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PO Box 10388
The Terrace
Wellington 6143
New Zealand

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Hutt City Council
30 Laings Road
Hutt Central
Lower Hutt 5010

MATTER NO: CN1427.3
OUR CONTACT: Max Barber

SUBMISSION ON PROPOSED DISTRICT PLAN – SITES AND AREAS OF SIGNIFICANCE TO MĀORI

1. This submission is made by Franks Ogilvie on behalf of My Land Group, an unincorporated association of landowners in Lower Hutt.
2. The email address for service is max.barber@franksogilvie.co.nz.
3. This is a submission on the Lower Hutt Proposed District Plan 2025 ("**Proposed Plan**").
4. My Land Group could not gain an advantage in trade competition through this submission.
5. The specific provisions of the Proposed Plan that this submission relates to are:
    a. SASM-O1 – SASM-O4;
    b. SASM-P1 – SASM-P9;
    c. SASM-R1 – SASM-R5;
    d. SUB-P15 and SUB-R6; and
    e. EW-P10 and EW-R10.
6. My Land Group wishes to be heard in support of this submission.
7. If others make a similar submission, we will consider presenting a joint case with them at a hearing.

SUMMARY

8. Our submissions relate to objectives, policies, and rules concerning Sites and Areas of Significance to Māori ("**SASMs**"). These provisions, which can be found in the SASM, Earthworks, and Subdivisions Chapters are referred to in this submission as "**SASM Provisions**".
9. We argue that the Proposed Plan is fundamentally inadequate:
    a. Its objectives are inconsistent with the purpose of the Resource Management Act 1991 ("**Act**");
    b. Its provisions are not required by the Act, and nor do they advance the Proposed Plan's objectives or the Act's purpose; and
    c. The Council's evaluation of its policy is fundamentally unsound, based on manifestly inadequate evidence and without an even cursory attempt to accurately estimate costs to landowners and the community.

10. We submit that the Proposed Plan should be withdrawn. Alternatively, if it is to be retained, we recommend the following changes:

    a. Amend Plan objectives and policies to ensure that the Plan does not purport to recognise mana whenua rights in private land that are analogous to private property rights.

    b. Ensure the interests of landowners and the broader public in efficient land use and development are recognised in plan objectives and policies.

    c. Merge SASM category 2 and 3 sites into a single category;

    d. Include only sites in category 1 that:

        i) Are situated on public land; or

        ii) Remain intact and are of such clear and obvious significance to Māori that restrictions on landowner rights are justified for the purposes of protecting the site;

    e. Apply restrictive land-use rules only to category 1 sites (other than accidental discovery protocols).

11. The details of the changes proposed in paragraph [10] are set out in full in **Appendix 1 – Table of Proposed Changes**.

12. This submission outlines:

    a. the background to My Land Group and the lack of appropriate consultation;

    b. the relevant legal framework;

    c. why the Proposed Plan's objectives are not the most appropriate way of achieving the purpose of the Act;

    d. why the SASM Provisions are not required by the Act; and

    e. why the Proposed Plan's provisions are not the most appropriate way of achieving its objectives or the purpose of the Act.

BACKGROUND

My Land Group

13. My Land Group is a community organisation formed by residents and property owners from across Lower Hutt. The group came together in response to the introduction by the Hutt City Council ("**Council**") of restrictive provisions in the Proposed Plan that affect land identified as Māori sites of significance.

14. My Land Group members include individuals with a wide range of political and personal views, including many who strongly support the recognition and protection of Māori heritage. However, they are united by a shared concern: that significant restrictions on private property rights have been introduced without adequate evidence, without meaningful consultation with affected landowners, without balancing against use and development objectives, and without sufficient regard to forthcoming legislative reforms which are intended to address precisely these types of regulatory issues.

15. This submission is not directed against the principle of protecting Māori cultural heritage. We accept that heritage values are an important consideration in district planning. However, restrictions on land use must be imposed carefully, transparently, and based on robust evidence. In particular it is a dereliction of the Council's duty of stewardship for all residents, to apply value-destroying restrictions without clear identification of the intended benefits weighed against the costs to owners and the community. These costs include the costs of uncertainty about property rights, the process costs of consent procedures, and the costs to community cohesion of setting up some Māori people to exercise undefined rights with substantial prospects of animosity from affected neighbours.

16. The current approach adopted by the Council falls well short of these standards. My Land Group are concerned about the manner in which the restrictions have been imposed (with minimal communication, insufficient evidential support, and a disregard for the serious impacts on affected landowners), and that the purposes and costs and benefits of the designations have not been properly articulated, if indeed they have been explored at all.

17. The group's objective is to ensure that the final Plan reflects fair, evidence-based, and proportionate planning outcomes for the benefit of the wider community.

Community outrage

18. The first many of the group's supporters heard of these changes was a letter they received earlier this year advising them that their properties were a site of significance to Māori and were subject to land use restrictions, effective immediately.

19. The sites were not included in the draft plan that the Council released for consultation in late 2023. The Council consulted with mana whenua before including the sites in the Proposed Plan, but did not consult with landowners.

20. The lack of community consultation prior to imposing this change has permanently and irreparably damaged community trust in the Council, and in the integrity of the process for changing the District Plan.

21. The lack of trust has been compounded by what many community members perceive as a deliberate lack of engagement by the Council with their concerns. Attempts to engage via the Council's 0800 number have proved fruitless, and councillors refused to meet with affected residents, claiming they were subject to effective "sub-judice". Councillors redirected enquiries to planning officials who were unable to answer them (for reasons unknown). Emily Bayliss, appointed by the Council as a "friend to submitters", has been polite, but has not been able to provide the substantive answers sought by landowners, probably through no fault of her own.

Statements from the Mayor and officials

22. Trust has further been eroded by public statements made by Mayor Campbell Barry to the effect that the SASM Provisions did not affect residential property. The Mayor did not seem to consider he was bound by the same sub-judice rules as had been advised by his fellow councillors, and neither did Deputy Mayor Tui Lewis (who attended the meeting with him).

23. He withdrew these comments later at a private meeting with My Land Group representatives (also attended by senior Council planner Tim Johnstone), but refused to clarify his comments publicly.

24. At that meeting, the Mayor largely allowed Mr Johnstone to speak for him. Mr Johnstone made several comments during that meeting that are relevant to this submission:

    a. That the lack of consultation on the SASM Provisions as part of the draft District Plan consultation reflected a resourcing issue, and that Council officials simply were not able to get the work done in time. He said that locals were still being consulted via the Independent

Hearings Panel ("**IHP**") process, and was not concerned that the Proposed Plan has immediate effect;[1]

b. He repeatedly stated that "this" was a requirement of "Part 6 (sic) of the Act".[2] We did not receive a clear answer as to what "this" meant, although after questioning, Mr Johnstone eventually conceded (in relation to SASM-R4) that the 200m^2 threshold triggering restrictions on land use was a "value judgement". The threshold had been selected because "mana whenua don't want to be consulted when someone is putting a deck in";

c. That the Council had not considered the Government's major reform proposals to the Act when formulating the Proposed Plan because it was not legally required to. The Mayor noted that RMA reforms happened consistently across multiple governments and that the plan-making process could not pre-empt them;[3] and

d. That the Council was bound by "process" to continue with the changes and would not consider withdrawing or changing them in the interim.

SUBMISSION

Legal framework

Part 2 of the Act

25. The purpose of the Act is the sustainable management of natural and physical resources.[4] Sustainable management requires that use, development, and protection of natural and physical resources be managed so as to enable communities to provide for their wellbeing while, among other things, avoiding, remedying, or mitigating adverse effects of activities on the environment.[5]

26. Sustainable management entails a *balancing* exercise between productive use and development of land for the community benefit, while protecting important environmental values. The Act does not mandate as a general principle that matters of national significance are "bottom lines", although in specific circumstances it may be permissible for planning instruments to define them as such.[6]

27. The Council has stated that two "matters of national importance" are engaged in respect of the SASM Provisions:

a. the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;[7] and

b. the protection of historic heritage from inappropriate subdivision, use, and development.[8]

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[1] By virtue of s 86B of the Act.
[2] We infer that he meant s 6 of the Act, particularly ss 6(e) and (f). Part 6 governs resource consents.
[3] We note the Government's proposal is a root and branch reform to planning law, and not the legislative tinkering that characterised many governments prior to the Natural and Built Environments reforms of the previous government. Two important features of the proposed regime are a presumption in favour of property rights, unless restrictions on them can be justified based on environmental effects and restrictions on (and in some cases compensating for) imposing restrictions on property rights for the public benefit. See https://www.beehive.govt.nz/release/new-planning-laws-end-culture-%E2%80%98no%E2%80%99.
[4] Section 5(1).
[5] Section 5(2).
[6] See *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 ("***King Salmon***") at [85], [90], and [94].
[7] Section 6(e).
[8] Section 6(f).

28. The Act also requires decision-makers to have particular regard to various matters, with relevant matters in this case being:

    a. Kaitiakitanga;[9]

    b. the ethic of stewardship;[10] and

    c. the efficient use and development of natural and physical resources.[11]

29. Finally, the Act requires that decision-makers take into account the principles of Te Tiriti o Waitangi/ Treaty of Waitangi when exercising their functions in achieving sustainable management.[12] The obligations can have both procedural and substantive implications on decision-making.[13] The application of s 8 will depend on which Treaty principles are relevant, and other statutory and non-statutory objectives that are affected.[14]

30. All of these matters are directed at achieving the Act's purpose of sustainable management of natural and physical resources. While ss 6 – 8 create a pre-weighting of matters relevant to sustainable management, they are not absolute rules. They exist to promote the relevant values only insofar as they relate to resource management.

31. In particular, the Act is not a forum for redressing Māori grievances over land confiscations, and is not intended to provide a general Māori veto over resource management decisions.[15] Other processes exist for redress of such grievances.[16]

Plan-making provisions

32. The Council is exercising its powers under s 73(1A) of the Act to change the District Plan. The purpose of the preparation, implementation, and administration of District Plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act.[17] When changing a District Plan, territorial authorities must do so in accordance with Part 2, and in accordance with their obligations to prepare and have regard to evaluation reports prepared in accordance with s 32.[18]

33. District Plans must give effect to higher level planning documents.[19] "Give effect" is a strong directive, although what is required will depend on the specificity of the relevant policy statement – the less prescriptive the instrument, the greater the opportunity for local authorities to undertake value judgements when determining resource management issues in a Plan.[20]

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[9] Section 7(a).
[10] Section 7(aa).
[11] Section 7(b).
[12] Section 8.
[13] *King Salmon*, above n6 at [88]; *Sustainable Matata v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [210].
[14] *Te Korowai o Ngāruahine Trust v Hiringa Energy Ltd* [2022] NZHC 2810 at [193].
[15] See *Watercare Services Ltd v Minhinnick* [1998] NZLR 294 (CA) at 521 – 522.
[16] We note that the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 vests fee simple title to some sites covered by the Proposed Plan (including Lake Kohangatera, Lake Kohangapiri, and the dendroglyphs) in the Port Nicholson Block Settlement Trust (ss 47, 49, and 50). This Act provides no protection or acknowledgement of other sites identified in the Proposed Plan.
[17] Section 72.
[18] Section 74(1).
[19] Namely national policy statements, national planning standards, and regional policy statements – see s 75(1).
[20] *King Salmon* above n6 at [30].

34. Territorial authorities can include Rules in a plan for the purpose of carrying out their statutory functions and achieving plan objectives.[21] They must have regard to actual or potential environmental effects when doing so.[22]

Section 32

35. A particularly important obligation in this case is the requirement for local authorities to prepare, and have regard to, s 32 evaluation reports when changing a District Plan. Relevant parts of s 32 are set out in full below:

> **32 Requirements for preparing and publishing evaluation reports**
> (1) An evaluation report required under this Act must—
> (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
> (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
> (i) identifying other reasonably practicable options for achieving the objectives; and
> (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
> (iii) summarising the reasons for deciding on the provisions; and
> (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
> (2) An assessment under subsection (1)(b)(ii) must—
> (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
> (i) economic growth that are anticipated to be provided or reduced; and
> (ii) employment that are anticipated to be provided or reduced; and
> (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
> (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
> […]
> (4A) If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must—
> (a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and
> (b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.
> […]

36. The Part 2 matters involve weighing competing and often indeterminate values. Section 32 reports provide a valuable discipline to this evaluative process, ensuring that decisions can be objectively justified even if the ultimate outcome is a value judgement.[23] While evaluation can be general, it must be reasonably detailed and comprehensive,[24] with the level of detail being proportionate to the significance of the anticipated effects.[25]

37. There are two limbs to the assessment:

    a. Whether the objectives of the proposal are the most appropriate way to achieve the sustainable management purpose; and

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[21] Section 76(1).
[22] Section 76(3).
[23] *Rational Transport Society Inc v New Zealand Transport Agency* HC Wellington CIV-2011-485-2259, 15 December 2011 at [50].
[24] *Lindis Catchment Group Inc v Otago Regional Council* [2019] NZEnvC 166 at [155] and [438].
[25] Section 32(1)(c).

b. Whether the provisions of the Proposed Plan are the most appropriate way to achieve the Act's objectives, including an assessment of alternatives, benefits, and costs (which must be quantified where reasonably practicable).

38. While the second limb appears to condone an assessment of provisions only against Plan objectives, the courts have clarified that Part 2 matters are relevant where the objectives of the Plan are disputed.[26]

SASM Provisions

39. The objectives of the SASM Provisions are:[27]

a. **SASM-O1 Te Mana o Ngā Wāhi (Recognition, protection, and maintenance)**: Sites and areas of significance to Māori and their associated values are recognised, protected and maintained.

b. **SASM-O2 Kaitiakitanga**: Tangata whenua can exercise kaitiakitanga in relation to sites and areas of significance to Māori.

c. **SASM-O3 Rangatiratanga (Self-determination)**: 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.

d. **SASM-O4 Mana Motuhake (Historic and contemporary connections)**: The historic and contemporary connection Mana Whenua have with their sites and areas of significance and their associated values are recognised and provided for.

40. The Council has identified that a major impetus for the Proposed Plan is that the operative District Plan ("**Operative Plan**") does not accurately identify SASMs, meaning that there is a lack of protection.[28] Accordingly, a major feature of the Proposed Plan is the redefinition of SASMs, which are now classed into three separate categories:[29]

a. Category 1 – Pā, kāinga, urupā and other sites or areas which have a high level of certainty and significance.

b. Category 2 – Pā, kāinga, urupā and other sites or areas that are significant, however their location may be less certain or they may not be as significant as those sites and areas listed in Category 1.

c. Category 3 – Sites or areas of significance that are important to acknowledge, but where subdivision, land use, and development is generally appropriate.

41. These SASMs are all defined as overlays on the Proposed Plan map. This is a marked departure from the Operative Plan, which identifies the equivalent of SASMs (named "Sites of Significance to Māori Culture" in the Operative Plan) as map pinpoints affecting a limited number of sites.

42. In its s 32 evaluation report ("**Council Evaluation Report**"), the Council identifies that the number of protected sites is increasing from 24 to 59. Due to the change from pinpoints to overlays, this paints

[26] *Eldamos Investments Ltd v Gisborne District Council* ENC Wellington W047 2005 at [131].
[27] Hutt City Council "Proposed Lower Hutt District Plan" (18 March 2025) ("**Proposed Plan**") at [SASM-O1]-[SASM-O4].
[28] Hutt City Council "Section 32 Evaluation – Sites and Areas of Significance to Māori" ("**Council Evaluation Report**") at [5].
[29] Proposed Plan at "SASM — Sites and Areas of Significance to Māori Chapter".

an incomplete picture. By our estimate, 806 lots are subject to the SASM Provisions (with a number of lots containing multiple properties). 442 lots are residentially zoned, while 364 are commercial.

43. By comparison, under the Operative Plan, approximately 21 properties were affected by land use restrictions.[30]

44. This drastic expansion of site coverage is the most controversial feature of the SASM Provisions, which we address in detail in paragraphs [72] – [75] below. A comparison of Proposed Plan maps in respect of the various sites is attached as **Appendix 2.**

45. The SASM Provisions impose restrictive land use rules, which have varying intensity depending on the SASM category:

    a. **SASM-R2** (restrictive effect in categories 1 and 2): In category 1 sites, this rule limits land disturbance outside of usual burial practices and minor gardening and maintenance work. In category 2 sites, landowners must follow an accidental discovery protocol.[31]

    b. **SASM-R4** (restrictive effect in categories 1 and 2): Limits new builds above 200m^2, as well as additions or alterations above 200m^2 for industrial and commercial buildings. Activities outside these limits are classified as restricted discretionary, with matters for consideration limited to site protection considerations, and engagement and decision-making involvement for mana whenua.[32]

    c. **SUB-R6** (restrictive effect in categories 1 and 2): classifies all subdivision inside category 1 and 2 SASMs as restricted discretionary, with the matters of discretion limited to consultation that has been undertaken with Mana Whenua, the values identified for each SASM, alternatives that could maintain those values, and practical mechanisms to maintain or enhance the ability for Mana Whenua to access and use each SASM.[33]

    d. **EW-R10** (restrictive effect in all categories): makes earthworks inside SASMs above 50m^2 within any 12 month period and to a vertical cut height or fill greater than 50cm a restricted discretionary activity, unless the activity is small-scale earthworks for burial in urupā. The matters of discretion are the effect of the earthworks on the SASM, and the protection of the identified values of the SASMs, such as avoiding archaeological sites.[34]

46. These rules apply to categories 1 and 2 in a largely identical manner. The sole difference is that category 1 sites are subject to more restrictive rules on land disturbance.[35]

47. Any activity that does not comply with these restrictive rules is classified as restricted discretionary. Resource consent applications are determined exclusively with reference to policies designed to enhance mana whenua consultation and site protection.[36] A consideration of the use and development of land to provide for community wellbeing is entirely absent from all of the policies, with the exception of SASM-P9. This policy provides that land use is "provide[d] for" only where it is "demonstrated that the cultural and spiritual values of the site are protected".

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[30] Note that this figure was calculated using our own 'desktop review' by essentially counting the number of properties that were covered by a SASM overlay or (in the case of the Operative Plan) by a pinpoint. We excluded sites that were in the middle of rivers or on public roads, meaning the number of properties assessed is lower than the number of sites identified in the Council Evaluation Report.

[31] SASM-S1.

[32] SASM-P4, P7 and P9.

[33] SUB-P15.

[34] EW-P10.

[35] SASM-R2.

[36] SASM-P3, SASM-P4, SASM-P7, SASM-P9, SUB-P15, and (to a slightly lesser extend) EW-P10.

48. Decision-makers are no longer permitted to have regard to Part 2 matters to approve consents that might otherwise be declined.[37] This means that consent applications must be determined entirely by reference to values that are entirely focused on promoting mana whenua engagement and protecting unidentified cultural and spiritual values. Some of the policies appear to promote mana whenua being granted access rights to private land as part of setting resource consent conditions.[38]

49. We note that the Operative Plan imposed significant restrictions on development in sites of significance to Māori culture. Whether or not this was justified in all cases is beyond the scope of this submission. However, the crucial difference is the much broader site coverage of the SASM Provisions, making restrictive rules apply to a far greater number of properties.

50. The greater scope means that imposing cultural and spiritual 'bottom lines' requires strong justification if the sustainable management purpose is to be met. As we set out in detail in the following paragraphs, the Council's justification is virtually non-existent.

The SASM Provisions are not required by the Act

51. As noted above at paragraph [24], Council planner Tim Johnstone indicated to us that the changes are "required" by the Act. This is simply not correct. The Act provides direction about recognising and providing for matters of national significance. It is for local authorities to implement the detail as part of the plan-making process.

52. We acknowledge that ss 6(e), 6(f) and 8 provide a strong imperative to protect Māori sites and heritage, subject to the sustainable management purpose. We also acknowledge that in individual cases of sites with significant heritage value, protection may justify restrictions on land use to protect the sites, and that mana whenua have a legitimate interest in being consulted as part of relevant resource consent applications. However, the operational detail (including scope and extent of restriction) is clearly a matter for the territorial authority making the Plan.

53. We also acknowledge that the Council must "give effect" to various higher level planning documents. A number of these documents strongly emphasise the importance of protecting Māori relationships with sites and heritage, and providing for involvement in decision-making.[39] However, the relevant national policy statement ("**NPS-UD**") also emphasises the importance of enabling development,[40] and acknowledges that the two objectives may conflict.[41]

54. The strength of the obligation to "give effect to" a planning document will depend on the prescriptiveness of the relevant provision in that document.[42] Clauses 3.32 and 3.33 of the NPS-UD acknowledge that promoting urban development and recognising and providing for s 6 matters may conflict, but does not give an explicit directive as to how conflicts are to be determined. It is clear that the detail has been left to local authorities when exercising their plan-making functions.

55. Additionally, the NPS-UD is far more prescriptive of urban development than it is of protection of Māori sites.[43] While matters of national significance can justify departure from development-focused

[37] Section 87A(3).
[38] SUB-P15 and SASM-P9.5.
[39] See the Wellington Regional Council "Regional Policy Statement for the Wellington Region" (April 2013), at 76.
[40] Ministry for the Environment "National Policy Statement on Urban Development 2020" (May 2022), objective 2 and policies 2 and 3.
[41] At [3.32]-[3.33].
[42] *King Salmon* above n6, at [80].
[43] Compare the strong development imperative in objective 2 and policies 2 and 3 compared to the more equivocal language of policy 9, particularly "*provide opportunities **in appropriate circumstances** for Māori involvement in decision-making on resource consents…*" (emphasis added).

policies,[44] departures must be justified in the relevant s 32 report.[45] We note that it appears that the Council is unaware of their obligation to justify departures from policy 3 based on matters of national significance.[46]

56. In summary, it is clear that there is no imperative in the Act or in planning documents under the Act for the Council to have defined SASMs as it has, nor to draft the restrictive planning rules as it has. As the Act itself makes clear, detail and implementation of these matters are an evaluative exercise to be undertaken by the local authority making the plan.

57. As we discuss in detail at paragraphs [71] – [112] below, the Council has manifestly failed in evaluating the Proposed Plan.

Independent Māori Statutory Board v Auckland Council

58. The High Court case *Independent Māori Statutory Board v Auckland Council* [2017] NZHC 356 provides a strong rebuttal to the Council's belief that the changes are required by the Act. This case arose in circumstances similar to the Proposed Plan. The Auckland Council chose to designate large numbers of sites as areas of "value" to Māori in its proposed Unitary Plan. Like the Council in this case, they failed to support this proposal with evidence, relying on a "desktop review". The Council (on the recommendation of an IHP) ultimately withdrew a large number of sites from its plan. The appellant appealed this change to the Environment Court and the High Court, losing in both cases.

59. In the High Court, the appellant in the case argued that the effect of ss 6(e) and 6(f) of the Act meant that the Council had acted unlawfully. They cited the *Ngati Maru Iwi Authority Inc v Auckland City Council* HC Auckland AP18-SW01, 24 October 2002 to the effect that Māori cultural evidence could only be dismissed if it was "insubstantial".[47]

60. The court distinguished *Ngati Maru* on the grounds that it was obiter dicta made in the context of a leave to appeal decision, not a considered judgment on the evidential threshold in cases before the Environment Court.[48] The Council (and Environment Court) had been entitled to remove sites of value to mana whenua from the Unitary Plan on the basis that their existence and values had not been properly evaluated against objective criteria during the s 32 evaluation process. Section 6(e) and (f) did not mandate that local authorities were required to protect sites based on inadequate evidence [49]

61. This case makes clear that local authorities cannot simply decide what sites of significance are without supporting evidence. That case shows how such evidence should be tested and reviewed. It is not simply a case of a Council consulting with mana whenua and declaring an outcome.

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[44] Clause 3.32.
[45] Clause 3.33.
[46] Section 32 Report at 10, which states "*The NPS-UD identifies qualifying matters, which are matters that can justify a district plan being less enabling of development than it is ordinarily required to be (s 3.32). This includes any matter of national importance in s 6 of the RMA, which includes the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*".
[47] *Independent Māori Statutory Board v Auckland Council* [2017] NZHC 356 at [87].
[48] At [88]. While the court here noted it was distinguishing *Ngati Maru,* it would be more accurate to say that dicta in the case about evidential thresholds were being confined to their facts. Accordingly, *Ngati Maru* can no longer be regarded as good law concerning the assessment of cultural evidence.
[49] At [37] and [99].

The Proposed Plan's ***objectives* are not the most appropriate way of achieving the purpose of the Act**

62. As noted above, we accept that there must be protection of significant Māori sites and heritage, provided protection is proportionate and respects property rights and the productive land use. The Act requires these values to be recognised and provided for. Where protections are properly developed such protection benefits the Hutt community.

63. In this respect, we are largely supportive of SASM-O1 and SASM-O2 relating to recognition and kaitiakitanga, provided that the interests of private landowners and the general community are respected. These provisions also require wording changes to ensure that the policy does not impose bottom lines, other than for genuine heritage sites such as intact historic urupā or genuine archaeological sites.

64. However, we are strongly opposed to SASM-O3 and SASM-O4 on their current wording. These objectives relate to rangatiratanga and mana motuhake respectively. We understand (although we are not experts) that both of these terms roughly translate into English as relating to self-determination. Self-determination is recognised expressly in relation to SASMs by SASM-O3. In SASM-O4, the connection is more oblique, referring to "historic *and contemporary* connections" to SASMs.

65. The purpose of the Act is sustainable management of *natural and physical resources*. It is legitimate for a Plan to recognise and provide for the relationship of Māori to protect their heritage from inappropriate use, subdivision, and development. These interests are recognised in SASM-O1 and SASM-O2.

66. Providing, as an additional matter, self-determination for Māori over sites is tantamount to recognising that mana whenua have a quasi-property interest in privately owned land within SASMs.

67. A number of policies in the SASM Provisions suggest that this is what these objectives are directed at. For example, both SASM-P9.4 and SUB-P15.4 refer to opportunities for Māori to access the SASM, which will be relevant when setting resource consent conditions. SASM-R1 makes undertaking tikanga Māori within a SASM a permitted activity.

68. The wording of these policies suggest that the SASM objectives are not directed towards the sustainable management of the sites. Rather, they appear to be intended as granting Māori an interest in the property subject to the SASM Provisions for its own sake.

69. If this is the Council's objective, it cannot be reconciled with the purpose of the Act. The 21st century reality is that the majority of sites have been destroyed or developed over. It is not the function of district plans under the Act to redress these historic wrongs. Early on in the Act's life, the Court of Appeal confirmed that s 8 of the act did not confer a general "Māori veto" over development for its own sake. Rather, Māori involvement in decision-making was intended to facilitate sustainable management.[50]

70. Our submission requests that SASM Provisions be withdrawn in their entirety. However, should the IHP recommend otherwise, we request the following changes to the Proposed Plan:

    a. SASM-O3 and SASM-O4 should either be removed from the Proposed Plan; and

    b. The objectives should explicitly recognise the interests of landowners and the community in the efficient development of land to meet community needs.

[50] *Watercare Services Ltd v Minhinnick* [1998] NZLR 294 (CA) at 521 – 522.

The Proposed Plan's *provisions* are not the most appropriate way of achieving the Plan's objectives or the purpose of the Act

71. As with the Plan's *objectives,* the Plan's *provisions* are also not the most appropriate way of achieving the objectives of the Act. The *provisions* are flawed in that:

    a. The areas covered by the SASMs have not been properly identified;

    b. There is no clear connection between Proposed Plan rules and the protection of values of the sites; and

    c. The SASM Provisions impose disproportionate costs on the community.

The SASMs have not been properly identified

72. The Council Evaluation Report is 80 pages long. Despite its lengthy citation of various selectively quoted provisions of the Act and policy statements, only a single paragraph is devoted to describing the evidence on which the sites are based. The paragraph reads as follows:

> *(63) The technical information and advice that has informed the identification of sites and areas of significance includes:*
>
> *• The advice received from Mana Whenua, in particular, the Kāhui group, and*
>
> *• Information collected during a desktop review of reports that discussed sites and areas of significance to Māori, their narrative, and values, and their locations (including existing cultural impact assessments available to Council).*

73. It is left unclear who the Kāhui group is, what advice they provided,[51] or what the 'desktop review' involved. This could range anywhere from a Google search to a robust analysis of empirical records. The vagueness and lack of detail that define the Council Evaluation Report (and the definition of sites) suggest it was probably closer to the former.

74. There are a number of irregularities in the definition of sites on the Proposed Plan map that suggest that a less than robust cross-check methodology was used:

    a. **Te Whiti Park (Category 2):** In the newly identified Te Whiti Park site**,** the overlay extends beyond the park to cover a number of residential properties on upper White Lines East in Waiwhetu. It is left unclear why the site extends beyond the park to cover properties on its verges. More concerning is the conspicuous omission of 172 White Lines East from the site[52] which is otherwise characterised by bold curve boundaries. A title search reveals that this property is owned by Waiwhetu Papakainga Housing Limited, a company wholly owned by Arohanui Ki Te Tangata Marae.[53] The omission of the property raises questions about how the decisions around boundaries were made and what factors were taken into consideration. There may be good reasons for excluding 172 White Lines East. However, other landowners covered by SASMs may similarly have good reasons for exclusion that they have not had the opportunity to put forward for consideration.

[51] We note that recording a summary of this advice is a requirement under s 32(4A), as is recording the Council's response to it.
[52] See **Appendix 2** at p 42.
[53] See **Appendix 3** – Record of Title for 172 White Lines East.

b. **Whiorau/Lowry Bay (Category 2):** The site cuts off approximately half way around the bay, in line with the Marine/Walter Walkway. Schedule 6 identifies fishing as an activity historically undertaken by Māori in the area. Absent some natural barrier, it would be unusual for Māori (or anyone) to fish in only one half of the Bay and we note that the reserve near the Lowry Bay boat ramp (which falls outside the site) is a popular modern fishing spot. The Proposed Plan and Council Evaluation Report are silent as to why Māori were deemed to have avoided this half of the bay.

c. In general, the SASMs are defined by unusually linear curve boundaries, suggesting that their bounds are unknown and have been drawn arbitrarily. Supporting this impression is that many of the sites are identified by modern day street geography.[54]

d. A number of sites are defined by reference to unjustifiably vague language, for example:

i) Days Bay (Ōruamātoro Pā) – "*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)

ii) Korohiwa Pā – "***Said to be** a pā located on the spur above Point Arthur and the Eastbourne Bus terminal*". (emphasis added)

iii) Silverstream Retreat (Pā Parihoro) – "*A **possible** pā site in the Eastern Hutt Road/Reynolds Bach Drive area. **Little is known** about this pā apart from its name and **general location**. Historians Jock McEwan and Morrie Love suggest the pā may have been located where the Silverstream Retreat is today, though **other locations have been proposed**.*" (emphasis added)

e. **Pito-One Precinct (Category 2):** The Council has defined a substantial chunk of the Petone commercial area as a SASM, solely because the general area contains a number of other SASMs (subject to their own protections) and because local rangatira first met William Wakefield on the Petone foreshore. While the courts have recognised protection for the surroundings of heritage areas,[55] they have never to our knowledge recognised a fully developed commercial district as a heritage area or a Māori site. To do so strains those concepts to breaking point.

75. These flaws do not only go to the definition of the particular SASMs identified. They are so elementary and fundamental that they bring into question the integrity of the Council's process for identifying the sites. We submit that beyond certain category 1 sites that are clearly identified by reference to existing physical sites,[56] the IHP can have no confidence whatsoever in the definitions of any of the sites identified in the Proposed Plan.

There is no clear connection between Plan rules and the protection of values of the sites (which are not identified in the Plan)

76. SASM-O1 identifies that an objective of the policy is to recognise, protect, and maintain SASMs. As the great majority of identified sites no longer physically exist, this objective can only be met in relation to those sites by recognising and protecting the cultural and spiritual values of the sites.

[54] Notable examples include Te Whiti Park, Whiorau/Lowry Bay, Korohiwa Pā, Ōruamātoro Pā (which cuts off at the Korimako Service Lane), Waiwhetū Pā, Paetutu Kainga, Pito-One Precinct, Te Ahi a Monono, Te Mako, and Pā Parihoro. See Proposed Plan map - <https://eplan.huttcity.govt.nz/review/property/0/0/46>.
[55] See *Hemi v Waikato District Council* [2010] NZEnvC 216 and *Raikes v Hastings District Council* [2022] NZHC 3075.
[56] For example Owhiti Urupā and Te Puni Urupā.

77. The Proposed Plan does not identify site values. The descriptions in Schedule 6 are simply more detailed elucidations of the history of the sites than applied under the Operative Plan. The absence of values from the Proposed Plan is a fundamental deficiency – it robs the Proposed Plan of any content.

78. In some cases, the values might be obvious. Few would dispute the cultural and spiritual significance of the urupā identified for protection under category 1. However, it is unclear how the values of an entire area should be protected based solely on the fact that Māori fished, hunted, cultivated crops, or lived in a general area once upon a time.[57]

79. If there are no identified values to protect, the rules imposed by the Plan exist in a vacuum. The Council cannot refer to any identified values when assessing resource consents. The rules, therefore, act as a threshold condition triggering a requirement for resource consent – at that stage, it is for mana whenua to determine the values that require protection on a case by case basis. This is indistinguishable from a mana whenua veto.

80. SASM-R4 is the most egregious example. The rule states:

SASM-R4		**Additions, alterations or new buildings or structures within a Site or Area of Significance to Māori**
	SASM Category 3	1. Activity status: Permitted
	SASM Category 1 **SASM Category 2**	2. Activity status: Permitted Where: a. The additions and alterations are for an existing residential activity b. The new building or structure is less than 200m^2, and c. The addition or alteration to a building or structure are within an industrial/commercial zone and are less than 200m^2.
	SASM Category 1 **SASM Category 2**	3. Activity status: Restricted discretionary Where: a. Compliance is not achieved with SASM-R4.1 or SASM-R4.2. Matters of discretion are restricted to: 1. The matters in SASM-P3, SASM-P4, SASM-P7, and SASM-P9.

81. SASM-R4 is the SASM Provision most restrictive of land development, and accordingly requires the greatest justification if the sustainable management purpose is to be met. Yet there is no trace of an explanation in the Council Evaluation Report about how restricting site development relates in any way to the (unidentified) values that must be protected.

82. The picture becomes more bizarre when the specifics of SASM-R4 are considered. Unlike the SASM rules in the Operative Plan, SASM-R4 does not require resource consent for all development. Instead, residential properties are permitted to make alterations to existing buildings of any size. New builds are permitted if they are under 200m^2, while alterations and additions to existing buildings in industrial and commercial areas are permitted under 200m^2.

83. As noted above at paragraph [24], Council planner Tim Johnstone advised us that the 200m^2 rule existed because "[mana whenua] don't want to be consulted when someone is putting a deck in on their house".

[57] See, for example, the Whiorau-Lowry Bay SASM, which is associated with fishing, hunting, and cultivating crops.

84. The Act is concerned with sustainable management of natural and physical resources. It is not concerned with what mana whenua "want", unless that is somehow relevant to that purpose.

85. Distinctions based on square metreage or on local authority land-zoning decisions cannot be grounded in tikanga Māori. As the Council has not provided the basis for this distinction, it is reasonable to assume that it rests on simple pragmatism, which is not a permissible reason for a Council to define the rule as it has.[58]

86. Whatever its justification, the 200m^2 rule also contradicts SASM-O1, because it reduces the protection of the most significant sites compared to the status quo (at least where those sites were identified in the Operative Plan). Under the Operative Plan, virtually all activities in the equivalent of SASMs are classified as restricted discretionary activities. By contrast, the 200m^2 rule allows for limited development, and this rule applies identically in category 1 and 2 sites.

87. In theory, under the Proposed Plan, the owner of (for example) Te Puni Urupā (a historical urupā that can be found just inland from the west end of Petone Beach) could erect a 199m^2 house in the middle of the burial sites, or demolish burial sites and turn the area into a carpark. Provided there was no associated land disturbance, this could be done without any requirement for resource consent, or for mana whenua involvement.

88. It would of course be open to the Council to impose more restrictive rules on category 1 sites compared to category 2 sites. The fact that it did not think to do so speaks to the quality of its "desktop review".

89. We also note a drafting error in SASM-R4 as it relates to SASM Category 1 and SASM Category 2**.** The permitted activity conditions are connected by "and" instead of "or". If read literally, this would require all three conditions to be satisfied at once, making this condition impossible to meet and thereby effectively classifying all new builds and alterations as restricted discretionary activities.

90. The Council have advised us that this is a drafting error it intends to correct in the Council submission. Our position is that SASM-R4 should be removed from the Proposed Plan entirely, but we draw this error to the attention of the IHP nonetheless. The existence of such an elementary drafting error in one of the most important SASM Provisions reflects lack of care and attention in preparing the SASM Provisions.

91. All of these matters speak strongly to the integrity and efficacy of the Council's process in making the SASM provisions. Again, we submit that in light of the defects, the IHP can have no confidence that the SASM Provisions achieve their objectives or the purpose of the Act.

The SASM Provisions impose disproportionate costs on the community

92. We note first that as a matter of legal obligation, the Council is required to have particular regard to the efficient use and development of natural and physical resources.[59] It appears that it has not had any regard to this matter – the Council Evaluation Report identifies the s 7 matters engaged in this case to be ss 7(a) and 7(aa).[60] There are hints elsewhere in the report that the SASM Provisions might hinder land development, but the impacts are minimised. [61]

[58] See *Eldamos Investments Ltd v Gisborne District Council* ENC Wellington W047 2005, 22 May 2005 at [145], where the Environment Court held that that the purpose of a District Plan is to assist the local authority to carry out its statutory functions and meet the purpose of the Act, not to allocate resources or provide for their wise use. On a similar basis, pragmatism is not a valid basis on which to make plan rules unless that pragmatism advances the purpose of the Act.
[59] Section 7(b).
[60] At p8.
[61] For example, at p 67.

93. Perhaps for this reason, the Council's evaluation of the efficiency and effectiveness of the policy in meeting the Proposed Plan objectives is grossly inadequate. Section 32 requires local authorities to identify other reasonably practicable options for achieving objects, assess the costs and benefits of their policies (environmental, social, economic, and cultural), including effects on opportunities for economic growth and employment.[62] The local authority must quantify costs and benefits where practicable,[63] and assess the risk of acting or not acting in the face of uncertain or insufficient information.[64]

94. While analysis need not be exhaustive (particularly when values are difficult or impossible to quantify), it must be reasonably comprehensive.[65] The purpose of the evaluation is to provide an objective basis for the evaluative judgement that must take place in imposing plan rules and policies.[66] If this evaluation is to have any meaning, it must allow for a genuine comparison between possible options.

95. We note at the outset that the most important element of the Proposed Plan change in terms of assessing economic and social costs is the increase in geographic scope of the sites, particularly category 2. The significant increase in site coverage results in application of restrictive land use rules and a consents process heavily weighted against development to a far greater number of properties compared to the status quo.

96. To meaningfully assess the cost of the Proposed Plan compared to the status quo, it must (at a bare minimum) understand the comparative number of properties affected, and how that increase in scope may impact development.

97. The Council's evaluation is fundamentally deficient.

98. First, it erroneously identifies that sites under the Operative Plan extend in a 50m^2 radius from the map pinpoint.[67] There is no basis for this conclusion in the Operative Plan, the proper interpretation of which is that only sites containing the map pinpoint are subject to the restrictive consenting rules.[68] This would ordinarily be highly material to comparing the number of sites affected between the Operative Plan and the Proposed Plan.

99. Second, the Council fails to identify the number of properties that are within SASMs in the Proposed Plan. It states that the number of sites is increasing from 24 to 59,[69] and that the number of properties affected is "moderate".[70] The Council could easily have counted the properties during even a cursory desktop review. Assessing the number of affected properties was a simple matter of counting them (as we have done for this submission. That it did not attempt to do so fundamentally undermines the integrity and credibility of their evaluation. This assessment appears calculated to mislead councillors as well as the public.

100. A similar absence of rigour is seen in the Council's assessment of the potential economic and social costs of the SASM Provisions, which are either mischaracterised or not addressed. The Council notes that the Plan imposes "opportunity costs" on landowners by restricting their ability to develop, and notes that there might be increased costs associated with resource consent applications.[71] There is no

[62] Section 32(2)(b).
[63] Section 32(2)(b).
[64] Section 32(2)(c).
[65] *Lindis Catchment Group Inc v Otago Regional Council* [2019] NZEnvC 166 at [438].
[66] At [155].
[67] Council Evaluation Report at p 69.
[68] See Chapter 3 of the Operative Plan, which defines "site" comprehensively. The Chapter 14E appendix makes it clear that land use restrictions apply to "sites".
[69] At paragraph [8].
[70] At paragraph [66].
[71] At page 69.

attempt whatsoever to quantify these costs, which would be impossible in any event due to the failure to count the number of properties affected.

101. We also note that "opportunity cost" is not an accurate characterisation of the cost imposed on landowners. This type of cost arises where one option of multiple is chosen, and is calculated by reference to the foregone benefit of the other options.[72]

102. Landowners in this case do not have options. A restriction is being placed on their ability to use and develop their land as they would otherwise be entitled to. It would be more accurate to characterise this cost as one to the value of their land. This cost has both immediate impact, in that market value of affected property is likely to reduce with its productive capacity (particularly for commercial sites) and a future effect, in that the land is less amenable to producing economic growth.

103. The Council also omits to consider the impact of developmental restrictions on the broader community in terms of restrictions on housing supply and foregone economic growth. As identified above at paragraphs [53] – [55], the NPS-UD recognises an imperative in enhancing urban development, which extends to enhancing housing supply and economic growth. The Council is required to give effect to the NPS-UD in the Proposed Plan.[73]

104. It is widely acknowledged that there is a housing supply crisis in New Zealand (for which the Act often receives the blame). Purchasing a home is out of reach for many New Zealanders, and lack of supply pushes up rents, imposing hardship on those trying to make ends meet.

105. According to the *Hutt City Council Regional Housing and Business Development Capacity Assessment – Housing update May 2022,* Lower Hutt will need to provide for 21,190 dwellings by 2051.[74] Adding a 'competitiveness margin' of 15-20% to those numbers, as required by the NPS-UD, means that Lower Hutt will need to provide for 24,773 dwellings by 2051.[75]

106. The same report identifies realisable development capacity for 16,847 residential dwellings and sections. Of particular relevance to this matter is that of the 16,847 only 903 are greenfield sections. The overwhelming majority of development capacity for additional housing in Lower Hutt is the 15,944 feasible infill and redevelopment dwellings identified.[76]

107. Regarding foregone economic growth various Hutt City Council and regional strategy documents highlight the importance of the Seaview/Gracefield area for employment in the Wellington region given its zoning.[77] For example the Council's Sustainable Growth Strategy 2025-2055 describes the area as "the largest industrial and manufacturing hub in the Wellington region"[78].

108. The same strategy notes that:[79]

> *"While we have a limited scope for 'greenfield' development,* ***there are several opportunities for growing and retaining our high-value businesses within the existing footprint of industrial land****"* (emphasis added).

109. Given the strategic importance of this commercial and industrial zone the Council has a strong interest in ensuring restrictions on redevelopment of this area are proportionate. Despite this the Proposed Plan's SASM provisions place significant restrictions in this area. There is no evidence that the Council

[72] See *Oxford Concise English Dictionary* (10th ed, Oxford University Press, New York, 2001) at 1000.
[73] Section 75(3).
[74] Hutt City Council "Hutt City Council Regional Housing and Business Development Capacity Assessment – Housing update May 2022" (May 2022) at 3.
[75] At 3.
[76] At 3.
[77] For example, see Hutt City Council "Vision Seaview Gracefield 2030: Transforming the Future" (June 2010); Greater Wellington Regional Council "Wellington Regional Strategy: Internationally Competitive Wellington" (June 2007).
[78] Hutt City Council "Rautaki Whakatipu Sustainable Growth Strategy 2025-2055" (February 2025) at 72.
[79] At 72.

carefully balanced the impact on employment and industrial development in the Seaview/Gracefield area.

110. Introducing such poorly justified and uncertain sites has impacts beyond the properties affected. Private capital will not invest in districts subject to such costly and arbitrary planning rules. There is a risk that private investors avoid investing in Lower Hutt altogether.

111. The fact that the Council felt comfortable advancing such drastic changes on such little foundation raises the question – what will they do next? While forthcoming triennial elections may change the faces seated around the Council table, the planners and officials apparently responsible for this policy will stay in place.

112. Private investors, assessing competing options for where to allocate capital, will not look favourably on investing where the Council greenlights such initiatives without appropriate scrutiny. This could cripple local economic growth at a time when urban centres like Petone, Seaview, and elsewhere need revitalisation and modernisation.

Conclusion

113. It is appropriate that the Proposed Plan recognise the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, and protects historic heritage, but the way this is done in the Proposed Plan is neither required by law nor the most appropriate way of achieving this objectives.

114. Our fundamental objections to the Proposed Plan are that it imposes land-use restrictions on a broad range of properties without:

    a. proper community consultation;

    b. any evidential basis;

    c. robust assessment of the costs to private property owners; or

    d. clear assessment of alternative approaches to achieving the Council's stated objectives.

115. Because of these fundamental flaws, we request that the Proposed Plan be withdrawn in its entirety. In the event the IHP recommends otherwise, we request the specific changes to the Proposed Plan set out in **Appendix 1 – Table of Proposed Changes**.

Yours faithfully
FRANKS OGILVIE

Max Barber
Senior Solicitor
max.barber@franksogilvie.co.nz
Mobile: +[redacted]

APPENDIX 1 – TABLE OF REQUESTED CHANGES

As noted above at paragraph [10], we ask the IHP to recommend that the Council not proceed with the SASM Provisions. The evaluation of the changes is so fundamentally flawed that the IHP (and the Council) can have no confidence that that Plan achieves the purpose of the Act. However, if the IHP recommends that the Plan proceed, we request the following changes:

Provision	Requested change
Schedule 6	Category 1 sites confined to: 1. Significant sites on public land; and 2. Demonstrably intact sites with such clear and obvious heritage value that impositions on private land use and development can be justified in accordance with the purpose of the Act. Merge category 2 and 3 sites into a single category that is not subject to land use restrictions beyond the accidental discovery protocol.
SASM-O1	Support with changes – *"Sites and areas of significance to Māori and their associated values are recognised, and (where restrictions on land use can be justified in accordance with the purpose of the Act) protected and maintained".*
SASM-O2	Support with changes – *"Tangata whenua can exercise kaitiakitanga in relation to sites and areas of significance to Māori, to the extent that this is consistent with property rights".*
SASM-O3	Delete
SASM-O4	Delete
SASM-P1	Support with changes – "Identify sites and areas of significance to Māori with tangata whenua and in accordance with tikanga Māori, cross-checked against empirical evidence".
SASM-P2	N/A
SASM-P3	Support, conditional on proposed changes to Schedule 6 above.
SASM-P4	Delete
SASM-P5	Support, conditional on proposed changes to Schedule 6 above (with this policy applying to the merged categories 2 and 3).
SASM-P6	Support with changes – *"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	Support, conditional on the policy being confined to category 1 sites as defined in Schedule 6 proposal.
SASM-P8	N/A
SASM-P9	Delete. If retained • SASM-P9 – "Provide for maintenance, repair, alterations, construction and modification within sites and areas of significance to Māori, while ensuring where it is demonstrated that the spiritual and cultural values of the site are protected, having regard to… "

	• SASM-P9.1 – "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~~". • SASM-P9.2 – delete. SASM-P9.3(a) – "a. Loss of cultural values associated with the site (where those values are defined in Schedule 6) through modification of the landscape" • SASM-P9.4 – delete. • SASM-P9.5 – delete. • SASM-P9.8 – "Whether there are proportionate alternative methods, locations or designs that would avoid remedy or mitigate adverse effects on spiritual or cultural values associated with the site or area (where those spiritual or cultural values are defined in Schedule 6).
SASM-R1	Support with changes: "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	Support, provided that restrictions on land disturbances beyond the accidental discovery protocol apply to category 1 sites as proposed above.
SASM-R3	Support
SASM-R4	Delete. If retained, restrict to category 1 sites (as defined in Schedule 6 proposal above).
SASM-R5	Support
SASM-S1	Support. Accidental discovery protocol should provide guidance for landowners about what qualifies as an artefact, for example by reference to a list of examples or a legislative definition.
EW-P10	Delete or confine to category 1 sites as defined in proposed changes to Schedule 6.
EW-R10	Delete or confine to category 1 sites as defined in proposed changes to Schedule 6.
SUB-P15	Delete. If retained in some form, delete SUB-P15.4
SUB-R6	Delete.

APPENDIX 2 – MAP OF SITES AND AREAS OF SIGNIFICANCE TO MĀORI

This Appendix compares the geographic extent of SASMs under the Operative Plan compared with the Proposed Plan. As these maps show, protected sites under the Operative Plan are marked by a blue pinpoint captioned by "Confirm Cultural Site Area with Hutt City Council Resource Consents Team". Under the Proposed Plan, SASMs are marked by an overlay (outlined in red).

While we have attempted to set out a comprehensive list of site maps, we could not practically depict comparative sites relating to the East Harbour Precinct and Orongorongo Precinct, which have been omitted. These sites (which we understand relate to either public land or land that has been vested in the Port Nicholson Block Settlement Trust) are less relevant to our submission than the predominantly urban sites described in the submission.

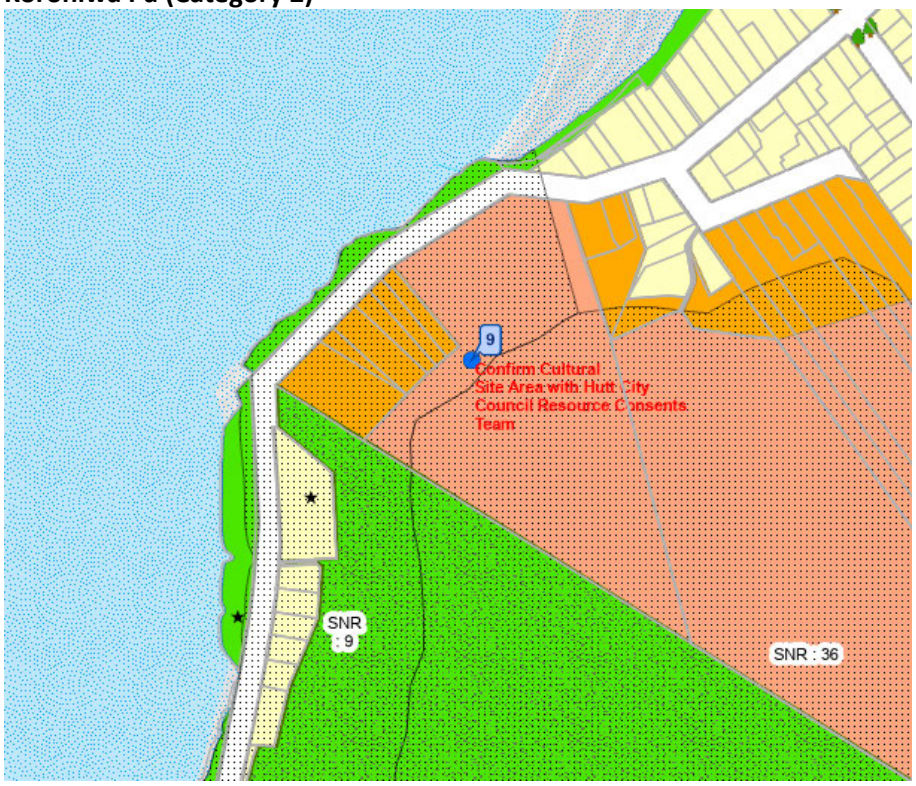
(continued overleaf)

Hikoikoi Pā (Category 2)

Operative Plan – Hikoikoi Reserve (see Appendix 14E, Sites of Significance to Māori Culture no. 4)

Proposed Plan - Hikoikoi Pā (see Schedule 6 page 3)

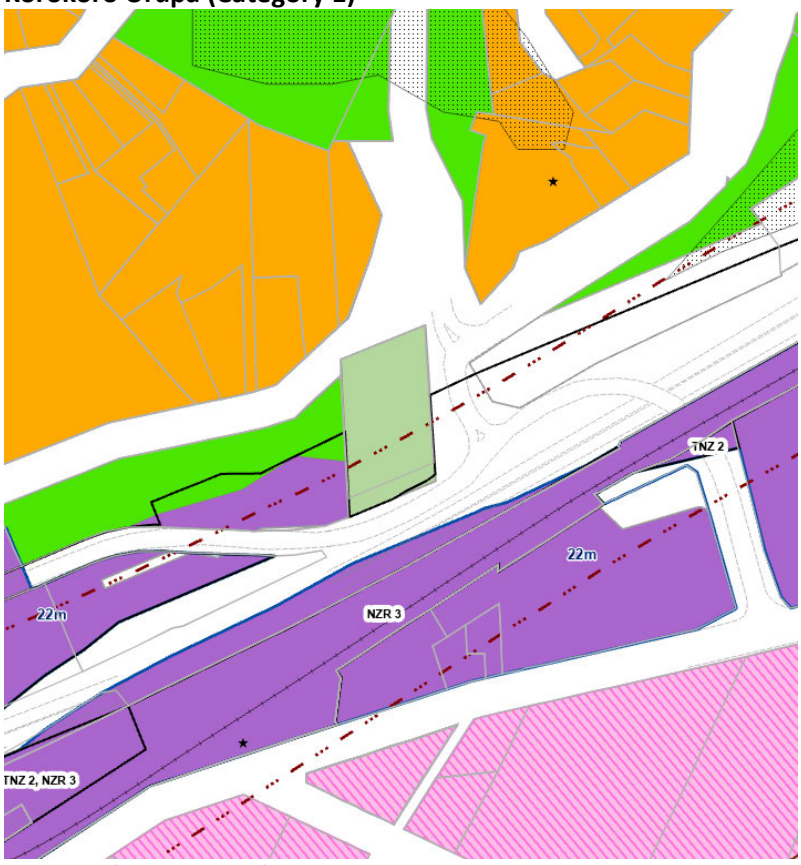
Korohiwa Pā (Category 2)



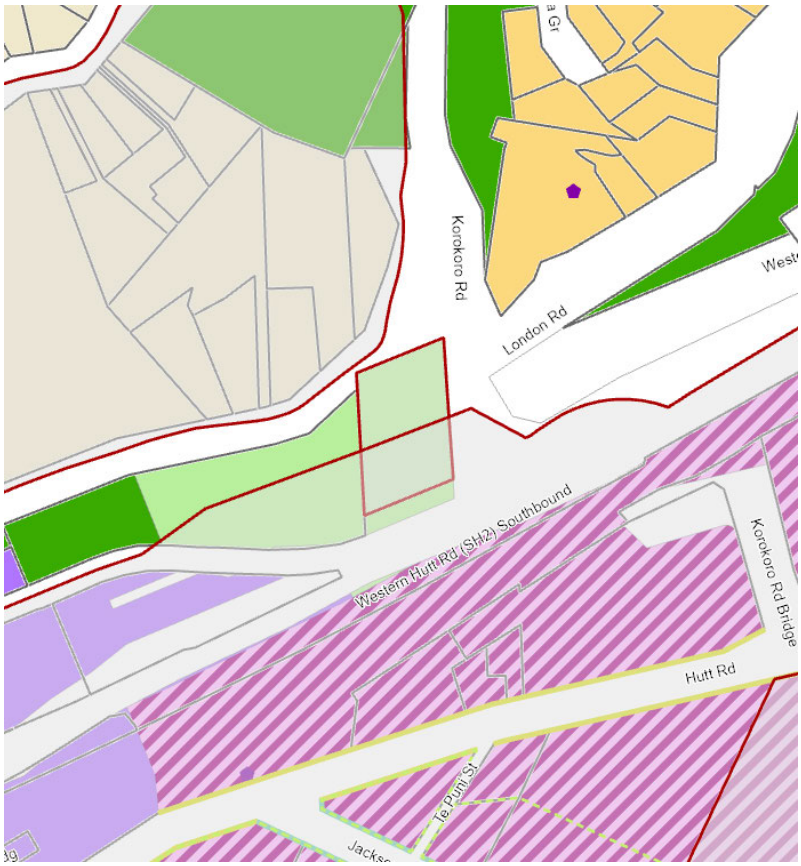
Operative Plan – Point Arthur (see Appendix 14E, Sites of Significance to Māori Culture no. 9)

Proposed Plan – Korohiwa Pā (see Schedule 6, page 5)

Korokoro Urupā (Category 1)

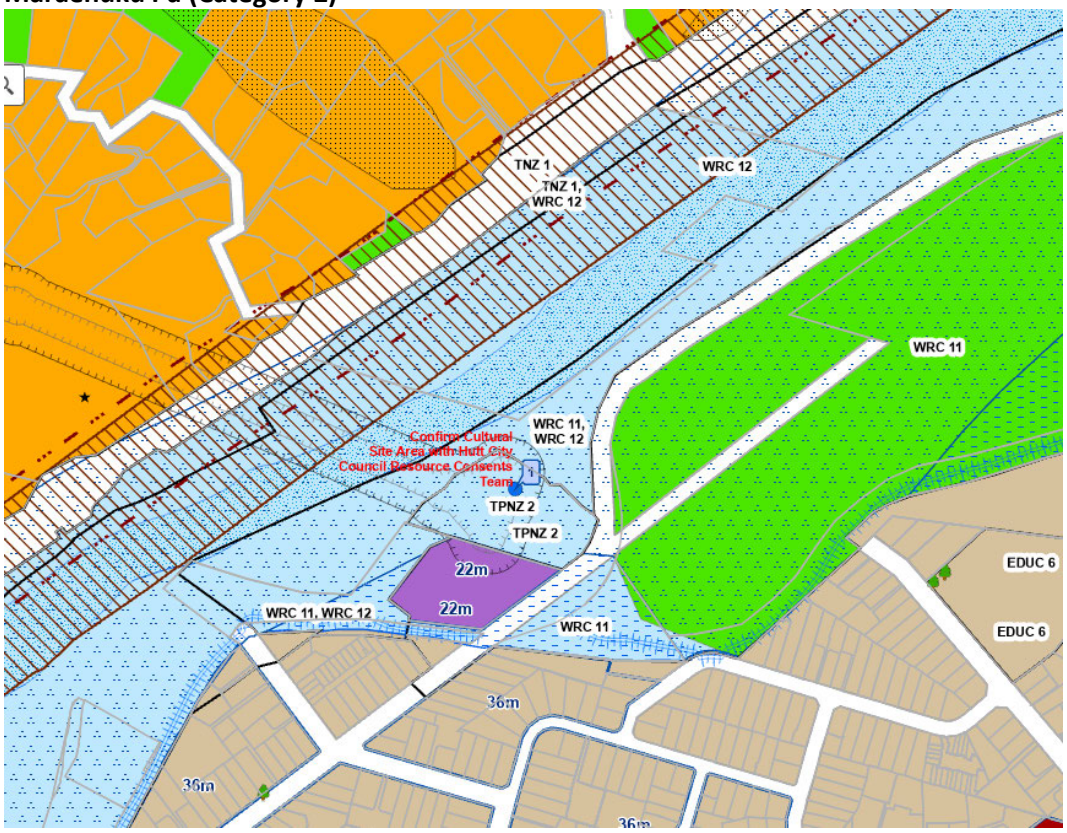


No site under Operative Plan

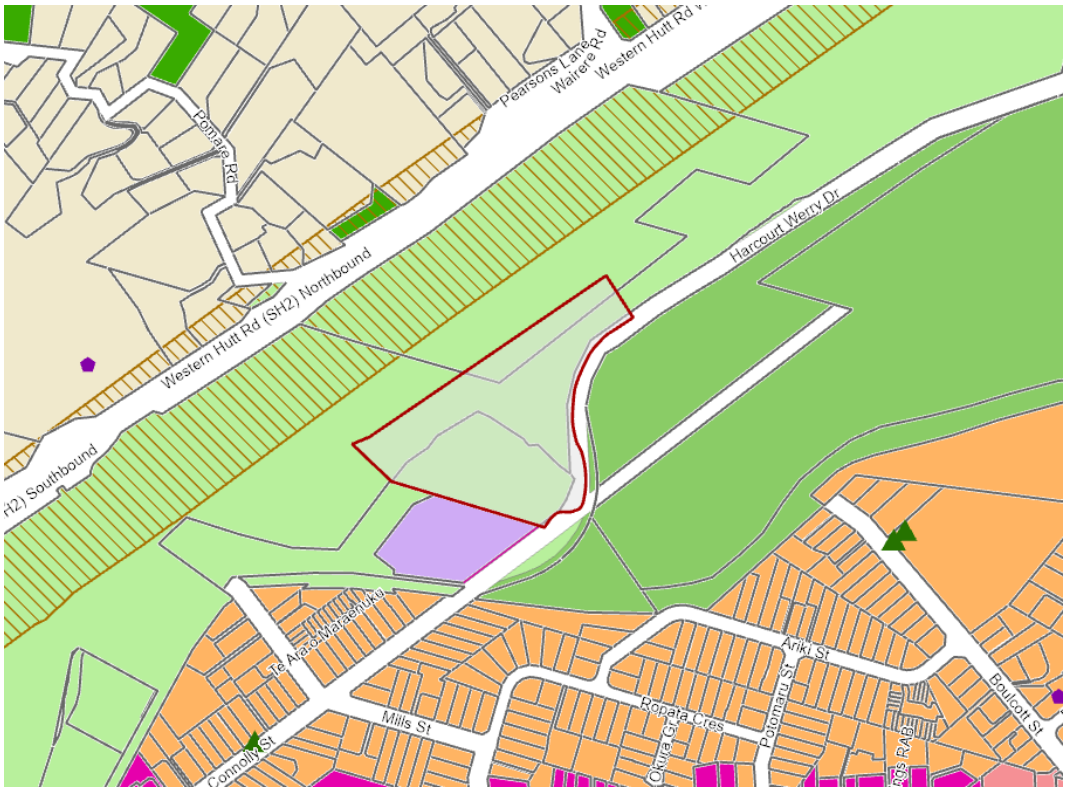


Proposed Plan – Korokoro Urupā (see Schedule 6, page 4)

Maraenuku Pā (Category 2)

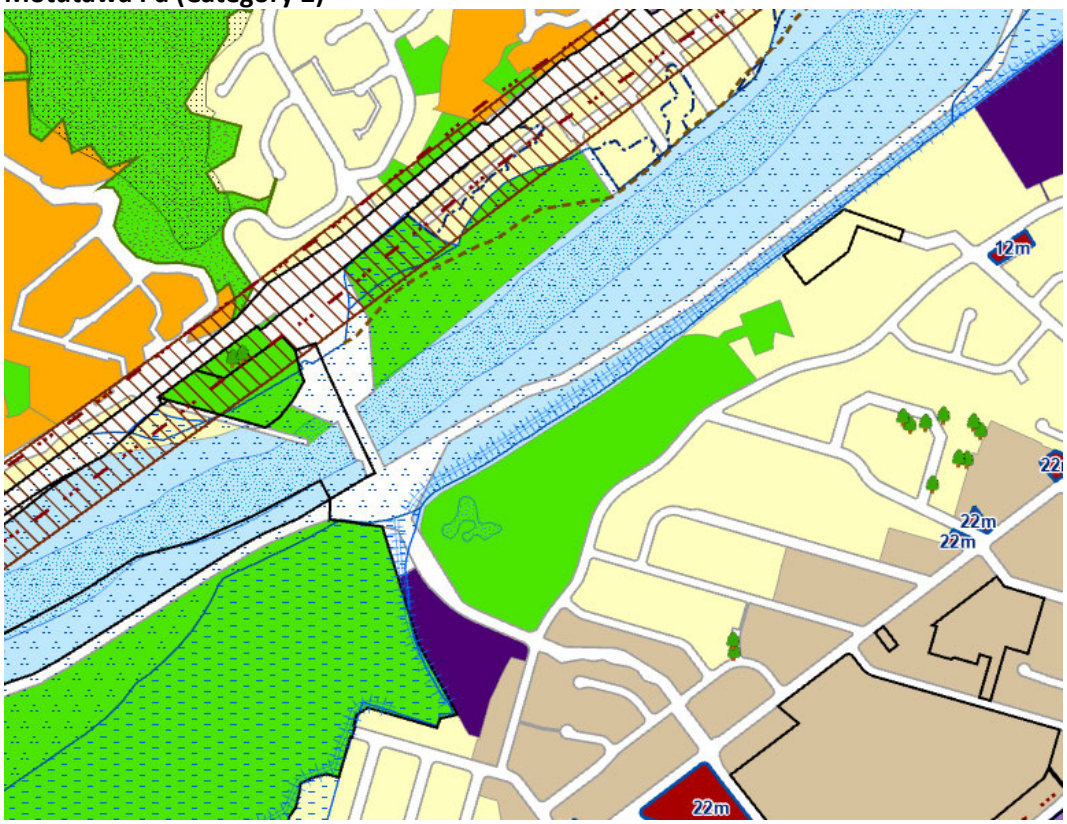


Operative Plan- Connolly Street (see Appendix 14E, Sites of Significance to Māori no. 1)



Proposed Plan – Maraenuku Pā (see Schedule 6, page 4)

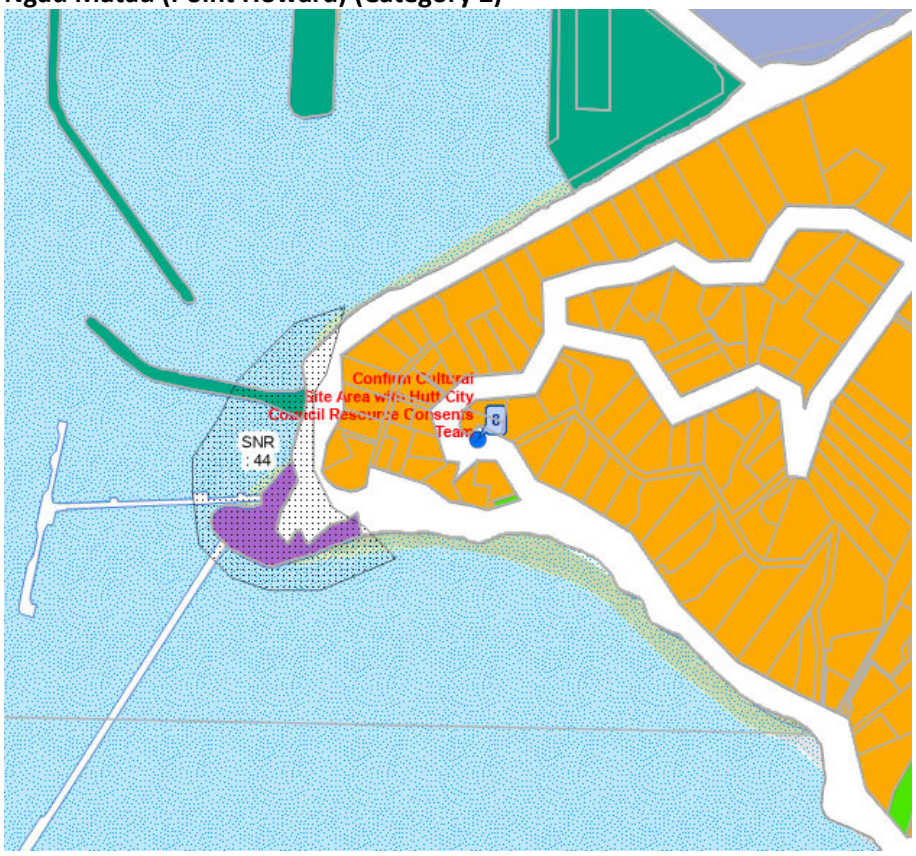
Motutawa Pā (Category 2)



No site under Operative Plan

Proposed Plan – Motutawa Pā (see Schedule 6, page 4)

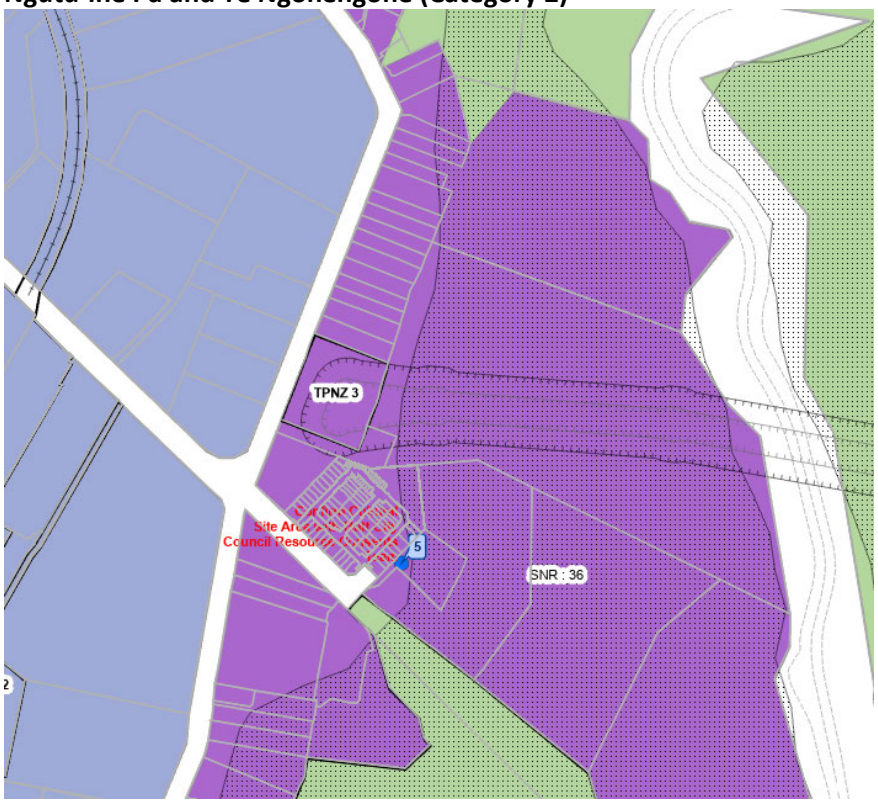
Ngau Matau (Point Howard) (Category 2)



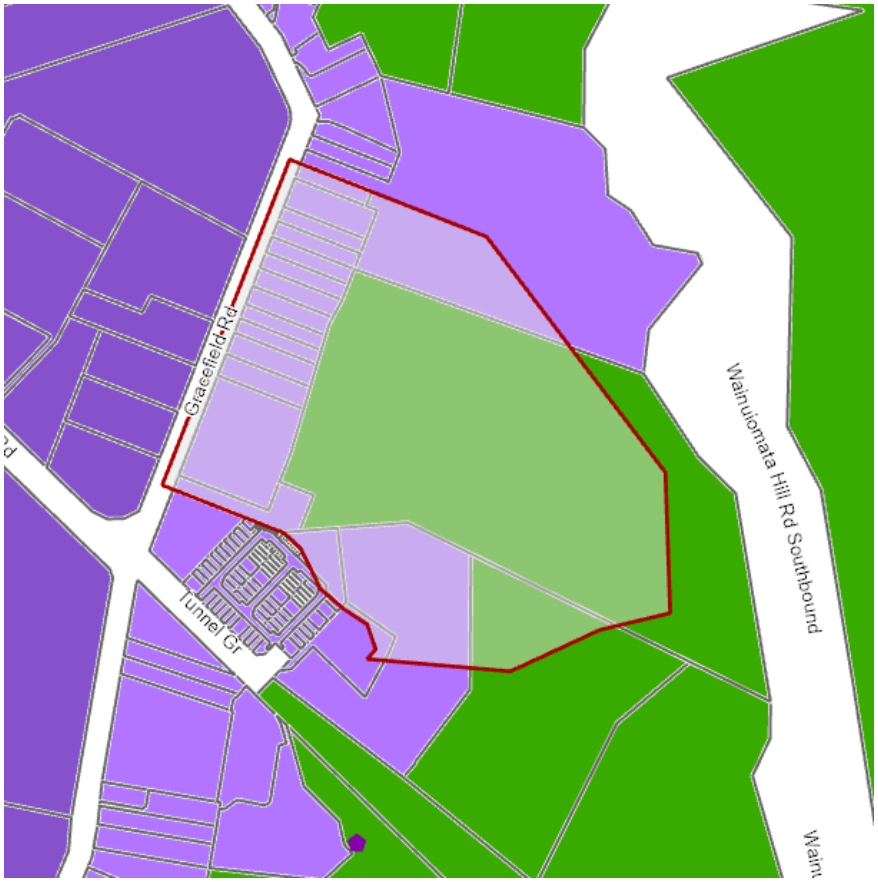
Operative Plan- Lowry Bay (Whio-rau) & York Bay (see Appendix 14E, Sites of Significance to Māori no. 8)

Proposed Plan – Ngau Matau (Point Howard) (see Schedule 6, page 5)

Ngutu-ihe Pā and Te Ngohengohe (Category 2)



Operative Plan- Hutt Park Road & Gracefield Road (see Appendix 14E, Sites of Significance to Māori no. 5)



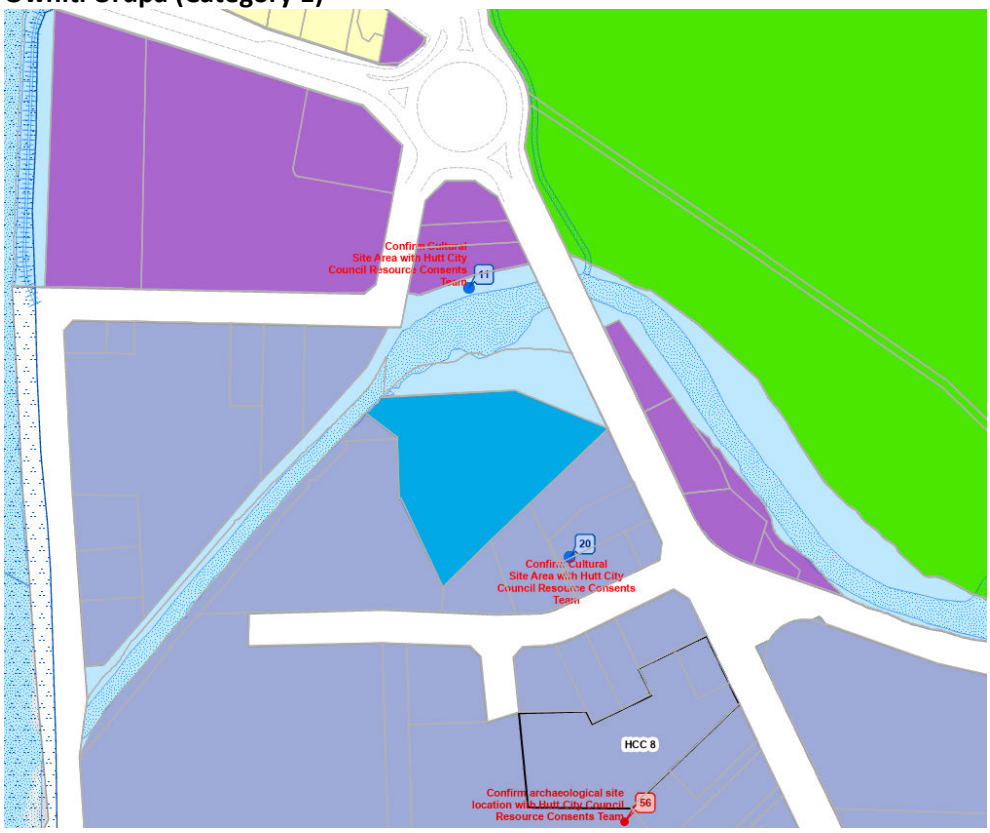
Proposed Plan – Ngutu-ihe Pā and Te Ngohengohe (see Schedule 6, page 5)

Ōruamātoro Pā (Category 2)

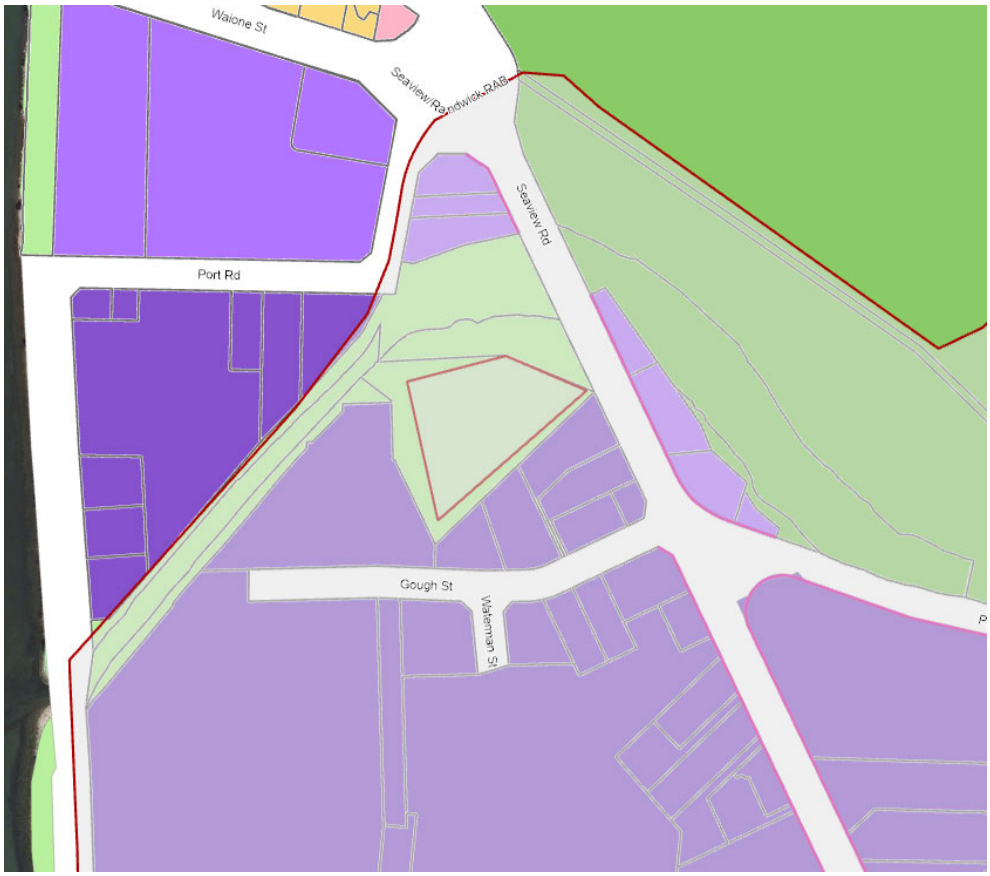
Operative Plan – Days Bay (Oruamatoro) (see Appendix 14E, Sites of Significance to Māori Culture no. 2 and 3)

Proposed Plan – Oruamatoro Pa (see Schedule 6, page 5)

Owhiti Urupā (Category 1)

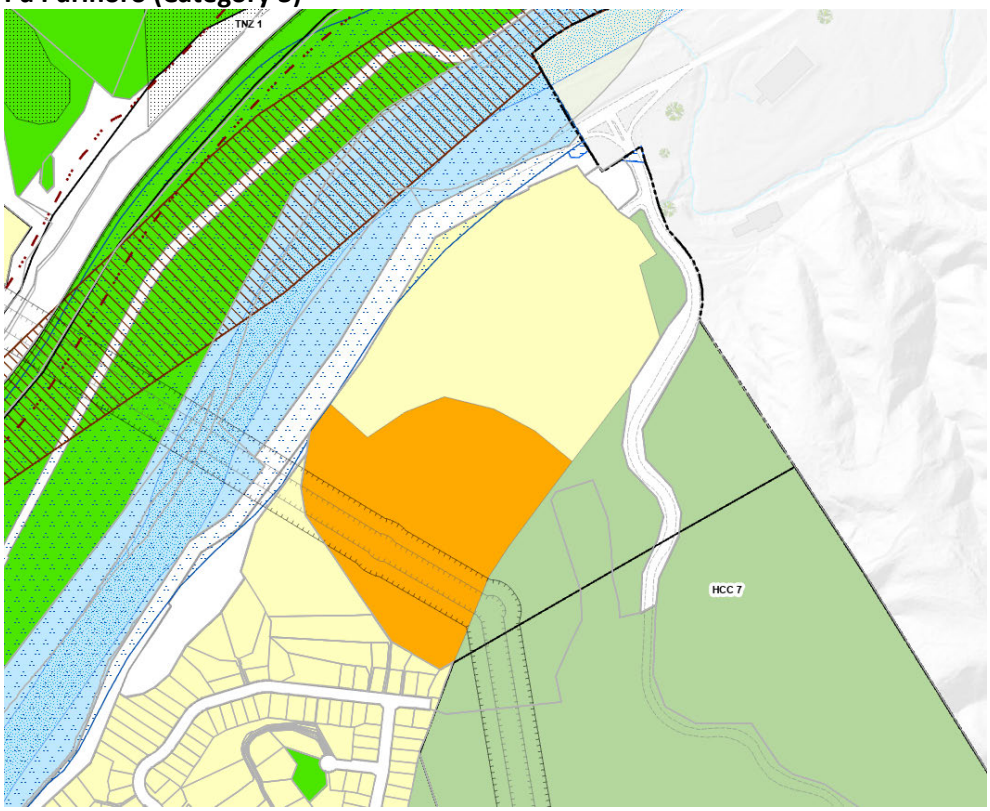


Operative Plan – Seaview Road (see Appendix 14E, Sites of Significance to Māori Culture no. 11)

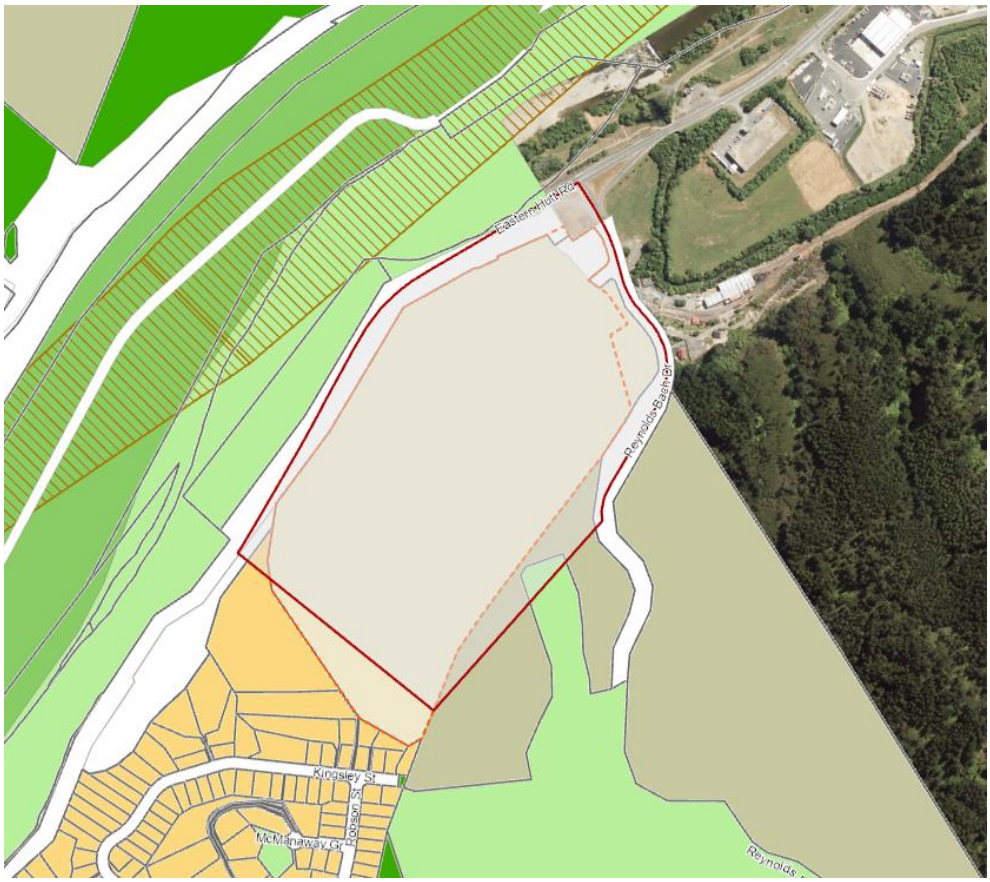


Proposed Plan- Owhiti Urupā (see Schedule 6, page 4)

Pā Parihoro (Category 3)

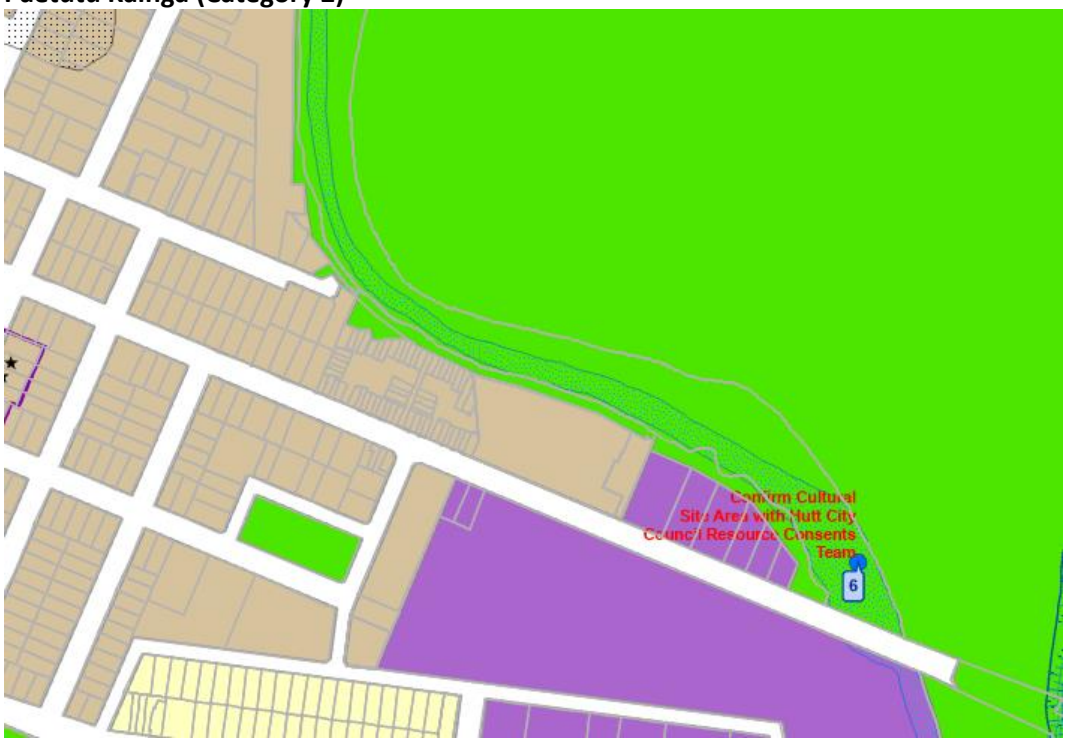


No site under Operative Plan

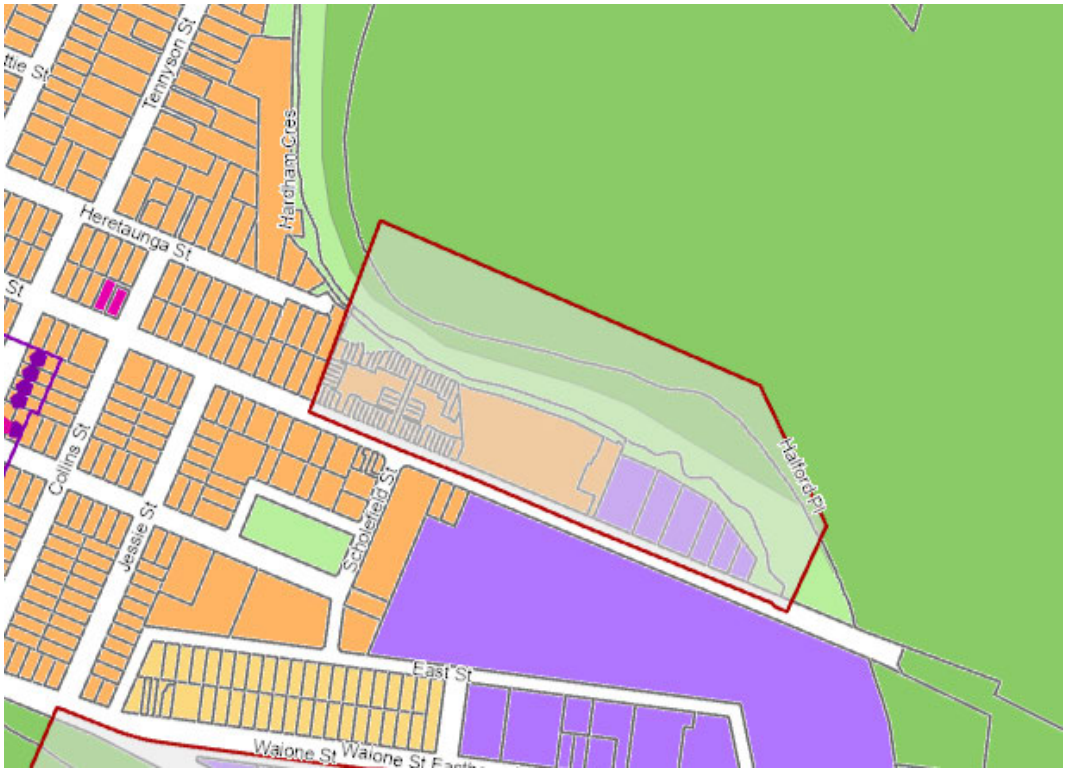


Proposed Plan – Pā Parihoro (see Schedule 6, page 5)

Paetutu Kainga (Category 2)

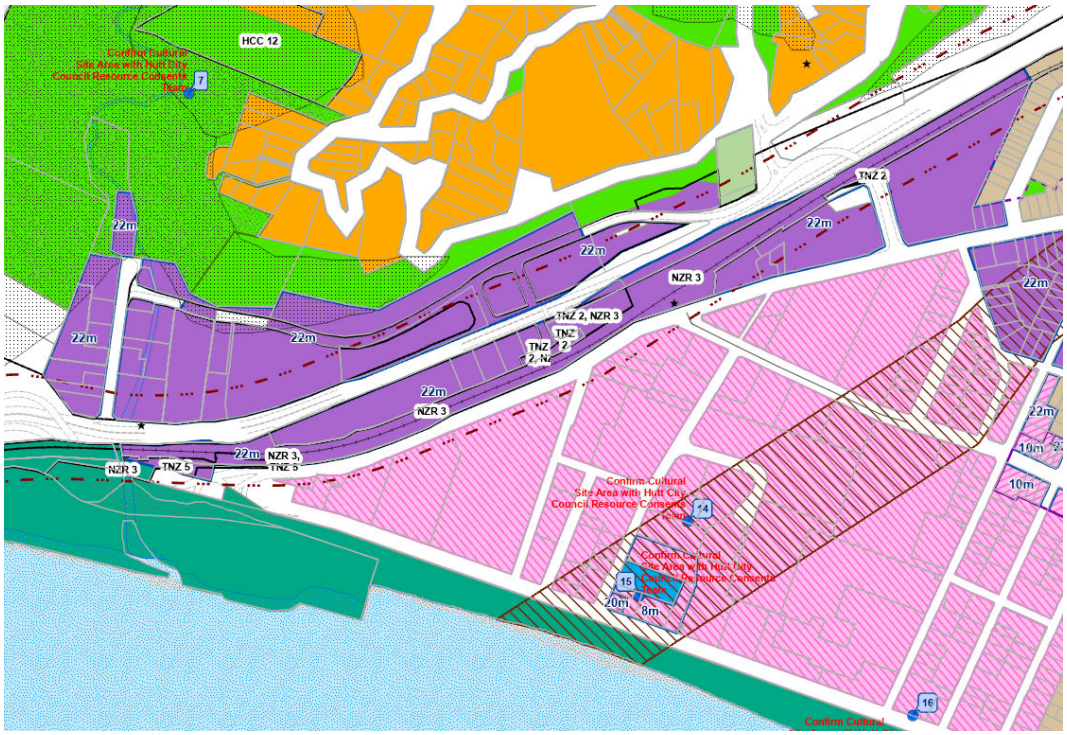


Operative Plan – Jackson Street (eastern end) (see Appendix 14E, Sites of Significance to Māori Culture no. 6)



Proposed Plan – Paetutu Kainga (see Schedule 6, page 4)

Pito One Precinct (Category 2) (includes Pito One Pā, Pito One Pā (II), Te Puni Urupā, and Honiana Te Puni reserve)

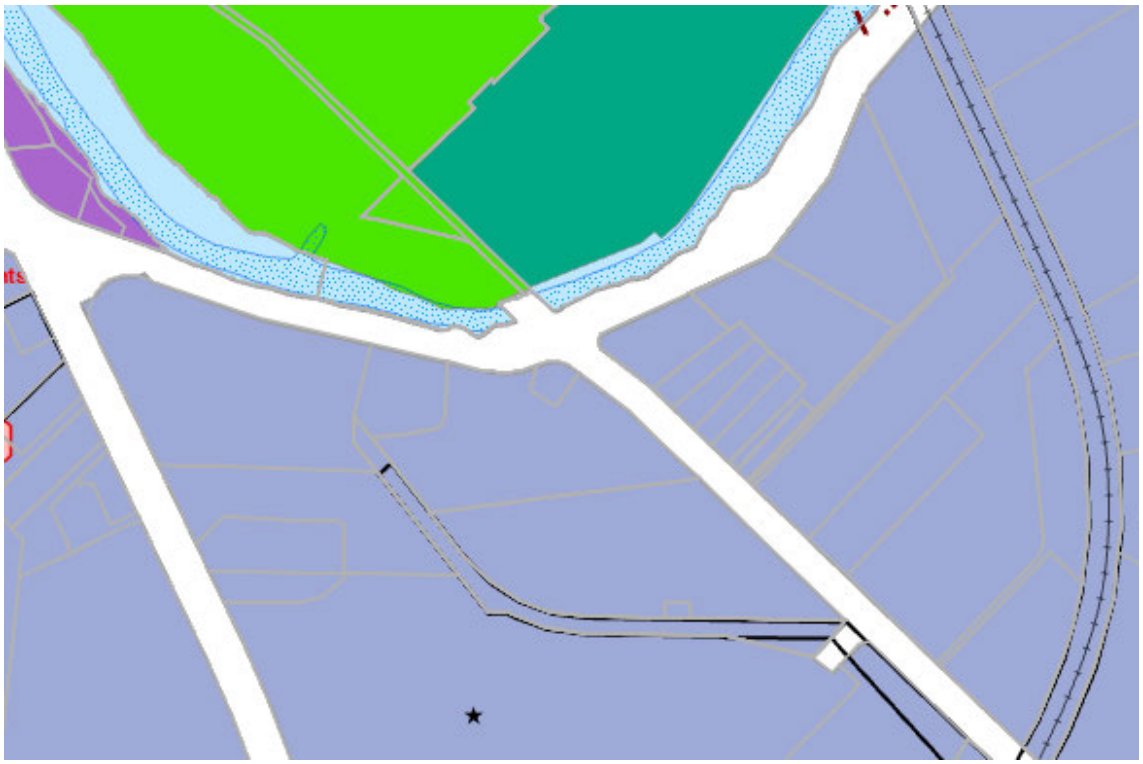


Operative Plan- Te Puni Street (see Appendix 14E, Sites of Significance to Māori Culture no. 14-17)

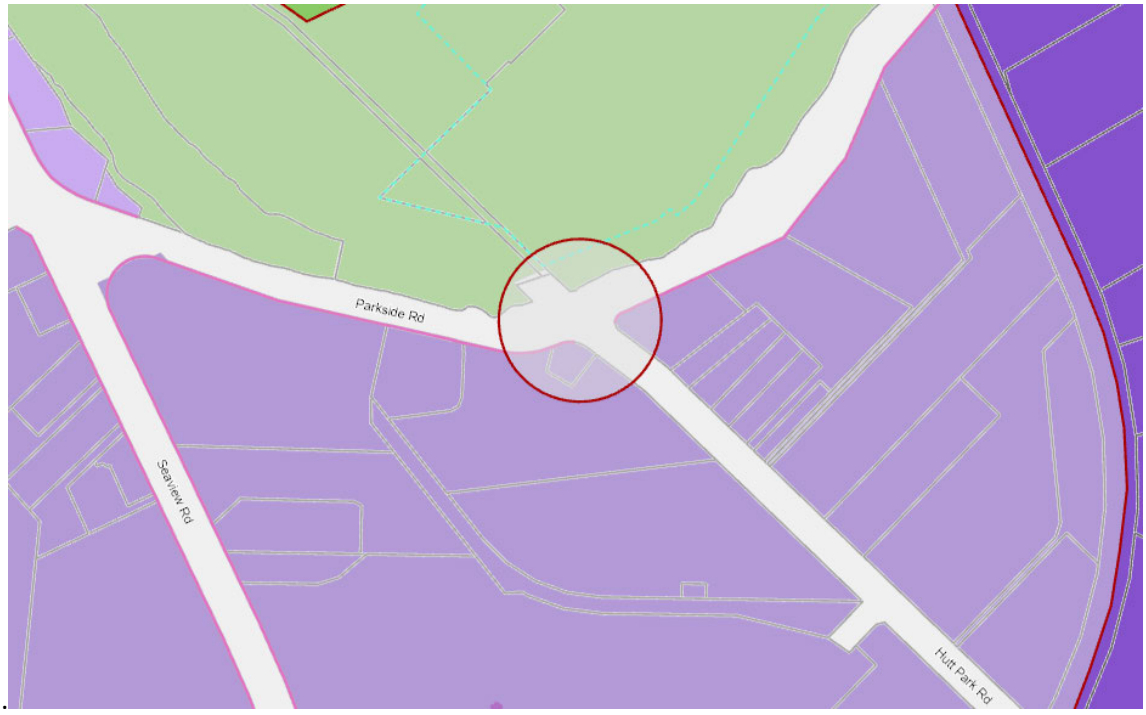
Proposed Plan- Pito One Precinct (see Schedule 6, page 1)[80]

[80] Note – the Pito-One Precinct SASM is the overlay covering Petone from Victoria Street in the east to Connolly Street/the Hutt motorway in the west, and from the Petone foreshore in the south and terminating in the triangular pattern in the north. As can be seen, this overlay includes other sites. The sites toward the top of the map are separate sites in Korokoro.

Pūhara-keke-tapu (Category 3)

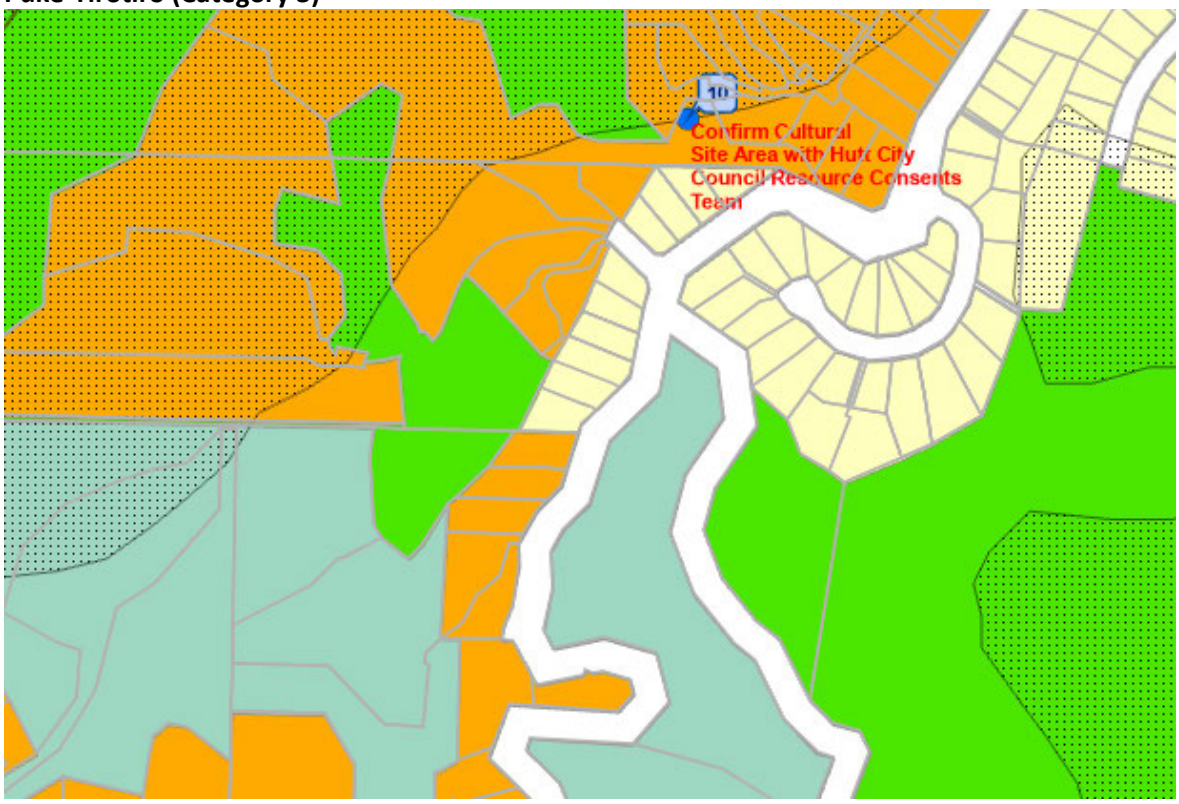


No site under Operative Plan

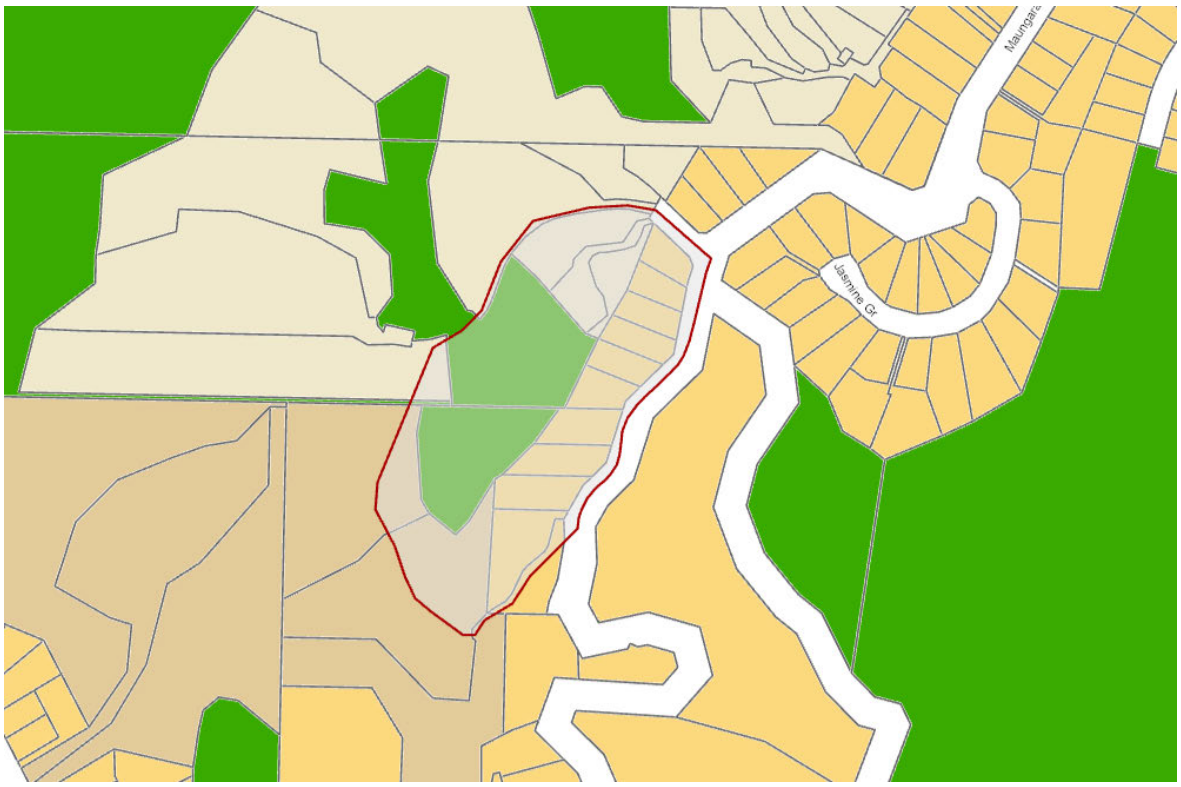


Proposed Plan – Pūhara-keke-tapu (see Schedule 6, page 4)

Puke-Tirotiro (Category 3)

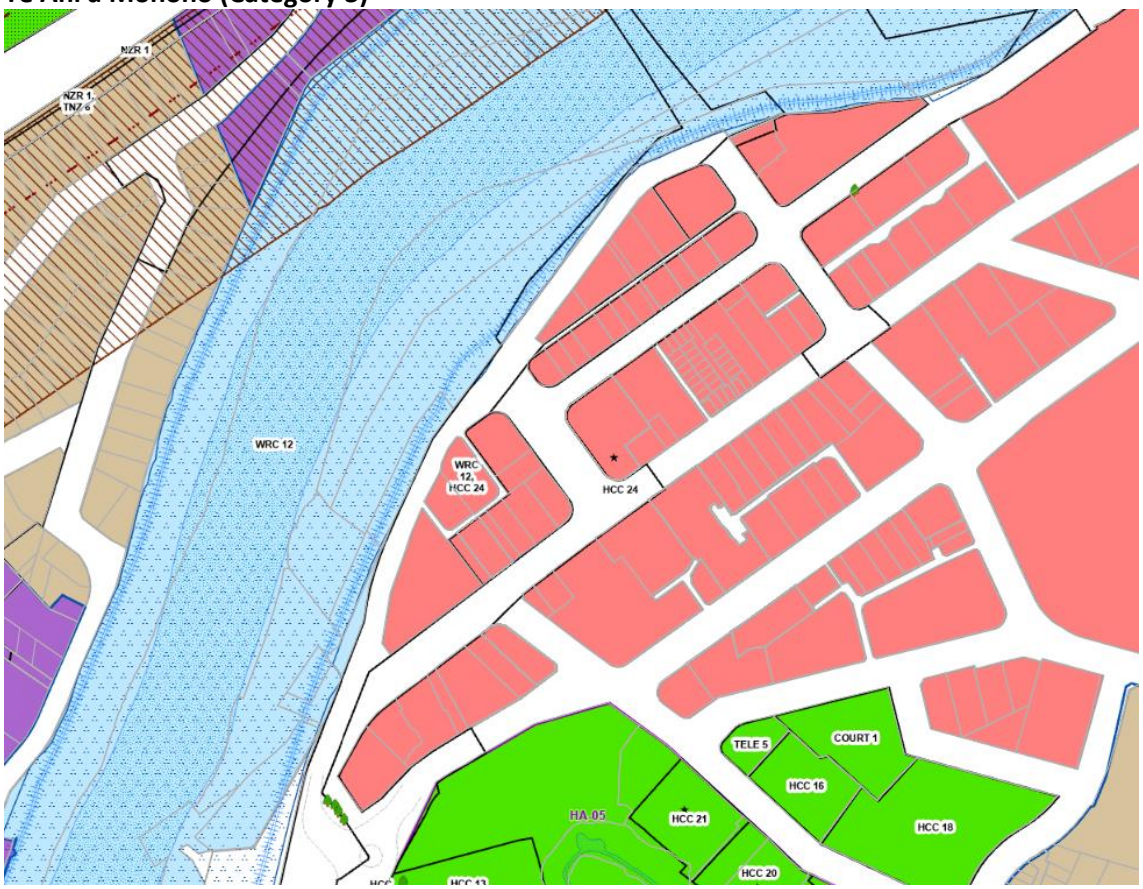


Operative Plan – Puketirotiro Peak (see Appendix 14E, Sites of Significance to Māori Culture no. 10)

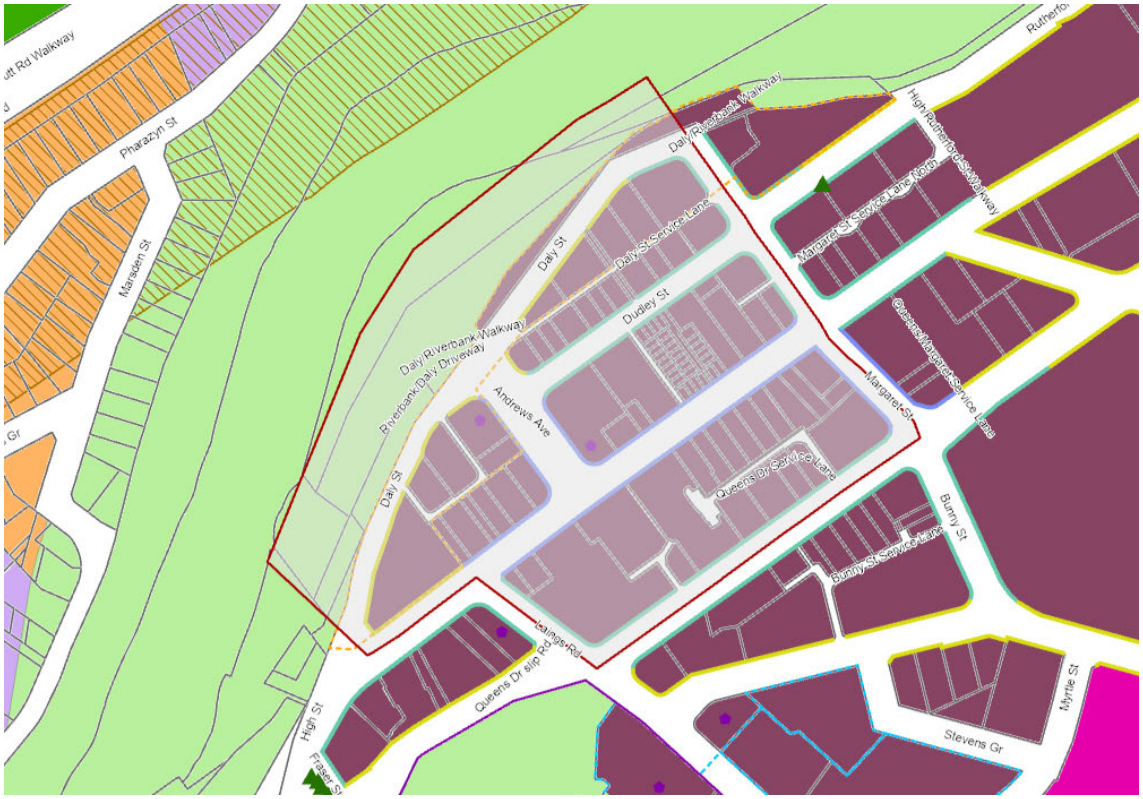


Proposed Plan – Puke-Tirotiro (see Schedule 6, page 6)

Te Ahi a Monono (Category 3)

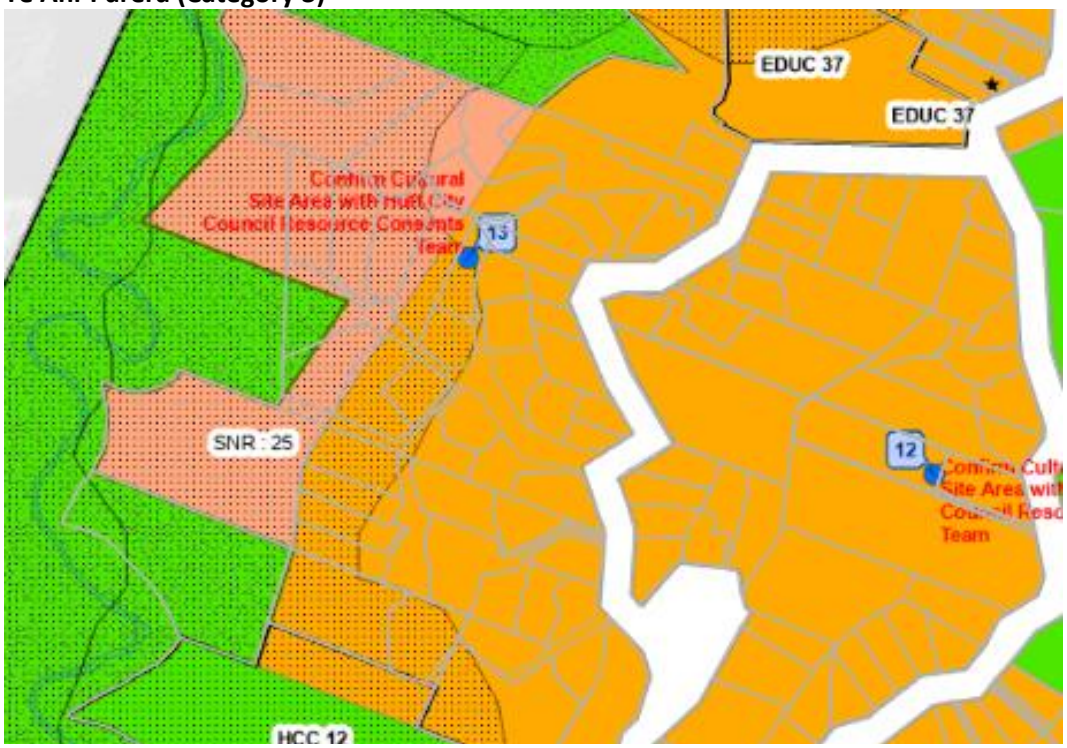


No site under Operative Plan



Proposed Plan – Te Ahi a Manono (see Schedule 6, page 5)

Te Ahi-Parera (Category 3)



Operative Plan – Singers Road (see Appendix 14E, Sites of Significance to Māori Culture no. 12)

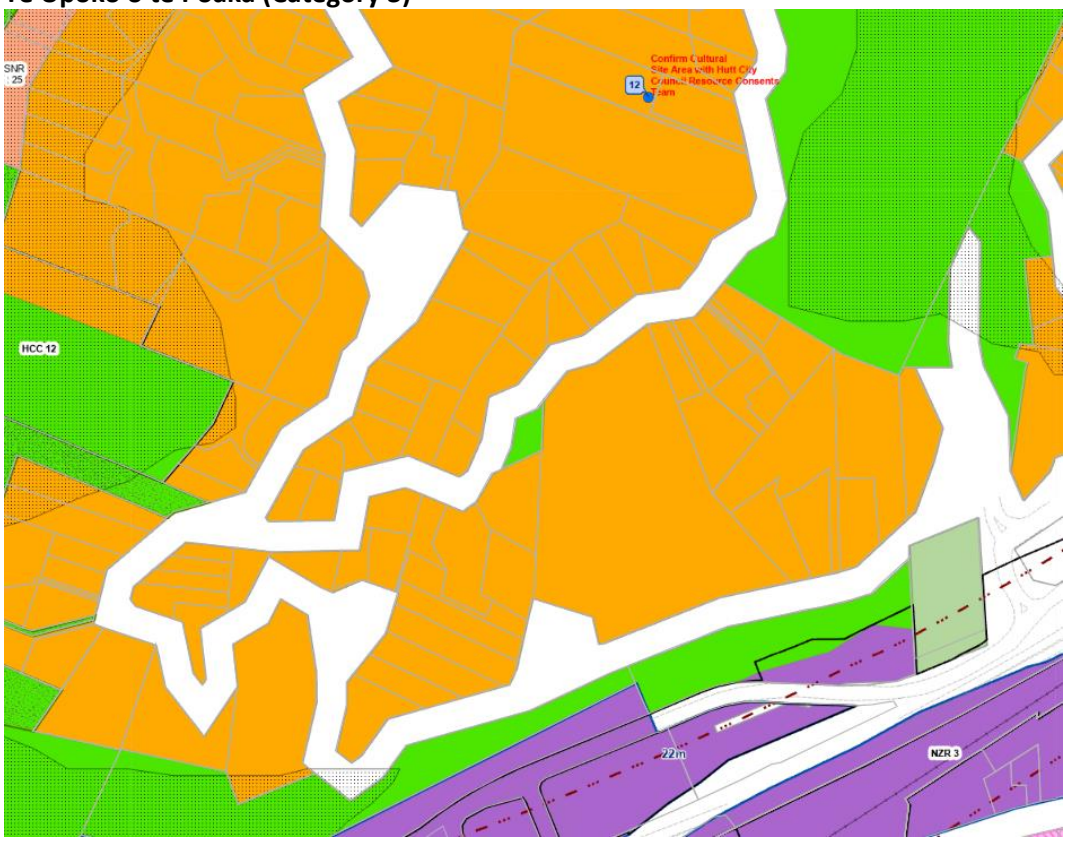
Proposed Plan – Te Ahi-Parera (see Schedule 6, page 5)

Te Mako (Category 2)

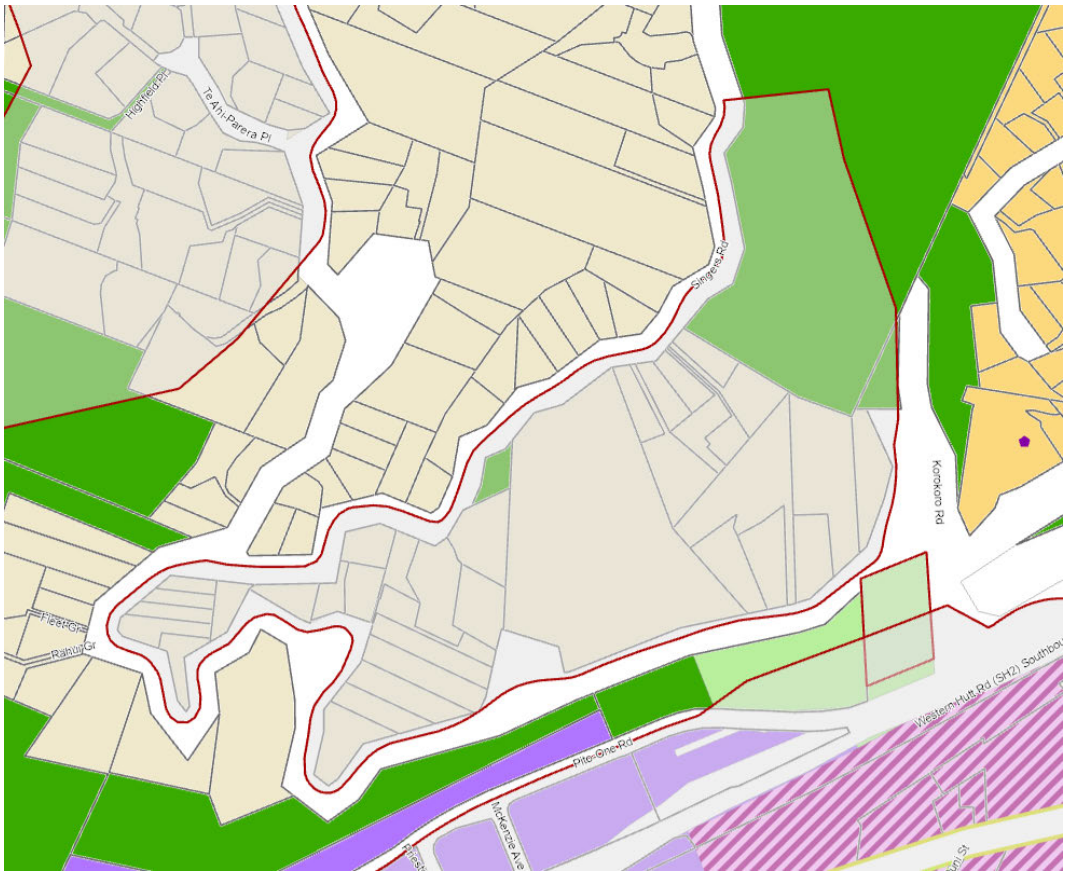
No site under Operative Plan

Proposed Plan- Te Mako, (see Schedule 6, page 5)

Te Upoko o te Poaka (Category 3)

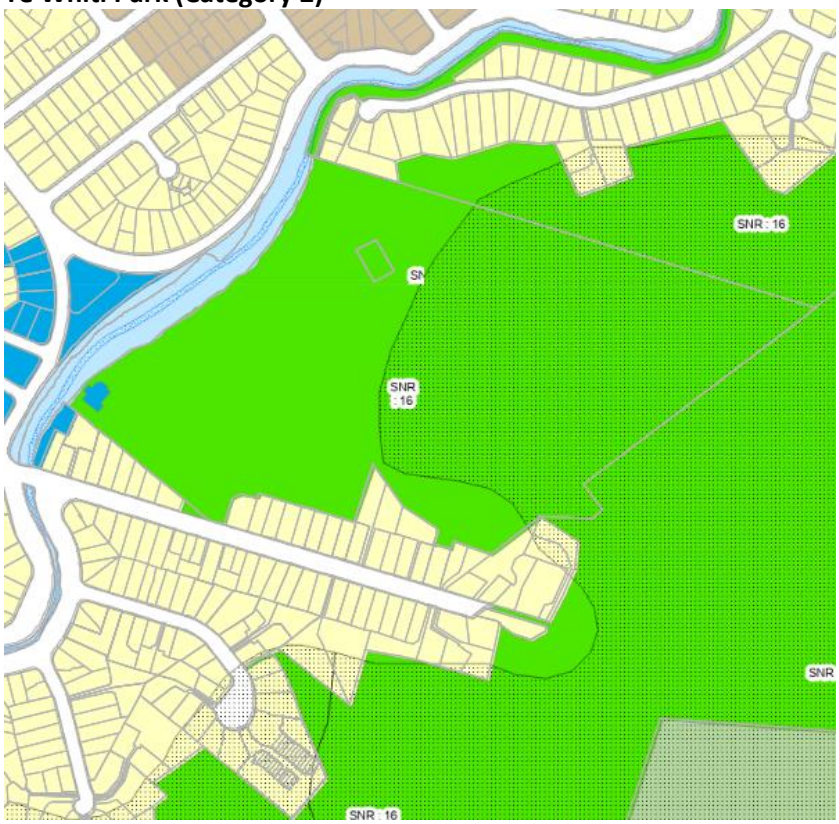


Operative Plan – Singers Road (see Appendix 14E, Sites of Significance to Māori Culture no. 13)

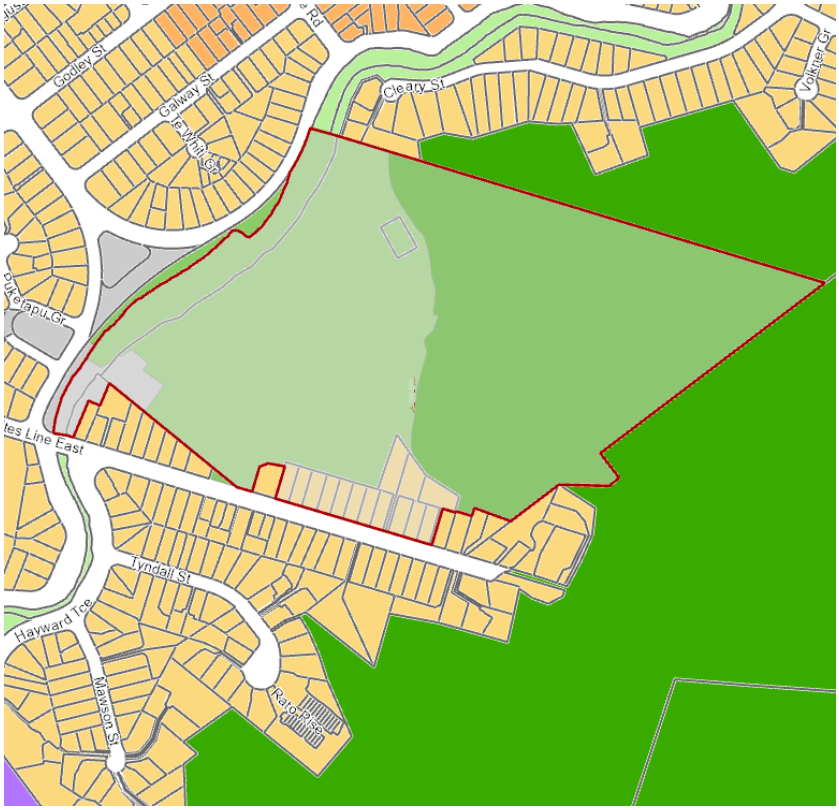


Proposed Plan – Te Upoko o te Poaka (see Schedule 6, page 5)

Te Whiti Park (Category 2)

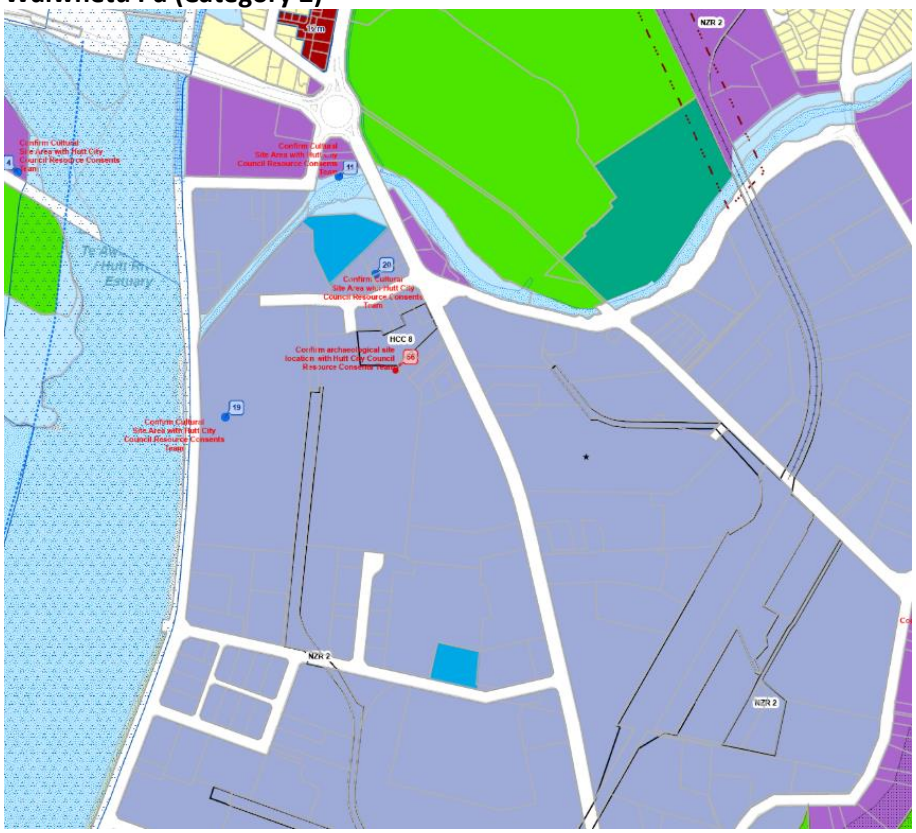


No site under Operative Plan



Proposed Plan – Te Whiti Park (see Schedule 6, page 4)

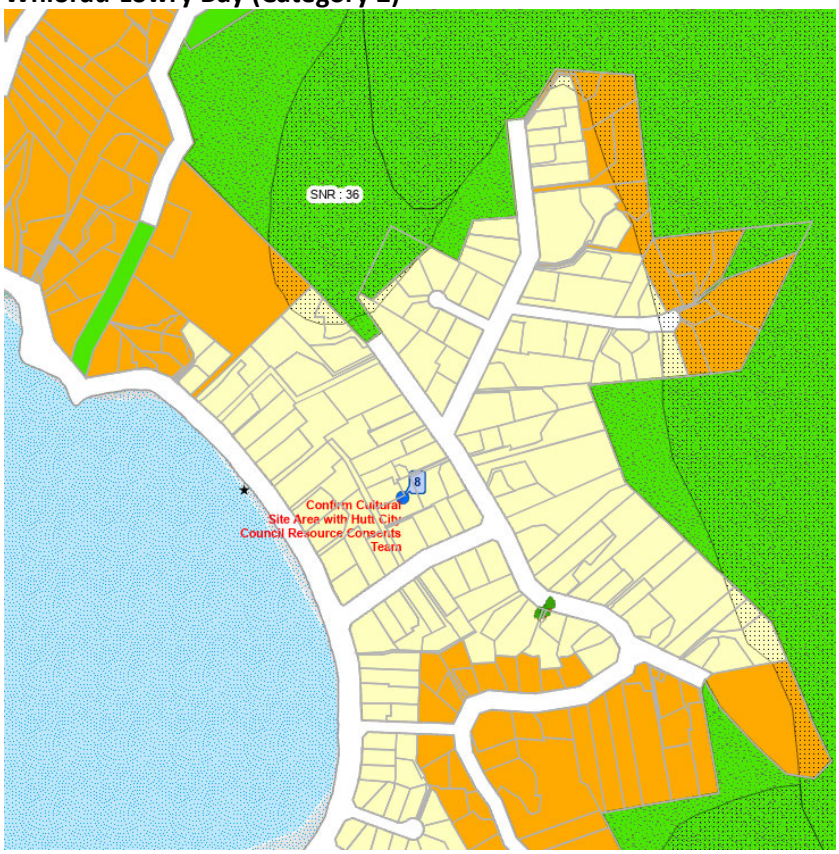
Waiwhetū Pā (Category 2)



Operative Plan- Waiwhetū Stream (see Appendix 14E, Sites of Significance to Māori no 19-20)

Proposed Plan- Waiwhetū Pā (see Schedule 6, page 6)

Whiorau-Lowry Bay (Category 2)



Operative Plan – Lowry Bay (Whio-rau) and York Bay (see Appendix 14E),

Proposed Plan – Whiorau-Lowry Bay (see Schedule 6, page 5)

APPENDIX 3 – RECORDS RELATING TO 172 WHITE LINES EAST

RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD

Search Copy

R.W. Muir
Registrar-General
of Land

Identifier **552360**
Land Registration District **Wellington**
Date Issued 28 June 2011

Prior References
WN48D/591

Estate Fee Simple
Area 941 square metres more or less
Legal Description Lot 1 Deposited Plan 442626
Registered Owners
Waiwhetu Papakainga Housing Limited

Interests

8767289.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 28.6.2011 at 2:47 pm

Subject to a right (in gross) to drain water over part marked A on DP 442626 in favour of Hutt City Council created by Easement Instrument 8767289.3 - 28.6.2011 at 2:47 pm

The easements created by Easement Instrument 8767289.3 are subject to Section 243 (a) Resource Management Act 1991

Fencing Covenant in Transfer 8850752.2 - 30.8.2011 at 1:45 pm

9070432.2 Mortgage to ANZ National Bank Limited - 28.6.2012 at 4:35 pm

NEW ZEALAND COMPANIES OFFICE COMPANIES REGISTER

Company Extract

WAIWHETU PAPAKAINGA HOUSING LIMITED

3066389

NZBN: 9429031417358

Entity Type:	NZ Limited Company
Incorporated:	24 Aug 2010
Current Status:	Registered
Constitution Filed:	Yes
Annual Return Filing Month:	September
Ultimate holding company:	No

Company Addresses

Registered Office
21 Puketapu Grove, Waiwhetu, Lower Hutt, 5010, NZ

Address for Service
21 Puketapu Grove, Waiwhetu, Lower Hutt, 5010, NZ

Directors

LUKE, Karoraina Hina
4 Atiawa Crescent, Waiwhetu, Lower Hutt, 5010, NZ

RERITI, Konga Henare
Flat 3, 154 Whites Line, Waiwhetu, Lower Hutt, 5010, NZ

Shareholdings

Total Number of Shares:	100
Extensive Shareholdings:	No

100	CC31936 Arohanui Ki Te Tangata Marae 21 Puketapu Grove, Waiwhetu, Lower Hutt, 5010, NZ

For further details relating to this company, check https://app.companiesoffice.govt.nz/co/3066389
Extract generated 29 April 2025 05:24 PM NZST