SUBMISSION ON PROPOSED LOWER HUTT DISTRICT PLAN 2025 – SITES and AREAS of SIGNIFICANCE to MAORI

To: Chief Executive, Hutt City Council

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

1. I, Neil Lewis Carr make this submission on the Proposed Lower Hutt District Plan 2025 ("Proposed Plan") in my own name.

2. My email address for service is neillcarr@gmail.com

3. I could not gain an advantage in trade competition through this submission.

4. I am not directly affected by an effect of the subject matter of the submission that—

   (a) adversely affects the environment; and

   (b) does not relate to trade competition or the effects of trade competition.

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 table below. 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.

Background

7. I am a property consultant with over 30 years' experience, primarily relating to public infrastructure and its property requirements. My work has related to roads, rail, in ground infrastructure, earthquake damage, development, Public Works Act compensation and general property matters. I have clients in Lower Hutt whose private property rights are at risk of being adversely impacted for the exclusive benefit of a third party without compensation. The extent and nature of this impact is nonspecific and there is no discussion as to what financial burdens (direct and indirect) this may have on their land. Typically, a public body that effectively transfers private property rights to itself or another party compensates the affected party even if the property right is compulsorily acquired. Thus the proposed SASM framework is potentially damaging to lawful landowners of private land and is absent of any meaningful tangible guidelines in how "SASM affected" owners will be compensated.

8. I am appalled and disappointed by the Council's total lack of consultation with private 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 with mana whenua before including the sites in the Proposed Plan, but didn't bother to consult with landowners. This is inconsistent with Council's obligation to act in good faith and consult with the community, particularly those parts of the community affected by the SASM zones.

9. This lack of consultation and advance notice is outrageous. I've been told that a section of the RMA says that the Proposed Plan is in immediate effect even though it hasn't been voted on by the Council. If the Council is going to impose rules on local private landowners, it should have the common decency to give them some advance notice and an opportunity to give their views on the changes. These 'ambush tactics' Council is going to propose in the absence of sound governance around the Council table and undermines Hutt property owners confidence in the integrity of its elected officials and council officers.

Submission and requested decisions

10. 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, poorly defined. Examples include: Homiama Te Puni Reserve – noted as being reclaimed land formed on the original shoreline

Plan provision	What the Plan says	General Position	Reasons

			• Uncertain and arbitrary boundaries:
			  ○ Korohiwa Pā: "**Said to be a pā** located on the spur above Point Arthur and the Eastbourne Bus terminal"
			  ○ Ōruamātoro Pā (Days Bay):
			  ▪ The Schedule defines the site as follows: "Ōruamātoro was a Ngāti Ira pā **said to have been located** on the headland between Days Bay and Sunshine Bay at the top of Ferry Road. There were **possibly** cultivations and urupā associated with the pa **in the general Days Bay area"**.
			  ▪ The Plan map apparently delinates the site by reference to a modern walking path: this is unlikely to be a relevant boundary.
			  ○ Te Whiti Park: 172 White Lines East seems to be deliberately carved out from this site. If the sites reflect pre-20th century use, why are current land boundaries used to carve out some sites?
			  ○ Whiorau/Lowry Bay: The significance of the site is defined by reference to (among other things) fishing, but the boundary of the site stops abruptly approximately half way around Lowry Bay. Unclear what evidence the Council has that Maori only fished in half of the bay.
			• Many sites are only significant in a general sense that does not justify protection
			  ○ Pito One Precinct covers a significant part of the Petone business area. The reason for this broad brush protection seems to be that historical events (such as contact with Europeans) occurred in the area and the area contains a number of other sites (that have their own protections).
			  ○ Nga Matau – Point Howard, and Whiorau/Lowry Bay are given significance solely because Maori fished and hunted there.
			  ○ Days Bay is largely covered by the site because there were "possibly" cultivations in the general area
			  ○ Te Whiti Park appears to have significance solely because it was once a Maori reserve that hapū living at Waiwhetu pā were settled on after being designated as a Native Reserve and because the Park is named in honour of a commander of the Maori battalion. The protected area extends beyond the park and covers residential properties on White Lines East.
			
			These are just a few examples. The boundaries are too vague to justify the restrictions imposed on property owners to protect them.
			
			I support genuine Maori cultural sites being protected, provided that they are on public land. Other sites on privately owned land that are both intact and clearly of great cultural significance, such as a historic urupā that is still intact today also warrant some form of protection. However, this should not be at the expense of the landowner. 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 Maori that imposing restrictions on use and development of private land is demonstrably justified and any loss of value attributable to the introduction of new SASM rules / regulation SASM restriction are fully compensated on terms acceptable to the landowner.
			• 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.	Support with changes	I support this clause, but 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: "Sites and areas of significance to Māori and their associated values are recognised, and (where consistent with private property rights), protected and maintained".
SASM-O2	Tangata whenua can exercise kaitiakitanga in relation to sites and areas of significance to Māori.	Support with changes	I support the Proposed Plan enabling tangata whenua to exercise tikanga Maori on their own land, but the clause should be clarified 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, to the extent that this is consistent with private property rights".
SASM-O3	Tangata whenua have self-determination over sites and areas of significance to Māori, and their associated values are recognised	Oppose	I oppose this objective. It is inconsistent with private property rights and (arguably) with the RMA itself – particularly the reference to "self-determination" (which is not clearly defined in the context of Sites and Areas of Significance to Maori). Where sites of significance to Maori are on private land, Objective SASM is close to recognising that Maori have property rights in privately owned land.

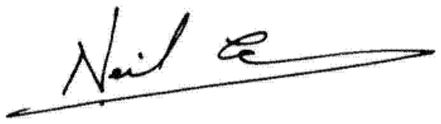
Plan provision	What the Plan says	General Position	Reasons
	and upheld by enabling active participation of Mana Whenua in decision-making.		There is no mention of the rights of self-determination of property owners or any protection of their right to undertake lawful activities on their land. The absence of any reference to or apparent consideration of that interest in this policy brings into question its legitimacy.
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.	Support with changes	I support this clause, but 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.	Support with changes	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 Maori 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 clarification to this policy: Identify sites and areas of significance to Māori with tangata whenua and in accordance with tikanga Māori, cross-checked against empirical and physical 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 with conditions	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. They have 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. This impression is supported by unacceptably vague language – as an illustrative example, when Schedule 6 justifies covering over half of the Days Bay, it records "Ōruamātoro was a Ngāti Ira pā **said to have been located** on the headland between Days Bay and Sunshine Bay at the top of Ferry Road. There were **possibly** cultivations and urupā associated with the pā in the **general Days Bay area**". (emphasis added) This is just one example. It is unacceptable for a Council to impose significant restrictions on land use on such a flimsy 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 with changes	I support this provision insofar as it is enabling tangata whenua carrying out tikanga Maori 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 with clarification	I support this policy, as long as it 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	b. 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. 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.	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. Private property rights appear to have been set aside by Council. 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 Maori 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. 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

	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.		category 1 sites.
SASM Rules			
SASM-R1	Undertaking tikanga Māori within a Site or Area of Significance to Māori - Activity status: Permitted (Category 1 – 3 sites)	Support with changes	I support this rule as it is enabling the use and development of private property for traditional Maori activities. However, as with SASM-P6 above, we recommend the following clarification: "Undertaking tikanga Māori within a Site or Area of Significance to Māori, to the extent that this is consistent with private property rights - Activity status: Permitted (Category 1 – 3 sites)".
SASM-R2	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 12- month 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.	Support with Conditions	I am supportive of protections against land disturbances in sites of genuine significance to Maori, 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. 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.
Plan provision	**What the Plan says**	**General Position**	**Reasons**
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 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,	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.

	b. The new building or structure is less than 200sm, and The addition or alteration to a building or structure are within an industrial/commercial zone and are less than 200m.		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 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 depends 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 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: 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.	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 "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)?
	a. Compliance is not achieved with EW- R10.1. **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.		



29 April 2025