

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 Michael Rachlin on the Proposed Lower Hutt District Plan 2025.
2. My email address for service is: candmrachlin@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 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 not consider presenting a joint case with them at the hearing.

Decisions Requested

#	Chapter	Provision	Position	Reasons	Relief sought
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1	Strategic Direction	CCSD-O2	Oppose	<p>The avoidance of risk and/or minimisation to acceptable level at a strategic level in Hutt City is not practical given the City's hazards profile and susceptibility to the effect of climate change.</p> <p>A district plan is a 10-year plan, which should be reviewed after this time. Achieving the avoidance or minimisation of risk at a strategic level is not possible for the above reasons in the life of this district plan.</p> <p>The PDP provisions do not implement this strategic objective. For example, it provides for Subdivision, Use and Development in the General Industrial Zone and Heavy Industrial Zone in Seaview, the Metropolitan Centre Zone in Petone and the Seaview Marina Zone and within the Medium Flood Hazard Overlay or High Flood Hazard Overlay and the Medium and High Hazard Areas of the Coastal Hazard Area. This does not avoid or</p>	<p>Delete or amend in a way which achieves the purpose of the Resource Management Act 1991 and gives effect to higher order planning instruments.</p> <p>An example of an appropriate amendment can be found in the Porirua Proposed District Plan – Appeals Version 2024 (strategic objective REE-O3)</p>
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#	Chapter	Provision	Position	Reasons	Relief sought
				<p>minimise risk to an acceptable level.</p> <p>The term “minimise” is not defined, but in other district plans¹ and the Natural Resources Plan for the Wellington region, it is defined as meaning: “reduced to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning”. It is assumed that this is the meaning to be applied in relation to CCSD-O2.</p>	

¹ Porirua Proposed District Plan – Appeals Version 2024, Wellington District Plan: Appeals Version 2024

2	Strategic Direction	UDSD-02 Clause e	Oppose	<ul style="list-style-type: none"> • This clause duplicates Strategic Objective NESD-03. • It is unclear what “ecologically sensitive” urban development is (this language is not used in the RMA) and how the Proposed District Plan objectives and policies implement this strategic outcome. • Ecologically sensitive outcomes, depending on what is meant by that term, are unlikely to be achieved by the district plan alone, since other regulations and statutes manage environmental effects of urban development such as the Natural Resources Plan for the Wellington region and HSNO (Hazardous Substances and New Organisms) Act. • The district plan should concentrate on meeting its obligations 	Delete clause e.
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#	Chapter	Provision	Position	Reasons	Relief sought
				under the RMA to protect and manage effects on significant indigenous vegetation and significant habitats of indigenous fauna (s6), and the maintenance of indigenous biodiversity (s31) and use RMA terms and language which are tried and tested, and well understood.	

3	Strategic Direction	UDSD-02 Clause g	Oppose	<ul style="list-style-type: none"> • The Proposed District Plan cannot, on its own, make an urban area “resilient” to the impacts of natural hazards and climate change. Other statutes, regulations, and actions outside of the RMA are equally important such as the Building Act, Fire and Emergency New Zealand Act 2017, and regional plans, as well as green and hard engineering mitigation projects such as stop banks. This assumes a narrow interpretation of “resilience” as meaning life and property rather than a broader meaning including economic and social resilience (See last point below). • The Proposed District Plan does not implement this strategic objective in that it provides for Subdivision, Use and 	Delete clause g or amend to ensure that: <ul style="list-style-type: none"> • It recognises that the PDP cannot on its own, make the urban area “Resilient to the impacts of natural hazards and climate change”; • It recognises that the PDP on its own can only help make the urban area more resilient rather than resilient; and • That it identifies what is meant by “resilience” within the context of the Proposed District Plan.
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				<p>Development in the high hazard overlays at the General Industrial Zone and Heavy Industrial Zone in Seaview, the Metropolitan Centre Zone in Petone and the Seaview Marina Zone.</p> <ul style="list-style-type: none"> • The Proposed District Plan can help make the urban area more resilient, but it cannot make it resilient. • Resilience to the impacts of natural hazards and climate change comes in many forms including to life and property, economic resilience, social resilience, and transport resilience. Clause g. is unclear which of the above is to be achieved by the Proposed District Plan and its unclear language creates interpretation and plan implementation uncertainties. 	
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#	Chapter	Provision	Position	Reasons	Relief sought
4	Coastal Environment, Natural Hazards, Earthworks, and Subdivision	Whole chapters	Oppose in part	<p>There is a lack of integration for the management of natural and coastal hazard risk across these chapters which result in internal inconsistencies in the PDP.</p> <p>The above is identified in specific submission points later in this submission. However, they include:</p> <ul style="list-style-type: none"> • EW-P7 which uses the term “Overland Flowpaths” which is not used elsewhere in the plan nor defined. • EW-R6 makes earthworks a restricted discretionary activity in flood hazard overlays, but development activities to which earthworks are a precursor are generally fully discretionary or non-complying in the Medium Flood Hazard Overlay or High Flood Hazard Overlay. 	Ensure natural and coastal hazard provisions are integrated across all relevant chapters of the Proposed District Plan, including use of consistent terms and language, and activity status for developments.

5	Planning Maps and Natural Hazards chapter, Earthworks , and Subdivision	Flood Hazard Overlays, Whole chapters	Oppose in part	<p>The planning maps “lump” together overland flowpaths, stream corridors, and ponding/inundation areas within the same overlay. For example, the Medium Flood Hazard Overlay combines overland flowpaths and ponding areas together, based on velocity and/or depth of water.</p> <p>Stream corridors, overland flowpaths and ponding/inundation areas serve differing hydraulic functions from each other and as such, the PDP should recognise this in the management of flood risk.</p> <p>As identified in the Introduction to the Natural Hazards Chapter, risk is defined as likelihood x consequences. The consequences for use and development of land in an overland flowpath or stream corridor (where velocity of flood water as well as depth determine the effects of a flooding event) differ from</p>	<ol style="list-style-type: none"> 1. Amend the planning maps and associated flood hazard overlays to clearly identify and separate out: <ul style="list-style-type: none"> • Overland Flowpaths • Stream Corridors • Ponding/inundation areas 2. Delete objectives, policies and rules for management of activities in the flood hazard overlays or amend to a risk-based approach that incorporates 1. above and the differing risks associated with these different hydrological areas.
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#	Chapter	Provision	Position	Reasons	Relief sought
				<p>ponding/inundation areas, where water velocity is less of an issue.</p> <p>The current approach to flood hazard management does not incorporate a risk-based approach as defined in the Chapter Introduction. Nor does it:</p> <ul style="list-style-type: none"> • Achieve the purpose of the RMA or appropriately implement s6(h) • Give effect to the Regional Policy Statement for the Wellington region. 	

#	Chapter	Provision	Position	Reasons	Relief sought
6	Natural Hazards	NH-O1	Oppose	<p>This only requires activities in high hazard overlays to reduce or avoid increasing existing risk. This is a less onerous outcome than required in NH-O2 where activities in low and medium hazard overlays, must minimise risk (see submission point 1 regarding definition of “minimise”).</p> <p>For example, NH-O1 could be achieved simply by placing a sandbag across a doorway which has the effect of reducing existing risk from flooding to that building.</p> <p>This objective does not appropriately achieve the purpose of the RMA or implement s6(h), nor give effect to higher order planning instruments.</p>	Delete or amend to require avoidance of inappropriate activities in high hazard overlays.

#	Chapter	Provision	Position	Reasons	Relief sought
7	Natural Hazards	NH-O2	Oppose	<p>This requires that activities in low and medium hazard overlays must minimise risk from natural hazards.</p> <p>Minimise (see submission point 1) generally means reduce to the smallest amount reasonably practicable. This requirement is not commensurate with a risk-based approach in that it is not calibrated to the consequences of the natural hazard effect. For example, the Low Flood Hazard Overlay covers areas where flooding up to a depth of 25cm and/or velocity of up to 0.5 m/s are expected. Requiring development to minimise risk in such locations is overly onerous and is the same threshold as for Medium Flood Hazard areas.</p> <p>This objective does not appropriately achieve the purpose of the RMA or implement s6(h), nor give effect to higher order planning instruments.</p>	Delete or amend to require that activities in these areas mitigate risk to an acceptable level based on the level of risk.

#	Chapter	Provision	Position	Reasons	Relief sought
8	Natural Hazards	NH-P8-2.c	Oppose in part	<p>It is unclear why an activity in a Low Hazard Flood Overlay would result in obstructions to water flows in Medium and High Flood Hazard Overlay. Activities within these overlays are managed elsewhere in the policy.</p> <p>NH-P8-2.c duplicates NH-P8-3 and NH-P8-4. As such it does not efficiently or effectively implement the objectives.</p>	Delete NH-P8-2.c

9	Natural Hazards	NH-P8-3 and NH-P8-4	Oppose in part	<p>As drafted, both NH-P8-3 and NH-P8-4 apply to sites within a Medium or High Flood Hazard Overlay outside of the General Industrial Zone in Seaview, the Heavy Industrial Zone in Seaview, the Metropolitan Centre Zone in Petone by virtue of the, “but also” included in NH-P8-3.</p> <p>This has the effect of creating a combined policy direction for such activities that they:</p> <ul style="list-style-type: none"> a. Be of a limited scale and size, b. do not create new residential units on the ground floor; and to demonstrate that: c. The risk from the 1% Annual Exceedance Probability flood event is low due to either the: <ul style="list-style-type: none"> i. Proposed mitigation measures, or ii. Size of the addition, or 	Delete or amend to provide clear direction in the policy.
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				<p>iii. Nature of the activities undertaken within the addition.</p> <p>d. The conveyancing of flood waters through the Medium Flood Hazard Overlay and High Flood Hazard Overlay is still able to occur unimpeded and is not diverted onto adjacent properties, and</p> <p>e. In the High Flood Hazard Overlay the existing risk to people, buildings and infrastructure is not increased from the 1% Annual Exceedance Probability flood event</p> <p>The poor drafting of the policies creates a confused policy direction for plan users and plan implementation. As such the policies do not efficiently or effectively implement the PDP objectives.</p> <p>.</p>	
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#	Chapter	Provision	Position	Reasons	Relief sought

10	Natural Hazards	NH-P8-4	Oppose	<p>The policy by “only allow” and combining both the Medium and High Hazard Flood Overlays has the effect of making additions to buildings in both Overlays a fully discretionary activity. This does not represent a risk-based approach, as risk is greater in the High Flood Hazard Overlay than the Medium Flood Hazard Overlay.</p> <p>NH-P8-4a and 4b clearly identify the effects to be managed and provide a consent pathway for sites in the Medium Flood Hazard Overlay. A fully discretionary activity requirement is therefore not necessary.</p> <p>Policy NH-P8-4 does not efficiently or effectively implement the objectives of the PDP, nor achieve the purpose of the RMA or implement s6(h), nor give effect to higher order planning instruments.</p>	<p>Delete or amend NH-P8-4 to achieve a risk-based approach, including:</p> <ol style="list-style-type: none"> Amending NH-P8-4 as follows: <ul style="list-style-type: none"> Only allow <u>Provide for</u> additions to existing buildings for activities potentially sensitive to natural hazards and activities most sensitive to natural hazards within the Medium Flood Hazard Overlay and High Flood Hazard Overlay in all zones (excluding General Industrial Zone in Seaview, the Heavy Industrial Zone in Seaview, the Metropolitan Centre Zone in Petone or the Seaview Marina Zone), where it can be demonstrated that: <ol style="list-style-type: none"> The risk from the 1% Annual Exceedance Probability flood event is low due to either the: <ol style="list-style-type: none"> Proposed mitigation measures, or Size of the addition, or Nature of the activities undertaken within the addition. The conveyancing of flood waters through the Medium Flood Hazard Overlay and High Flood Hazard Overlay is still able to occur unimpeded and is not diverted onto adjacent properties, and . In the High Flood Hazard Overlay the existing risk to people, buildings and infrastructure is not increased from the 1% Annual Exceedance Probability flood event. A new policy for additions to existing buildings for activities potentially sensitive to natural hazards and activities most sensitive to natural hazards within the High Flood Hazard Overlay.
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#	Chapter	Provision	Position	Reasons	Relief sought
11	Natural Hazards	NH-P9-4 and NH-P9-5	Oppose	<p>These suffer from the same drafting deficiency identified in submission point 9 for NH-P8-3 and NH-P8-4.</p> <p>The poor drafting of the policies creates a confused policy direction for plan users and plan implementation. As such the policies do not efficiently or effectively implement the PDP objectives</p>	Delete or amend to provide clear direction in the policy.

#	Chapter	Provision	Position	Reasons	Relief sought
12	Natural Hazards	NH-P9-5	Oppose	<p>NH-P9-5 clearly identifies the effects to be managed and a consent pathway for sites in the Medium Flood Hazard Overlay, similar to NH-P9-4 for General Industrial Zone in Seaview, the Heavy Industrial Zone in Seaview, the Metropolitan Centre Zone in Petone or the Seaview Marina Zone², where such development is provided for rather than only allowed. A fully discretionary activity requirement is therefore not necessary.</p> <p>Policy NH-P8-4 does not efficiently or effectively implement the objectives of the PDP, nor achieve the purpose of the RMA or implement s6(h), nor give effect to higher order planning instruments.</p>	<p>Delete or amend as follows:</p> <ol style="list-style-type: none"> 1. Only allow <u>Provide for</u> new buildings and structures, building platforms and the conversion of existing buildings for activities potentially sensitive to natural hazards and activities most sensitive to natural hazards within the Medium Flood Hazard Overlay in all zones (with the exception of General Industrial Zone in Seaview, the Heavy Industrial Zone in Seaview, the Metropolitan Centre Zone in Petone and the Seaview Marina Zone) where: <ol style="list-style-type: none"> a. The risk to people and buildings on site from the 1% Annual Exceedance Probability Flood is <u>minimised low</u> due to the incorporation of mitigation measures; b. The risk to people and buildings on adjacent properties is reduced or not increased from the 1% Annual Exceedance Probability Flood; and c. The flow of floodwaters is unimpeded and unobstructed to allow for the conveyancing of flood waters, and flood water is not diverted onto adjacent properties or blocked.

² I have assumed that NH-P9-4 is intended to apply only to these locations.

#	Chapter	Provision	Position	Reasons	Relief sought
13	Natural Hazards General	Rules	Support in part	The Rules framework will appear complex and potentially confusing to plan users. The use of Notes to clarify when and how a rule applies to a property will help avoid confusion on the part of property owners and aid in plan administration.	Add a Note at start of the Rules framework to make clear to plan users that the rules only apply to activities undertaken in that part of a site located within an Overlay.
14	Natural Hazards	NH-R8	Oppose in part	<p>As drafted NH-R8-1.a would apply retrospectively to any part of an existing building within a Low Flood Hazard Overlay and not just to the addition. It would also mean that structures were not caught by this permitted activity standard as it only refers to buildings.</p> <p>The RMA does not provide for this type of retrospective requirement.</p> <p>NH-R8-1.a effectively requires such additions in the Medium Flood Hazard Overlay to require consent under NH-R8-2. While technically this work, it is not user friendly for lay plan users.</p>	<p>Amend NH-R8 as follows:</p> <p>Activity status: Permitted</p> <p>Where:</p> <p>When located within a Low Flood Hazard Overlay, <u>The finished floor level of the building are addition is</u> located above the 1% Flood Annual Exceedance Probability level, plus the height of the floor joists or the base of the concrete floor slab and an allowance for freeboard.</p> <p>And</p> <p>Create a bespoke restricted discretionary activity rule for additions in the Medium Flood Hazard Overlay.</p>

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15	Natural Hazards	NH-R9	Oppose	See submission point 10	Delete or amend as follows: <ul style="list-style-type: none"> Amend rule to apply only to Medium Flood Hazard Overlay and create separate rule for High Flood Hazard Overlay Amend NH-R9-2³ (All Zones) from discretionary to restricted discretionary, with following matters of discretion: <p><u>Matters of discretion are restricted to:</u> <u>The matters contained in NH-P8-4.</u></p>
16	Natural Hazards	NH-R13	Oppose	See submission point 12	Amend NH-R13-2 ⁴ (All Zones) from discretionary to restricted discretionary, with following matters of discretion: <p><u>Matters of discretion are restricted to:</u> <u>The matters contained in NH-P9-5.</u></p>

³ The PDP has incorrectly numbered this as 2 but it should be 3.

⁴ The PDP has incorrectly numbered this as 2 but it should be 3.

#	Chapter	Provision	Position	Reasons	Relief sought
17	Coastal Environment	CE-O4	Oppose in part	<p>This requires that activities in low and medium hazard overlays must minimise risk from natural hazards.</p> <p>Minimise (see submission point 1) generally means reduce to the smallest amount reasonably practicable. This requirement is not commensurate with a risk-based approach in that it is not calibrated to the consequences of the coastal hazard effect. It applies the same outcome to low coastal hazard areas as medium coastal hazard areas.</p> <p>This objective does not appropriately achieve the purpose of the RMA or implement s6(h), nor give effect to higher order planning instruments.</p>	Amend to incorporate risk-based outcomes that more appropriately recognise the differing level of risk between low coastal hazard areas and medium coastal hazard areas.
18	Planning Maps	Low Tsunami Hazard Overlay	Support		Retain as notified

#	Chapter	Provision	Position	Reasons	Relief sought
19	Coastal Environment	CE-P15	Support	<p>This policy, insofar as it relates to Low Tsunami Hazard Overlay, appropriately implements a risk-based approach and the objectives of the PDP.</p> <p>This policy, insofar as it relates to Low Tsunami Hazard Overlay, appropriately achieves the purpose of the RMA and gives effect to higher order planning instruments.</p>	Retain as notified insofar as it relates to activities in the Low Tsunami Hazard Overlay.
20	Coastal Environment	CE-R8 and CE-R9, and CE-R13 to CE-R16	Support	These rules appropriately implement a risk-based approach.	Retain as notified

#	Chapter	Provision	Position	Reasons	Relief sought
21	Earthworks	EW-P6	Oppose in part	<p>Use of the term, “managing” does not provide clear direction to plan users and decision makers on what actions are actually required.</p> <p>The policy relies on the terms, “Overland Flowpaths” and “Stream Corridors” yet neither are defined or identified on the planning maps. This relates to the issues identified in submission point 5.</p> <p>The policy creates a high level of uncertainty for plan users and does not provide a necessary level of policy direction.</p> <p>The policy does not efficiently or effectively implement the PDP objectives.</p>	<p>Amend by:</p> <ul style="list-style-type: none"> Mapping “Overland Flowpaths” and “Stream Corridors” (see Submission point 5) Replacing with risk-based policies that address the hydraulic differences between overland flowpaths, stream corridors, and ponding/inundation areas.

#	Chapter	Provision	Position	Reasons	Relief sought
22	Earthworks	EW-R5	Oppose in part	The drafting of this rule has the effect that any earthworks that is not for Natural Hazard Mitigation Works or Green Infrastructure and undertaken by central government, local government, or their agents default to a fully discretionary activity. This nullifies rule EW-R6 which is the rule intended for other earthworks.	Delete EW-R5-2 and rely on remainder of earthwork rules to manage earthworks that are not for Natural Hazard Mitigation Works or Green Infrastructure and undertaken by central government, local government, or their agents.
23	Earthworks	EW-R6	Support	This rule appropriately implements a risk-based approach.	Retain as notified
24	Earthworks	EW-R7	Oppose in part	No definition is provided for “Community Scale Natural Hazard Mitigation Structure”. The rule lacks the necessary certainty for a permitted activity rule.	Amend by providing a definition for “Community Scale Natural Hazard Mitigation Structure”.

#	Chapter	Provision	Position	Reasons	Relief sought
25	Subdivision	SUB-O2	Oppose	<p>This objective requires that subdivision simply manage risk from natural hazards. This is not a clear outcome.</p> <p>Outcomes for subdivisions in natural and coastal hazards overlays are already set out in the objectives to the Natural Hazards and Coastal Environment Chapters. It is therefore unclear why SUB-O2 is necessary.</p> <p>The “How This Chapter Works” Note already directs plan users to the objectives in the Natural Hazards and Coastal Environment Chapters.</p> <p>The objective does not appropriately achieve the purpose of the RMA or implement s6(h), nor give effect to higher order planning instruments.</p>	Delete objective

#	Chapter	Provision	Position	Reasons	Relief sought
26	Subdivision	SUB-P22	Oppose	<p>Policy direction for subdivision in natural and coastal hazards overlays are already set out in the policies in the Natural Hazards and Coastal Environment Chapters. Policy SUB-P22 adds no useful additional direction.</p> <p>The policy does not effectively or efficiently implement the objectives of the PDP, nor give effect to higher order planning instruments.</p>	Delete policy
27	Subdivision	SUB-R15	Oppose	The reasons from submission point 12 apply here.	<p>Amend so that all subdivision within a Medium Flood Hazard Overlay is a restricted discretionary activity with the following matters of discretion:</p> <p>a. NH-P9-5: Subdivision, use and development in the Flood Hazard Overlay.</p>
28	Subdivision	SUB-R17	Support in part	This rule appropriately adopts a risk-based approach but the matters of control and matters of discretion for subdivision in Low Tsunami Hazard Overlay need to be amended to be more precise by identifying the specific part of CE-P15 that apply and also remove SUB-P22 which adds no useful policy direction.	<p>Amend to:</p> <ul style="list-style-type: none"> delete SUB-P22 from the matters of control and matters of discretion; and add CE-15-7 to the matters of control and matters of discretion

