

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 Quintin and Karoline Jacobs, Gordon and Maryanne Irving, Justin and Briar Bloomfield, Mark Jacobs and Chairmain Koszti and Sally Croft of 3, 4, 5, 6, 9 and 9A Waerenga Road and Judy Bain 623 Marine Drive, Days Bay. The contact for this submission is Quintin Jacobs or Karoline Jacobs on the Proposed Lower Hutt District Plan 2025.
2. My email address for service is: quintin-jacobs@hotmail.com alt email contact is: karoline.jacobs@outlook.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, is the Sites and Areas of Significance to Maori (SASM). My submission on this proposal, 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 do wish to be heard in support of my submission.
6. If others make a similar submission, I will not consider presenting a joint case with them at the hearing.

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Introduction and Position

This document is submitted to address serious concerns regarding the Lower Hutt City Council's proposed revised district plan, specifically the inclusion of Sites and Areas of Significance to Māori (SASM) in the Days Bay (Ōruamātoro) area, with particular focus on Waerenga Road. While we acknowledge the Council's intention to preserve Māori heritage sites, we assert that the proposal, as currently formulated, is flawed both legally and procedurally, and risks infringing upon the rights of private landowners without due process.

First and foremost, the proposed SASM designations lack sufficient, credible evidence to support the defined boundaries. The designations are predominantly based on the historical narratives provided by tangata whenua representatives, with little to no archaeological evidence substantiating these claims. As such, the process for identifying and mapping these sites fails to meet the standards of transparency and impartiality that are required for such a significant designation. This not only undermines the integrity of the proposal, but also exposes it to legal challenges on the grounds of procedural fairness and due process. In addition to the lack of evidence, we have serious concerns regarding the potential impact of the proposed designations on the rights of private landowners. Many of the proposed SASMs fall within established residential properties, which raises questions regarding the legal rights of landowners whose homes and private spaces are implicated in the designation. The proposal, as currently drafted, does not adequately account for the privacy and property rights of these landowners, and the implications of such designations on their ability to use and enjoy their property remain unclear.

Further complicating the matter are the concerns regarding access. The proposal's language suggests that tangata whenua would have "freedom of access" and "self-determination" over the sites, which naturally prompts significant questions regarding how these rights will be balanced with the rights of residential landowners. This potential erosion of private property rights could lead to significant social and legal issues, particularly in cases where tangata whenua access, or use residential properties in a manner that conflicts with the landowners' rights to peaceful enjoyment of their property. The proposal also presents risks of social division. The designation of SASMs without a clear, transparent, and evidence-based process could exacerbate tensions between tangata whenua and the broader community. Without adequate consultation and consideration of landowners' rights, such proposals risk creating a sense of division and resentment, rather than fostering the respectful and collaborative relationship that the Council likely intends to achieve. Moreover, there is an apparent conflict of interest inherent in this proposal, as tangata whenua may stand to gain both fiscal and cultural benefits from the implementation of these designations. Given that the historical narrative supporting the designation is almost exclusively derived from tangata whenua with something to gain, there is a clear risk of bias in the decision-making process, further undermining any form of robust governance and assurance of the proposal.

In light of these significant concerns, we respectfully request that the Council provide clear, evidence-based justification for the proposed SASM designations, including archaeological and cultural documentation to substantiate the boundaries. We also call for a transparent, impartial

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process that incorporates comprehensive consultation with affected landowners to address their rights and concerns. Until these issues are addressed—both in terms of process and the potential social and access-related implications—the proposed SASM designations should not proceed. Failure to address these concerns would not only undermine the rights of affected landowners but also expose the Council to legal and social consequences. We reserve the right to pursue all legal avenues available to protect the rights of the affected landowners if these issues are not satisfactorily resolved.

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Decisions Requested

#	Chapter	Provision	Position	Reasons	Relief sought
1.	Part 2 – District-Wide Matters/Historical and Cultural Values/ Sites and Areas of Significance to Māori	Sites and Areas of Significance to Māori / SASM -01, SASM-02, SASM03 and SASM-04	Oppose	<ul style="list-style-type: none"> • We oppose objectives SASM 01 – SASM 04 as they allow for designations to be made without due process, threshold or evidence, in favour of an unchallenged and unfounded historic narrative. • Objectives SASM 01 – 04 do not appear to acknowledge or consider the rights and privacy of legal landowners where proposed SASM's fall within residential properties. • There is a gross conflict of interest for tangata whenua to provide the narrative and basis for these objectives where there are both fiscal and intangible advantages for tangata whenua as a result. 	<ol style="list-style-type: none"> 1. A clear process that provides for a transparent, unbiased and robust method of designation should be formulated and implemented before designations of sites and areas of significance to Māori are made. 2. Provide further clarity of what these objectives mean for legal landowners; specifically in terms of restrictions and the intended legally binding relationship tangata whenua will have over these sites. 3. Define in clear terms how tangata whenua will observe Kaitiakitanga over the sites that fall within private residential

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				SASM-04 implies tangata whenua have freedom of access to sites and states they shall have 'self-determination' of these sites. This is in stark conflict to the rights of residential landowners where these proposed sites largely overlay private dwellings.	<p>properties and/or private roads.</p> <p>4. It appears the recognition of SASM's disregards any respect or consideration to the legal landowners of residential properties that fall within these proposed designations. Please provide clarity on the legal rights of landowners in respect to these objectives.</p> <p>5. Given the absence of impartial, expert assessments to support the proposed designations, we call for an independent (and neutral) third-party review of the SASM boundaries. Such a review would ensure that the process is evidence-based, objective, and fair to all parties involved, in accordance with the principles of good governance outlined in the <i>Local Government Act 2002</i>.</p>
2.	Part 2 – District-Wide Matters/Historical and Cultural Values/ Sites and Areas of	Policies/ SASM-P1	Oppose	<ul style="list-style-type: none"> As above, there is no clear, transparent or objective process that has been openly shared, as to how these sites have been identified and geographically mapped to such precise boundaries; particularly where 	6. Develop and openly disclose an objective and factual process for identifying and designating sites that is not only limited to the historical narrative of tangata whenua representatives.

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	Significance to Māori			there is 'uncertainty' in precise location (Category 2 designations).	7. This will allow for not only better transparency, but also negate any legal dispute/proceedings.
3.	Part 2 – District-Wide Matters/Historical and Cultural Values/ Sites and Areas of Significance to Māori	Policies/ SASM-P4	Oppose	<ul style="list-style-type: none"> The rationale for SASM-P4 is fundamentally flawed, as it fails to provide clear, evidence-based criteria for how the sites have been designated. The majority of these sites fall within private, established residential properties that are already governed by existing rules and regulations within the district plan, which already mitigate any potential adverse effects. The introduction of further restrictions or processes under SASM-P4 does not offer any tangible benefit or additional protection to these sites, as the sites are already being managed under the current regulatory framework. Furthermore, the imposition of these restrictions without a transparent and substantiated justification is contrary to the principles of procedural fairness and due process as required by the <i>Resource Management Act 1991</i> (RMA), particularly under 	<p>8. Delete SASM-P4 or provide clear guidance as to what is considered 'inappropriate use' or 'development' and why it is considered inappropriate in the context of SASM.</p> <p>9. Provide clarity on exactly what involvement tangata whenua will have in terms of consultation and/or additional costs they may impose on landowners.</p> <p>10. A commitment to further, in-depth consultation with affected landowners, ensuring that all parties have a clear understanding of the proposed restrictions and any financial or operational obligations they may incur. The consultation process should adhere to the principles of the <i>Resource Management Act 1991</i> and the <i>Local Government Act 2002</i> to ensure fairness, transparency, and accountability."</p>

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#	Chapter	Provision	Position	Reasons	Relief sought
				Section 32, which mandates that any proposed policy must be evaluated in terms of its costs and benefits.	
4.	Part 2 – District-Wide Matters/Historical and Cultural Values/ Sites and Areas of Significance to Māori	Policies/ SASM-P6	Oppose	<ul style="list-style-type: none"> There is no information as to the legal rights of residential landowners in respect to SASM P-6. SASM-P6 implies that tangata whenua would have unfettered access to private land and the freedom to practice tikanga within any site deemed a SASM. This raises serious concerns about the erosion of private property rights, as it suggests that landowners may have little to no control over their property's use or access by third parties. The practice of tikanga, while culturally important, must be balanced with the legal rights of landowners, especially where these practices may conflict with the landowners' rights to peaceful enjoyment of their property. Such an open-ended policy risks infringing on the rights of landowners and could lead to significant legal and social consequences. 	11. Due to the potential for significant legal, practical, and social issues arising from SASM-P6, it should either be deleted or substantially revised to ensure the protection of landowners' rights and a fair process for all parties involved.

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#	Chapter	Provision	Position	Reasons	Relief sought
5.	Part 2 – District-Wide Matters/Historical and Cultural Values/ Sites and Areas of Significance to Māori	Policies/ SASM-P7	Oppose	<ul style="list-style-type: none"> The rationale for the protection of sites is unfounded. SASM-P7 encourages land owners to work with tangata whenua to protect sites; however, as aforementioned, sites that fall within residential land are already developed and cared for by the landowners. Additionally, landowners are subject to the multitude of other rules within the district plan therefore, it is unclear what this policy objective is in practical terms. Unclear practical application: It is not clear how this policy adds value or addresses any actual need, as the sites are already protected by the current framework of district plan rules. Should landowners engage tangata whenua, will there be an associated cost to landowners? Will there be a commercial or fiscal advantage afforded to tangata whenua should they be engaged by landowners (directly or indirectly via Hutt City Council)? 	12. Delete SASM-P7 entirely. The policy is redundant and lacks clear, justified need or process.

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#	Chapter	Provision	Position	Reasons	Relief sought
6.	Part 2 – District-Wide Matters/Historical and Cultural Values/ Sites and Areas of Significance to Māori	Policies/ SASM-P9	Oppose	<ul style="list-style-type: none"> We oppose SASM-P9 as it sets a broad and undefined framework that could inadvertently lead to restrictions on land use without adequate evidence of the spiritual and cultural significance of the areas. The policy calls for the protection of spiritual and cultural values but does not establish clear, objective criteria for determining these values, which risks imposing restrictions based on incomplete or unsubstantiated claims. Additionally, there is a lack of clarity on how the consultation process and cultural impact assessments should be conducted, which could result in inconsistencies and undermine the intent of the policy and also the rights of landowners. SASM P-9 also fails to account for existing land uses and the practical implications for property owners, particularly where cultural or spiritual values are unclear or not supported by evidence. Without the prior reasons in existence, this policy will offer limited meaningful 	13. Delete SASM-P9 due to its broad, undefined scope and lack of evidence-based criteria for imposing restrictions on land use.

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#	Chapter	Provision	Position	Reasons	Relief sought
				benefit to the sites themselves or the community.	
7.	Part 2 – District-Wide Matters/Historical and Cultural Values/ Sites and Areas of Significance to Māori	Standards SASM-S1-Accidental discovery protocol	Support	<ul style="list-style-type: none"> This section should be retained to ensure any items of cultural significance are preserved and recorded. 	14. Move SASM-S1 into all relevant sections of the District Plan for any land disturbance, ensuring consistent application across the document.

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Conclusion

While we recognise the intention behind the Lower Hutt City Council's proposed revised district plan to protect Māori heritage sites, we must categorically reject the methodology, evidence, and rationale underlying the proposed inclusion of Sites and Areas of Significance to Māori (SASM) in the Days Bay and Waerenga Road areas. The proposal, as currently formulated, suffers from several fundamental flaws that undermine its legal and procedural integrity.

Firstly, the process for designating these sites lacks transparency and fails to provide a clear, evidence-based framework. There is a critical absence of archaeological evidence substantiating the proposed SASM boundaries, which leaves the designation open to challenge. The reliance on historical narratives without objective, scientific proof risks not only the imposition of restrictions on land use without adequate justification, but also the unlawful encroachment on the rights of private landowners. The absence of such evidence constitutes a breach of due process and undermines the validity of the proposed designations.

Furthermore, the consultation process has been inadequate. Affected landowners have not been meaningfully engaged, and there is no indication that their concerns or rights have been fully considered before presenting this proposal, with only 4 weeks afforded to provide feedback. This is not only procedurally flawed but also legally untenable. The Council has an obligation to ensure that property rights are respected and that landowners are given the opportunity to meaningfully engage in any proposed designation that directly affects their property.

In addition, there is a significant and irreconcilable conflict of interest inherent in the proposal. Tangata whenua are potentially positioned to derive both fiscal and cultural benefits from these designations, which raises serious questions about the objectivity of the process. This is particularly concerning considering the narrative for these proposals are almost exclusively derived from tangata whenua, without challenge. The potential for a financial conflict of interest further complicates the proposal, undermining its legitimacy and fairness. This lack of impartiality exposes the Council to the risk of legal challenges based on breach of natural justice and procedural fairness.

Given these concerns, we urge the Council to reconsider the proposed SASM designations and take immediate action to address the following:

1. **Provide robust, evidence-based justification** for the proposed SASM designations, including clear archaeological evidence and verifiable cultural documentation that supports the proposed boundaries.
2. **Establish a transparent and objective process** for the designation of SASMs, ensuring that it is free from bias and based on tangible, scientific data rather than subjective historical narratives.

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3. **Engage in meaningful and comprehensive consultation** with all affected landowners, providing them with the opportunity to present their concerns and ensuring their legal rights are fully respected in any future decision-making process.
4. **Ensure that any process or designation is free from conflicts of interest (or publicly disclosed)** particularly with regard to potential financial advantages for tangata whenua, and that all steps are taken in full compliance with the principles of natural justice and fairness.

Failure to address these critical issues will not only result in unjust and unnecessary restrictions on property owners but also expose the Council to protracted legal disputes and adverse reputational damage. The proposed SASM designations, as they stand, lack any sufficient foundation required for their implementation and threaten to infringe upon the rights of landowners without due process or justification.

We therefore request a thorough review of the SASM proposal, a reconsideration of the process, and a fair, evidence-driven approach that fully respects the rights of landowners, the principles of procedural fairness, and the rule of law. Should the proposal proceed in its current form without addressing these concerns, we reserve the right to pursue all available legal avenues to protect the interests of ourselves as affected landowners.

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Appendix 1: Further information

1.1. Initial correspondence which outlines further reasoning and evidence.

To: Lower Hutt City Council

Re: Proposed Revised District Plan – Inclusion of Sites and Areas of Significance to Māori (SASM)

Dear Cristal,

I am writing in response to the Council's proposed revised district plan, specifically regarding the inclusion of Sites and Areas of Significance to Māori (SASM) within the area of Ōruamātoro, Days Bay. While we acknowledge and respect the Council's intent to identify and protect areas of significance to Māori, we are concerned that the proposed inclusion of Ōruamātoro Pā, specifically under the category of a "significant site," lacks sufficient evidentiary support and raises critical legal and procedural concerns. Additionally, the inclusion of SASM's within Waerenga Road in the proposed district plan has raised issues related to existing land use and ownership that must be addressed.

Lack of Evidentiary Basis for Inclusion of Ōruamātoro Pā

The rationale for the inclusion of Ōruamātoro Pā as a Site and Area of Significance to Māori appears to rest primarily on historical narratives provided through the engagement with mana whenua, particularly the Kāhui Group. However, the documentation provided does not offer sufficient objective evidence to substantiate the mapping of Ōruamātoro Pā within a specific and defined geographic area. Specifically:

1. **Uncertainty in Location:** The historical references to Ōruamātoro Pā indicate its location between Days Bay and Sunshine Bay on the headland at the top of Ferry Road. However, the precise geographical location of the pā has not been clearly identified through any archaeological or historical evidence in the proposed district plan. The reliance on oral history and narrative, while important, does not replace the need for verifiable, site-specific data to support the inclusion of a SASM under the district plan.
2. **Lack of Archaeological Evidence:** While there is mention of possible cultivations and urupā associated with the pā, no archaeological surveys or findings have been presented that substantiate these claims. The absence of formal archaeological assessment or cultural impact studies in relation to the mapped boundaries of the proposed site raises concerns about the accuracy of its proposed delineation; specifically, due to the well-defined boundaries proposed, as opposed to an area radius (which would be expected if a precise location/s cannot be defined, such as in this case).
3. **Limited Technical Information:** The technical information referenced within the proposed plan (e.g., desktop reviews and existing cultural impact assessments) does not appear to provide a detailed or substantive examination of the specific physical characteristics of the site, particularly with regard to Ōruamātoro Pā, or any associated cultivations and urupā. Further technical investigation, including site surveys or archaeological assessments, should be conducted (beyond a historic narrative) to provide a more solid evidentiary basis for its inclusion.

4. **Cultural Impact Assessment for Tupua Horo Nuku Pathway:** A relevant statement from the cultural impact assessment prepared for the Tupua Horo Nuku shared pathway, further supports our concerns regarding the lack of archaeological evidence for the SASM designation. The assessment notes that "physically, little remains of these Māori settlements in the coastal margins, particularly given the degree of tectonic uplift that has occurred around this coastline". It further explains that "for these works Māori archaeology is unlikely to be revealed; however, this report proposes having an accidental discovery protocol in place for the whole scheme". This statement is significant in that it highlights the general scarcity of physical remnants of Māori settlements in the coastal areas, which is particularly relevant to the Ōruamātoro Pā site; considering the significance and use of coastal areas of Māori during this period. Consequently, this reinforces the argument that the SASM designation for Ōruamātoro Pā may be based on insufficient archaeological evidence. As such, the Council should be cautious in mapping such specific sites without a clear, evidence-based foundation. This presents the urgent need for further archaeological investigation to substantiate the proposed locations of SASMs, especially in areas where there is an apparent lack of physical evidence or formal documentation to support the clear delineation of boundaries for such sites.

"Providing Access" to Tangata Whenua

The concept of "providing access" to tangata whenua, as noted in the Council's engagement with the Kāhui Group, raises critical issues of clarity. The proposal notes that some identified sites of significance have been restricted due to colonisation and urban development, making access difficult for tangata whenua. However, the plan does not clarify:

1. **What Constitutes "Access":** The term "access" is vague and undefined within the proposed plan. It is important for the district plan to articulate what specific measures will be taken to enable tangata whenua to exercise their kaitiakitanga and what this means for landowners within said areas.
2. **Scope of "Access":** Does "providing access" involve legal mechanisms such as land restoration, the removal of urban development, or improved pathways for cultural practices? The district plan should detail these considerations to ensure that "access" is more than a symbolic gesture and represents tangible actions that landowners can be fully aware of and provide meaningful feedback.
3. **Restoration of Sites:** While the plan recognises the need for the restoration of damaged water bodies and sites, it is crucial that the District Plan outlines clear policy provisions that articulate what and how the council intends on facilitating the restoration of physical access to these sites, including land use restrictions or incentives for the conservation of significant areas; particularly for sites that fall on private residential properties.

Mapping and Delineation of Ōruamātoro Pā

The specific boundaries of Ōruamātoro Pā, as proposed in the district plan, have not been substantiated with evidence beyond narrative descriptions. The Council's methodology for determining the geographic extent of the site, especially given the historical uncertainty surrounding the pā's exact location, requires further clarification. We request that the Council provide:

1. **Justification for Mapping:** A clear explanation of how the boundaries of Ōruamātoro Pā were determined and the sources of information relied upon to delineate these boundaries.
2. **Further Consultation:** Additional consultation with independent archaeologists, historians, and objective tangata whenua representatives to unanimously verify the proposed site's boundaries and confirm its historical and cultural significance.
3. **Policy on Uncertainty:** Where there is uncertainty regarding the location of significant sites, the Council should adopt a precautionary approach, recognising that future archaeological and cultural investigations/findings may alter the boundaries of the proposed SASM. We propose until such time that clear boundaries are established, no such SASM shall be included without evidence, beyond reasonable doubt.

Concerns Regarding Waerenga Road SASM's

It is also noted that areas for Waerenga Road, which are included in the proposed district plan as Sites and Areas of Significance to Māori, overlap exclusively within existing residential properties. These properties, all of which contain dwellings, are currently in active use by their owners. As such, there are significant concerns regarding the proposed designation and its practical implications, particularly in relation to the concept of "protection" from damage:

1. **Infringement on Private Property:** The inclusion of areas along Waerenga Road as SASM has the potential to infringe upon the rights of property owners whose land is subject to development or land use restrictions. Specifically, the claim that these areas require "protection" from damage is unfounded, as the designation would only affect part of the land and does not reflect the full extent of its current use or development potential. There is a need for clarity on how the proposed designation would impact the ongoing use and management of land by its owners.
2. **Limited Protection Justification:** The proposed district plan claims that these sites need protection from adverse effects arising out of inappropriate subdivision, use, and development. However, given that the areas affected are already developed and in residential use, the application of this protection is limited and needs further justification. Additionally, the protections sought for any large-scale development would fall within the "Outstanding Natural Feature, Outstanding Natural Landscape or Coastal Natural Character Area", therefore rendering the rationale for SASM protection defunct. It is not clear how the designation would materially benefit the

protection of these areas or how it would provide meaningful protection against land use changes that have already been undertaken.

3. **Impact on Landowners:** The lack of comprehensive consultation with affected landowners along Waerenga Road, or the wider residents of Days Bay (within the proposed SASM) is a concern. As the proposed designation will likely restrict land use in ways that may not align with owners' current or future plans, it is crucial that the Council engages in a more detailed dialogue with these landowners. This engagement should include a clear outline of the proposed restrictions and how they will be implemented, alongside an assessment of the economic impact these restrictions may have on the landowners.
4. **Specific Concern Regarding 9 & 9A Waerenga Road:** In particular, I wish to draw attention to our property located at 9 & 9A Waerenga Road. This property was developed in the 1940s, and the area within the proposed SASM boundaries was significantly developed. Specifically, the proposed SASM area defined was excavated during that time, and no evidence of archaeological or cultural significance was identified or recorded in the property's historical records. Given the significant alteration of the land and the absence of any archaeological or cultural findings in the available property records, the inclusion of this area as part of the SASM is unsupported and lacks a clear basis. We request that this property be excluded from the SASM designation, as there is no evidence to substantiate its inclusion.

While we acknowledge and support the Council's commitment to recognising and protecting Sites and Areas of Significance to Māori, we believe that the inclusion of Ōruamātoro Pā in its current form within the proposed district plan is premature. Additionally, the proposed inclusion of areas along Waerenga Road, particularly 9 & 9A Waerenga Road, must be reconsidered, as it lacks sufficient evidence and could adversely affect current land use and create uncertainty of our rights as landowners and rate payers.

We request that the Council provides further evidence supporting the designation of Ōruamātoro Pā, particularly with regard to archaeological data, more precise geographical mapping, and clarification of the specific nature of "access" to mana whenua. Additionally, we request that further consultation be undertaken with the landowners that will be impacted to ensure their concerns are addressed, and that 9 & 9A Waerenga Road be excluded from the SASM due to the lack of evidence supporting its inclusion.

We look forward to the opportunity to engage further on these important issues and would appreciate the Council's response to these concerns.

Sincerely,

Quintin & Karoline Jacobs