have walked over the land hundreds of years ago. ○ One of the most contentious rules applied is, we now need to get additional resource consent if we want to build a new house over 200sqm. There doesn't seem to be any logic to this apart from appeasing some group interest that opposes dwellings over this size. ○ My personal observation is approx. 90% of existing housing in our area (Lowry Bay) are well over 200sqm. There is no reason given by HCC as to why any new building exceeding 200sqm needs this scrutiny. All the zones targeted predominantly are private property. ○ The affected private property owners are now expected to bear the devaluation and loss of property rights without compensation. This arbitrary decision to apply these rules is seemingly out of no-where and lacks any factual supporting evidence. ○ Almost 100% of the affected current property owners have never been informed that their properties where subject to a 3rd party land claim. I my-self would have never purchased the property I own if this was known at the time of purchase. ○ Going forward from now, I assume the recognition of these claims has already devalued the respective land. ○ Why does HCC think it ok to interpret the current RMA regulations into something so contentious and unnecessary ○ At the very least I would expect the Council to compensate all private owners for the obvious devaluation of their land values. ○ Private property owners also being rate payers did purchase their properties in good faith and should expect, in New Zealand common democratic principles apply. ○ If HCC insist on applying rules that give away private property owner standard rights, all affected owners should be offered a one-off buyout option at current (January 2025) capital values. This would allow new ownership with the pre-knowledge of the new delegated property rights and consent rules. This would also be consistent with instance where the government or local bodies purchase private property based on public need (e.g. for roading). I support genuine Māori cultural sites being protected, provided that they are either on public land or where they are both intact and clearly of great cultural significance, such as a historic urupā that is still intact today. These restrictions would affect a much smaller number of sites. As a result, I submit • That category 1 sites only include those that are either a) situated on public land; or b) are currently intact and are of such clear and obvious cultural or spiritual significance to Māori that imposing restrictions on use and development of private land is demonstrably justified • That categories 2 and 3 be merged into a single category that recognises the sites and enables exercise of kaitiakitanga in land owned or controlled by mana whenua, but otherwise imposes no restrictions on use and development of the land (see further below).
SASM Objectives			
SASM-O1	Sites and areas of significance to Māori and their associated values are recognised, protected and maintained.	Oppose in part	I support this clause, but only with the following rewording that recognises 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	The Proposed Plan enabling tangata whenua to exercise tikanga Māori on their own land is ok, but the clause should be <u>amended as shown below</u> 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, <u>to the extent that this is consistent with private property rights".</u>

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 that recognises that while all sites and associated values should be recognised, only certain sites are available for protection and maintenance: "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 Hutt landscape is rich with Māori history. It is important to Māori, and to everyone in the Hutt Valley, to have Māori heritage on the land identified, recorded and honoured. It is understandable that Māori may also want to identify, record, and honour their cultural connection to this heritage. However, 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. I don't oppose Council consulting with mana whenua in respect of important Māori cultural sites, and making sure they are protected, but these requirements 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. To support the changes proposed to Schedule 6, I propose 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-P2	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.	Neutral	N/A – outside scope of submissions
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 in Part	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. How does HCC determine that only the targeted private properties on the northern side of Lowry Bay were used for food collection and not properties on the southern side? How does an unsubstantiated boundary around hunting and food gathering areas warrant the annexation of private property rights for the targeted property owners. 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.	Support in part	I support this provision insofar as it is enabling of tangata whenua carrying out tikanga Māori on land owned by them individually or collectively. We support the rights of Hutt residents and businesses to exercise their property rights. 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 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.	Support in part	I support this policy **only** if this is confined to category 1 sites (as defined as in my Schedule 6 submission).
SASM-P8	Avoid degradation of the mauri of sites and areas listed as Ngā Awa o te Takiwā in SCHED6 — Sites and Areas of Significance to Māori as a result of the following activities: 1. Cemeteries and crematoria, 2. Landfills, 3. Wastewater treatment plants, and 4. Earthworks and land disturbance.	Neutral	N/A – outside scope of submissions

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: b. a. Loss of cultural values through modification of the landscape, 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.	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. • 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.

Plan provision	What the Plan says	General Position	Reasons
	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.		
SASM Rules			
SASM-R1	Undertaking tikanga Māori within a Site or Area of Significance to Māori - Activity status: Permitted (Category 1 – 3 sites)	Support in part	I support this rule as it is enabling of the use and development of private property for traditional Māori activities, however, as with SASM-P6 above, the <u>following change</u> is needed: "Undertaking tikanga Māori within a Site or Area of Significance to Māori, <u>to the extent that this is consistent with private property rights</u> - 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 fully 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 constrain commercial development in key business areas in the Hutt (Petone and Seaview) and restrict economic growth; it will also 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. On the topic of the 200m^2 limit, and the distinction between residential and commercial activity – I've been told that the Council's senior planner Tim Johnstone said that the reason for this limit is because "mana whenua don't want to be consulted when someone is putting in a deck". 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 fully 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
	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.		"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.		

John Griffin

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01-05-2025