

IN THE MATTER OF:

Sections 104, 104B and 108 of the Resource Management Act 1991

AND

IN THE MATTER OF:

A resource consent application made by Urban Perspectives Ltd on behalf of Summerset Group at 10, 12 and 14 Hathaway Avenue, Lower Hutt, to construct three residential buildings at 10-14 Hathaway Avenue, each building to contain 2 dwelling units, and undertake associated earthworks at the above address.

(Lots 6, 7 and 8 DP 9877 (WN473/13))

Council Reference RM 140140

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1 THE DECISION

- 1.1 In accordance with a delegation by Hutt City Council (HCC), pursuant to the provisions of Section 34 of the Resource Management Act 1991, as there were not less than three members present, the Hearings Subcommittee had power to act in determination of the following proceedings. The following resolution represents Council's decision on the resource consent application.
- 1.2 That the Hearings Subcommittee, acting under delegated authority from Council and pursuant to section 104B of the Resource Management Act 1991, **DECLINES CONSENT**, to the resource consent application made by Urban Perspectives Ltd on behalf of Summerset Group Holdings Ltd for the establishment of three residential buildings containing a total of six dwelling units on land at numbers 10 to 14 Hathaway Avenue, Lower Hutt (being Lots 6, 7 and 8 DP 9877 comprised in computer freehold register WN473/13) for the reasons explained throughout this decision and summarised in Part 20 below.

2 THE APPLICATION

- 2.1 Full details of the proposal are contained in the Section 42A report and in the application.
- 2.2 In summary, Summerset Group Holdings Ltd proposes to construct three residential buildings on a site in Hathaway Avenue. Each building is to house two self-contained dwelling units. The site comprises Lots 6, 7 and 8 DP 9877 in a single computer freehold register WN473/13. Lots 6, 7 and 8 were part of a twenty-lot subdivision deposited in 1930, and these three allotments were bought as one entity by the Hutt Golf Club in 1939. Currently the site is an asphalted carpark for use primarily by patrons of the Boulcott's Farm Heritage Golf Club Inc. The site is within the Special Residential Activity Area ("SRAA") and the surrounding residential development (to the west, south and east) is also in this activity area. The Boulcott's Farm Heritage Golf Club to the rear (north) is within the General Recreation Activity Area.

3 SUBMISSIONS

- 3.1 The application was publicly notified on 25 November 2014. Submissions closed on 23 January 2015. We were informed that this extended submission period of 28 working days for submissions was agreed with the applicant provided that the Hearing commenced earlier than the statutory limit of 25 working days after the close of submissions. The Hearing, which commenced on 13 February 2015, occurred earlier than the statutory limit.
- 3.2 A total of forty one (41) submissions were received, with 39 in opposition, one in support and one was neutral.
- 3.3 We record that we read all the submissions in full prior to the Hearing and had regard to them all as part of our evaluation of the application.
- 3.4 We note that the submission from Powerco was neutral but requested the imposition of conditions to protect its underground gas transmission assets beneath the site. Powerco's planning consultant supplied a written statement to the Hearing which confirmed the wording of the condition that the company considered should be imposed (to assure the safety of its underground assets) if consent were granted.

4 PROCEDURAL MATTERS

Late Submission

- 4.1 One opposing submission (number SRH14/34) was not filled out correctly. It was received before the closing date for submissions but provided no name or address. We understand that the submitter made contact with Council officers prior to the Hearing. Officers were therefore able to clarify the submitter's name and contact details but these were not received until after the closing date for submissions. The applicant's legal counsel (Mr Russell Bartlett, QC) confirmed at the Hearing that it had no objection to this late submission being received as valid. We are satisfied that no other party is adversely affected by acceptance of this late submission. Accordingly, we record our decision made at the Hearing that, pursuant to section 37A of the Resource Management Act 1991 (the RMA), the closing date for submissions is extended to allow the submission by Mr B Jenness to be accepted as valid.

Relationship of This Application to Summerset's Plan Change Request

- 4.2 A number of submissions expressed the view that this application should be considered in conjunction with a requested District Plan change that is currently being processed by the Council. Ms Gina Sweetman (a planning consultant commissioned by the Council to prepare the section 42A report) clarified in her report that in September 2014 Summerset Villages (Lower Hutt) Ltd (a wholly owned subsidiary company of Summerset Group Holdings Ltd) applied to Council for a Private Plan Change, to rezone part of the Golf Club land at the rear of the Hathaway Avenue site, from General Recreation Activity Area to General Residential Activity Area. The private plan change request also seeks specific provisions to facilitate the development of a large scale retirement village on the land (subject to obtaining a resource consent). The private plan change request does not include the Hathaway Avenue land that is the subject of this application for land use consent. The Council resolved on 28 January 2015 pursuant to clause 25 of the First Schedule of the Act to allow the plan change request to proceed to public notification.
- 4.3 Some submitters hold the view that the Council should pause the processing of this application for land use consent so that the private plan change process can 'catch up' and the two can be considered together. As a result of pre-hearing correspondence with submitters, the Council sought advice about the applicability of section 91 of the RMA in respect of this matter. Section 91 provides that a consent authority may determine not to proceed with the notification or hearing of an application for a resource consent if (in summary) it considers that other resource consents are required for the activity applied for and that it is appropriate, for the purpose of better understanding the nature of the proposal, that all required resource consents be applied for and heard together. As is explained in Ms Sweetman's report, the philosophy behind section 91 is that good resource management practice requires all resource consents for a project to be identified at the outset and applications should be made for them so they can be considered together.
- 4.4 Ms Sweetman noted that section 91 refers only to '*other resource consents*' and does not refer to private plan change requests. Ms Sweetman acknowledged that Summerset would be required to obtain a resource consent for the ultimate development of the land that is the subject of the private plan change request. However, the District Plan

provisions under which that consent would be made have not yet been confirmed and no such application has been made. Ms Sweetman stated in her section 42A report that the Council had to consider whether this current application for land use consent is sufficiently severable from what she referred to as the *'overall proposal'* to be processed independently. Her conclusion was that this application for land use consent does not rely on the retirement village development on the adjoining land in order to proceed. We are satisfied, based on the evidence heard, that that is indeed the case.

- 4.5 Our view is that the more relevant matter is that section 91 is concerned only with the application for consent that has been applied for. In this case, there is only one – and that is application RM140140 for 6 residential units on the Hathaway Avenue land. In this respect, there is no *'overall proposal'* – only the land use consent applied for. Section 91 requires consideration of what other resource consents are required *in respect of the proposal to which the land use application relates* and only in relation to that application. The unrefuted evidence is that no other resource consents are required to enable the proposal for 6 residential units to proceed. Our conclusion is that the Council was correct in not invoking section 91. The question under section 91 is not "is this developer planning two related developments that might conveniently be considered together?". The question is "what other resource consents are required to enable development of this particular (6-unit) residential development?" The simple answer is 'none'. Section 91 therefore does not apply.
- 4.6 Our view is also that, once the hearing of an application has commenced, it is not open to the consent authority to invoke section 91. The only action available to the consent authority is to determine not to proceed with notification or with the hearing. Those two steps have passed for this application. It does not appear that it is open to this Panel to take any action under section 91 and we identify no reason to do so.
- 4.7 We concur with Ms Sweetman's conclusion that our task is to assess this application for land use consent, involving 6 proposed residential units, on its individual merits. Plans presented to the Hearing indicate the three proposed buildings (containing 6 residential units in total) are intended to be connected by pedestrian paths to a future retirement village on the adjoining land if that retirement village development proceeds. Our view is that it is not relevant to include the retirement village on the adjoining Golf Club land in our consideration of the future environment for the purposes of assessing this 6-unit residential development proposal. That is because the retirement village concept remains an aspiration for which no land use application has been made and the requested changes to district plan provisions have not completed their Schedule 1 process. The current District Plan provisions do not permit that development and, in our view, it cannot be considered to be reasonably foreseeable under the current operative District Plan provisions.

5 THE HEARING

- 5.1 The Hearing was held at the Wainuiomata Chambers, Wainuiomata Library, Queen Street, Wainuiomata on Friday 13 February 2015, Monday 16 February 2015 and Thursday 19 February 2015. We closed the Hearing on 27 February 2015 after receiving a copy of the Old People's Homes Regulations 1987 that we requested at the Hearing.
- 5.2 The following persons presented legal submissions and evidence to the Hearing.

For the Applicant:

Mr R Bartlett QC, Legal Counsel for the applicant
Mr Mark Georgesen, Consultant Traffic Engineer
Mr Alistair Aburn, Planning Consultant
Mr Martin Bryant, Urban Design Consultant
Mr Ian Munro, Urban Design Consultant

Submitter in Support:

Mr John Freer

Submitters in Opposition:

Mr Stephen O'Neill
Mr Brian & Mrs Carol Toomey
Dr Dennis Paige
Mr Brian Timmins
Mr Ray Tomlinson
Mr Gary Paddison
Mr Patrick Hussey
Mr Peter Mc Guinness
Mr Andrew Curran
Mr Ian McLauchlan
Mr Ian Gordon, Legal Counsel (representing Boulcott
Preservation Society Inc, Alison Hussey, Phil and Hayley Saxton,
Lance McClure, Rachel Jobson, Andrew Oakley, Michelle Walker)
Mr Lance McClure

For the Hutt City Council:

Ms Sarah Clarke, Acting Team Leader, Resource Consents
Ms Gina Sweetman, Consultant Planner
Mr Bill Barclay, Consultant Traffic Engineer
Mr Morten Gjerde, Consultant Urban Designer

- 5.3 A section 42A officer's report was prepared by Council's Consultant Planner, Ms Gina Sweetman. We were assisted in an administrative capacity by Mrs Heather Clegg, Hearings Administrator for HCC.
- 5.4 All of the material presented by the above parties is held on file at HCC. We took our own notes of the oral presentations and the answers to our questions. For the sake of brevity we have not produced that material verbatim in this decision. We do however refer to relevant matters raised in the material in subsequent parts of this decision.
- 5.5 We undertook a site visit on Wednesday 11 February 2015 and record that we were not accompanied on that site visit by the applicant, the submitters or officers.

6 REASON CONSENT IS REQUIRED

- 6.1 The appropriate planning instrument for assessing the proposed activity is the City of Lower Hutt District Plan (the District Plan). As noted earlier, the site is within the SRAA. The relevant rules are contained within Chapters 4B Special Residential, and 14I Earthworks.
- 6.2 The proposal breaches the following three permitted activity standards:
- Rule 4B2.1.1 (a) Net Site Area: the minimum required is 700m² per permitted activity (Rule 4B2.1 (a) permits 'dwelling houses' so we infer that each dwelling house requires 700m² net site area). 'Dwelling houses' are defined in the District Plan as '*a building or unit within a building providing self-contained residential accommodation*'. The net site area available for the 6 proposed dwelling houses ranges between¹ 225m² and 314m²;
 - Rule 4B2.1.1 (b) Site Coverage: maximum 30%. The proposed site coverage is between 30% and 45% depending on whether it is calculated per unit or as a proportion of the total site area (34.8%) or a proportion of each of the three allotments²;
 - Rule 14I2.1.1 (b) Maximum Volume of Earthworks per Site: the maximum permitted volume is 50m³ per site which the foundation earthworks are expected to exceed by an estimated 50m³.
- 6.3 In addition, Ms Sweetman considered that the proposal also fails to comply with the following rules in relation to what she referred to as the 'net site area boundaries' between the pairs of dwelling units:
- Rule 4A 2.1.1 (b) Yard Setback: a minimum 1-metre-wide yard is required between all dwelling houses and the boundary of the net site area;
 - Rule 4A 2.1.1 (c) Height Recession Plane: 2.5m + 45⁰ from all site boundaries.

¹ And we note the point made by Mr McLauchlan, a submitter, that the net site area excluding shared driveways is approximately 1,475m² suggesting average net site area of approximately 245m² per dwelling unit.

² Ms Sweetman included a table in paragraph 4.4 of her section 42A report that summarises the coverage calculations.

- 6.4 As we understand it, these two rules apply in respect of the site boundary. According to Ms Sweetman, the site is the entire site and the site boundary is the exterior site boundary. Accordingly these rules must apply to the external site boundary. Summerset does not propose to create subdivided site boundaries separating the six proposed dwellings. There is no reference in the District Plan to 'net site area boundaries' and we are not persuaded that the rules apply in the manner suggested by Ms Sweetman. Even if they did apply in that manner, that would not alter the activity status of the proposal.
- 6.5 The permitted activity non-compliances mean that the proposal has to be considered as a Discretionary Activity under Rule 4B2.3 (a).
- 6.6 A number of submitters commented at the Hearing that the application ought to be declined simply because it fails to comply with the permitted activity standards. However, that is not the intention of the RMA or the aim of this District Plan. Activities are not prohibited simply by virtue of non-compliance with permitted activity standards. The District Plan explicitly provides for (contemplates) activities that fail to comply with permitted activity standards as listed discretionary activities.
- 6.7 Some submitters questioned whether the application is genuinely residential in nature or whether it actually involves 'housing for the elderly'. Ms Sweetman clarified in her section 42A report that, if the applicant wished to later use the proposed buildings for the purpose of 'housing for the elderly', a separate consent would be required. Ms Sweetman drew our attention to the applicant's references to "future elderly residents" and the suitability of the proposed units in providing accommodation for elderly people from this neighbourhood.
- 6.8 Mr Bartlett clarified that the applicant's intention is that the dwelling houses are to accommodate older persons. However, those persons are expected to be able to care and cook for themselves in the same way as many older persons living in their own homes. The dwelling houses are not intended to be occupied by frail aged people who are reliant on retirement village services such as nursing services, personal cares, meal preparation, cleaning and laundry services, recreational or any kind of communal services or on-call staff provided by a single provider (such as Summerset). Mr Bartlett stated that the proposed dwelling houses are not intended to be operated as a rest home for the elderly but will be self-contained household units albeit occupied by older people in their retirement years. In this respect, he clarified, there would be nothing to distinguish the dwelling houses from other dwellings in the neighbourhood.
- 6.9 The application states that the proposal is a residential development and the proposal falls within the District Plan definition of 'dwelling houses'. The consent status of the proposal was assessed by the applicant and Ms Sweetman based on the permitted activity standards applicable to dwelling houses. As noted above, the proposal fails three of those permitted activity standards and, therefore, falls to be considered as a discretionary activity under Rule 4B 2.3(a).
- 6.10 'Housing for the elderly' is explicitly provided for as a discretionary activity only in the Special Residential Activity Area (under Rule 4B 2.3 (e)) and is defined in the District Plan as:

'a building or part of a building used as a home under the Old People's Homes Regulations 1987 or any Regulations in substitution thereof. It includes old people's

homes, rest homes, pensioner housing developments, retirement villages and associated ancillary facilities such as medical, recreational and other communal facilities which offer an exclusive service to the residents of the Home for the Elderly.'

- 6.11 We requested and were supplied with a copy of the Old People's Homes Regulations 1987 which clarify that the Regulations apply to 'homes' defined as:

'any premises where 3 or more persons who have attained the age of 65 years and are not related by blood or marriage to the householders are, or are to be, in residence and paying for their lodging and for 1 or more meals a day, being any premises that are, or purport to be, conducted principally for aged-frail persons.....'

- 6.12 We are satisfied that the proposal does not fall within the definition of 'housing for the elderly' even if the proposed dwellings are to be occupied by people over the age of 65.
- 6.13 Our assessment has been on the basis that the application is for 6 dwelling houses in three residential buildings that fail to comply with some SRAA permitted activity standards.

7 STATUTORY PROVISIONS

- 7.1 Section 104B of the RMA provides that:

"104B Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108."*

- 7.2 Section 104 sets out the matters to which we must have regard in considering the application and the submissions received.

- 7.3 For this application, the relevant section 104 matters are as follows:

- * Any actual and potential effects on the environment of allowing the activity;
- * The relevant provisions of the operative Regional Policy Statement;
- * The relevant objectives, policies and rules of the operative District Plan;
- * All of which are subject to Part 2 of the Act.

Relevance of the Design Guide for Medium Density Housing

- 7.4 The Urban Designers advising the applicant and HCC referred us to the Design Guide for Medium Density Housing contained in Appendix 19 to the General Residential Activity Area. They had undertaken assessments of the proposal in terms of the Design Guide's provisions. Mr Ian Gordon, Legal Counsel representing a number of submitters, did not consider that the Design Guide is relevant for this proposal within the SRAA. The Design Guide was inserted by Plan Change 12 which affected only the General Residential Activity Area and it explicitly applies only in respect of that Activity Area. This is clarified by an overlay notation on the planning maps indicating the areas within which medium density residential development is specifically provided for. We agree with Mr Gordon that the

Design Guide is not directly applicable to multi-unit residential development in the SRAA. We do not consider, either, that it is particularly relevant for the purposes of considering the particular amenity values and policy outcomes sought for the SRAA where low density (as opposed to 'medium density') is the explicit policy intention.

Permitted Baseline

7.5 Ms Sweetman referred us to section 104(2) of the RMA which states:

"...when forming an opinion for the purpose of subsection 1(a), a consent authority may disregard an adverse effect of the activity on the environment if [a national environmental standard or] the plan permits an activity with that effect."

7.6 This is commonly referred to as the 'permitted baseline'. Ms Sweetman explained that the permitted baseline for this application would be a development which complies with all the requirements of the District Plan, including the net site area, site coverage and earthworks provisions. She stated that a complying development would comprise a maximum of two dwellings on the overall site with a maximum of 30% site coverage. No party refuted Ms Sweetman's description of the permitted baseline and we accept that. We discuss the relevance of the underlying three-lot subdivision pattern and Policy 4B 1.2.1 later in this decision.

8 PRINCIPAL ISSUES IN CONTENTION

8.1 The principal issues that were in contention at the Hearing were:

- (a) Whether the assessment should be on the basis of the three underlying allotments or as a single site;
- (b) Potential effects on the special amenity values of this part of the SRAA;
- (c) Whether the resulting density would be compatible with this part of the SRAA;
- (d) Whether the proposal would undermine the District Plan's integrity and/or create a precedent for future similar multi-unit development in the SRAA;
- (e) The merits of a condition suggested by the applicant that would restrict numbers of residents per dwelling house;
- (f) Traffic impacts;
- (g) Earthworks and construction effects;
- (h) Concerns about the 'type' of person likely to be accommodated;
- (i) The adequacy of Summerset's consultation;
- (j) Impacts on property values in the Hathaway Avenue neighbourhood.

9 BASELINE FOR ASSESSMENT - SINGLE SITE OR THREE SITES?

9.1 As earlier noted, the site is part of the original 1930 subdivision that created the residential neighbourhood of Hathaway Avenue. Ms Sweetman's opinion was that, although there are three allotments within the computer freehold register (the 'title'), they are held together and form a single 'site' as defined in the District Plan. It was her opinion that separate titles for each of the three allotments cannot be issued because they each fail to comply with the current SRAA subdivision standards (in particular, they each have less than the minimum 700m² net site area). Ms Sweetman's opinion was that

a discretionary activity subdivision consent would be required in order to release each allotment separately. The total site area, comprising the three allotments, is 1709m².

- 9.2 In answer to our questions, the applicant tabled a letter from Mr Hudson Moody, Director – Surveying and Planning at Spencer Holmes (Engineers, Surveyors, Planners) which acknowledged that the three allotments collectively comprise a single ‘site’ as defined by the District Plan. However, the letter explains Mr Moody’s opinion that section 226 of the RMA could be used to obtain separate titles for each of the three allotments. Policy 4B 1.2.1 states that:

*4B 1.2.1 Building Height, Scale, Intensity and Location
Policies*

(a)

(f) *Where a certificate of title has been issued for a site prior to 5 December 1995, it is recognised that it is reasonable to permit the erection of buildings/structures (as contemplated when the title was issued or plan lodged) even though the maximum site coverage may exceed that set out in 4B 2.1.1(b). Under such circumstances the scale, intensity, visual attractiveness of buildings and/or structures as well as the adverse effects on the amenity values of adjoining properties, and the streetscape be taken into account in assessing the suitability of the development.*

Rule 4B 2.1.1 provides as follows:

4B 2.1.1 Permitted Activities – Conditions

All Permitted Activities shall comply with the conditions for Permitted Activities within the General Residential Activity Area, with the following exceptions:

(a) *Net Site Area:*

(i) *The minimum net site area per Permitted Activityshall be 700m².*

(ii) *Where a certificate of title has been issued for a site prior to 5 December 1995 or where a site has been created by a staged development whether under a stage unit plan or crosslease plan lodged with the District Land Registrar and where part of the development has been completed prior to 5 December 1995, and it can be established that the site has been created with an intention to accommodate a dwelling, then in such circumstances the area of the site shall be the minimum net site area.*

- 9.3 Mr Moody reasoned that Policy 4B 1.2.1 makes provision for sites created before 5 December 1995 and Rule 4B 2.1.1 recognises that the net site area of an existing site can be less than 700m². Therefore, in his view, under Rule 4B 2.1.1 the minimum required site area is the standard 700m² or the actual site area. Mr Moody applied this reasoning to each of the component allotments within the 'site'. On that basis, Mr Moody considered that the actual net site area of each component allotment could be considered to be compliant and that, therefore, a certificate pursuant to section 226 of the RMA could be issued (if requested by the landowner). Mr Moody also noted that treating the three allotments as individual sites would be consistent with the design outcome intended when DP9877 was deposited and would be consistent with Policy 4B 1.2.1.
- 9.4 Ms Sweetman's contrary view was that, although a certificate of title was issued before 1995, the 'site' for which it was issued was the three allotments held together. Individual titles have not been issued for each allotment. Therefore, in Ms Sweetman's opinion, the actual net site area of the relevant 'site' is the total area of the three allotments (1709m²). Her view was that the Council would not be able to issue a section 226 certificate for each individual allotment (if one was sought) because the minimum net site area is the standard 700m² and the alternative of the actual site area is the total area of all three allotments. Her point is that a s. 226 certificate could not automatically be issued for each of the three allotments (if sought). Strictly applying the rules, we agree that is probably correct. However, Ms Sweetman accepted that, if an application was made for discretionary activity consent to issue separate titles for the three allotments that it would likely be granted by the Council.

Finding: Baseline for Assessment

- 9.5 Our assessment assumes the three allotments comprise one 'site' as defined by the District Plan. However we consider that the pattern of development that was intended by the DP9877 subdivision plan is relevant under Policy 4B 1.2.1. We also note that most submitters who spoke at the Hearing referred to the site as 'the three lots' and clearly thought of the site as three individual allotments. With some exceptions³, submitters stated that they had expected that there would one day be one dwelling on each allotment (i.e. a total of three dwellings on the site).

³ Notably, Mr Toomey, Mr Hussey, Mr McGuinness, Mr McClure and Mr Curran

10 EFFECTS ON THE SPECIAL AMENITY VALUES OF THE SRAA

- 10.1 Issue statement 4B 1.1.1 specifically addresses the residential character and special amenity values of the SRAA:

'4B 1.1.1 Residential Character and Special Amenity Values

Within the City, there are some residential areas which possess special amenity values, characterised by residential dwellings, low densities, mature vegetation, and a high standard of development. It is important that these characteristics and amenity values be protected from the adverse effects of unsympathetic development and activities.'

- 10.2 The explanatory text following the statement of issues explains that:

Within the City, there are some residential areas which possess special amenity values. These values are characterised by low dwelling density, mature vegetation, and a high standard of development. It is important that these characteristics and amenity values are identified and protected from adverse effects of unsympathetic development and activities.

Emphasis will be placed on retaining vegetation present in the area, or on replacement planting if it is removed.'

- 10.3 In addition, site development issues are discussed in issue statement 4B 1.2.1 in the following way:

'4B 1.2.1 Building Height, Scale, Intensity and Location

Within this activity area building height, intensity, scale, and location can cause adverse effects upon the amenity values of adjacent sites, and on special characteristics of the residential area. It is important that such adverse effects are managed.'

- 10.4 The explanation that follows the issue statement explains that:

'Within this activity area, building height, scale, location and intensity can affect adversely amenity values associated with adjoining sites. They can also affect adversely the special amenity values associated with the surrounding residential area. It is essential that these aspects of development be managed to maintain and enhance the special amenity values. The Plan will set minimum acceptable conditions through the use of rules. These rules will generally be the same as those for the General Residential Activity Area with the exception of site coverage, and net site area.

(a) Net Site Area

In order to maintain and enhance the existing low density development, and amenity values of the Special Residential Activity Area, a specific net site area has been determined to achieve this purpose.

(b) Site Coverage

Combined with net site area, site coverage helps to control building density. A maximum acceptable site coverage has been determined at 30%, which ensures that low density development is achieved.'

10.5 In response to the above issues, the following District Plan objectives and policies pertain to the special amenity values of the SRAA:

4B 1.1.1 Objective

To maintain and enhance residential areas of the City which possess special amenity values.

Policies

- (a) To maintain and enhance the distinctive characteristics and special amenity values (including a low density of residential dwellings and a predominance of mature vegetation) for those identified residential areas adjacent to the Lower Hutt Central Business District, parts of Military Road, and Hathaway Avenue, and parts of Lowry Bay.*
- (b) That vegetation and trees which add to the particular amenity values of the area be retained, and landscaping be included where practicable where such vegetation is removed as part of any development proposal.*
- (c) To restrict the range of activities within the activity area to protect amenity values.*
- (d) To establish a minimum net site area to ensure low dwelling density is achieved, and amenity values are retained, protected and enhanced.*

4B 1.2.1 Objective

To maintain and enhance the distinctive residential characteristics, and special amenity values of sites and surrounding residential environment.

Policies

- (a) That low density development be encouraged through the establishment of comparatively large minimum net site areas and more restrictive coverage requirements.*
- (b) To ensure new development is of a height and scale which is compatible with surrounding development.*
- (c) To ensure a progressive reduction in height of buildings the closer they are located to a site boundary, to maintain adequate daylight and sunlight between buildings.*
- (d) To manage the siting of buildings so as to minimise detractions from the character, visual attractiveness, the amenity values of adjoining properties, and the streetscape.*
- (e) That the scale and siting of garages and carports be managed to maintain safety and visibility during manoeuvres.*
- (f) Where a certificate of title has been issued for a site prior to 5 December 1995 or where a site has been created by a staged development whether under stage unit*

plan or crosslease plan lodged with the District Land Registrar and where part of the development has been completed prior to 5 December 1995, it is recognised that it is reasonable to permit the erection of buildings/structures (as contemplated when the title was issued or plan lodged) even though the maximum site coverage may exceed that set out in 4B 2.1.1(b). Under such circumstances the scale, intensity, visual attractiveness of buildings/structures as well as the adverse effects on the amenity values of adjoining properties, and the streetscape be taken into account in assessing the suitability of the development.

- 10.6 Given the focus of the relevant issue statements, objectives and policies on the '*distinctive characteristics*' and '*special amenity values*' of this SRAA, we sought to understand from the submitters and the urban design and planning experts exactly what these expressions mean in this particular part of the SRAA.
- 10.7 Mr Martin Bryant, a consultant Landscape Architect called by Summerset, had prepared the *Urban Character Assessment* that accompanied the application. In that assessment, Mr Bryant described the physical context of the neighbourhood and the site. He described the Hathaway Avenue locality as having a serpentine street pattern which is atypical compared with the predominant grid pattern of the wider landscape of the Boulcott suburb. He considered that allotment sizes in Hathaway Avenue vary in size and configuration according to the serpentine nature of the street. He noted that the allotments are arranged with short boundaries facing Hathaway Avenue and long boundaries perpendicular to the street which he considered results in a distinctive fine grain of housing facing the street interspersed with driveways and small pockets of vegetation in between. Mr Bryant noted that allotment sizes vary between 509m² and 1,229m² with an average of 724m² and median of 645m². Frontage widths vary between 12m and 20m and most are characterised by hedges, trees and fences. Mr Bryant noted that there is variation in building setbacks from front boundaries (from 3m to up to 20m). He also noted that some housing is obscured from view by fences and vegetation and so is removed from street activity whereas others address the street more openly. Mr Bryant described building setbacks from side boundaries as being more regular and generally within the range 1m to 5m.
- 10.8 Mr Bryant noted that most of the residential buildings are 1 to 2 storeys in height (within Hathaway Avenue, he identified 70% two-storey and 30% single-storey dwellings), establishing a low scale to the area such that most dwelling roofs sit below tree canopies. He also noted that low site coverages prevail (he estimated these to range been 21% and 45% in Hathaway Avenue). Mr Bryant described this range of site coverage as indicating that there are large areas of landscape at the rear and in front of each dwelling (as would be expected on sites with such low coverage). Mr Bryant described built form within Hathaway Avenue as uniformly single use residential with a range of styles including pitched roof bungalows, flat roofed buildings and some modern style homes. He also noted that many have been adapted, added to and altered and that most houses are heavily articulated in the horizontal plane with stepped upper storeys. He summarised the neighbourhood as having an eclectic mix of styles, setbacks and orientations, with a coherence provided by the broad landscape, the highly landscaped frontages, the scale of built form and large tree backdrops.
- 10.9 Mr Bryant noted that the entire suburb of Boulcott (including the Hathaway Avenue SRAA) is distinctive for its rich and healthy vegetation, with many streets lined with mature trees. The edges of much of Hathaway Avenue, Troon Crescent and Military Road are lined with

mature trees as he described, although the trunks of many of those trees are within private properties. Mr Bryant noted that the vegetation within private properties provides a sense of scale, framing and screening the built forms which helps define the character of the street. He also noted that the type, construction materials and heights of fences varies from property to property.

- 10.10 Mr Bryant described the available viewshafts within Hathaway Avenue as being internally focussed. The serpentine street arrangement provides a sequence of short views that terminate in private gardens with occasional views extending through gaps between vegetation and buildings to the hills in the background.
- 10.11 Mr Bryant also described the features and character of the area surrounding the SRAA. However, for the purposes of giving meaning to the issues, objectives and policies of the SRAA, we consider that it is the characteristics and amenity values of the SRAA that are particularly relevant.
- 10.12 Mr Ian Munro, a consultant Urban Planner and Urban Designer called by Summerset, stated in evidence that the SRAA and Hathaway Avenue exhibit a mixed urban design quality. He noted that there are a number of buildings and sites that reflect 'accepted urban design principles' but that there are many that he described as 'unsuccessful' (including sites that are visually dominated by garaging, solid front boundary walls, and/or overgrown vegetation). Mr Munro presented a standardised *Urban Design Framework* (explained in his Attachment 2) which he had derived from a number of domestic and international authorities varied to take into account local urban design guidance such as the District Plan's *Design Guide for Medium Density Housing*. We did not find Mr Munro's standardised *Urban Design Framework* particularly helpful. Nowhere does it refer to the particular matters of concern in the issue statements, objectives and policies that are applicable to this SRAA. As earlier noted, we are not persuaded that the Design Guide he referred to is applicable or relevant for development within this SRAA.
- 10.13 Mr Morton Gjerde, a consultant Architect and Urban Designer called by the Council, summarised his assessment of the character and amenity values of the SRAA and the Hathaway Avenue locality in his *Urban Design Assessment Reports* dated 4 July 2014, 16 July 2014, 2 November 2014, 27 January 2015 and 29 January 2015. His assessment largely paralleled that provided by the applicant's experts and he highlighted the following features and distinctive characteristics:
- (a) The area is framed within the broader natural landscape of the Hutt Valley, with views to the western hills through gaps between and above buildings;
 - (b) Built form in Hathaway Avenue is serpentine in nature;
 - (c) Hathaway Avenue is relatively narrow in width which is accentuated in some parts by mature trees, vegetation and the built form on some properties;
 - (d) Buildings in the area are largely one and two storey, detached houses and garages predominantly single family dwellings;
 - (e) Individual allotment sizes were historically quite large but have been reduced by subdivision and infill development however this is not readily perceptible from public spaces;

- (f) Historical intensification has occurred through situating new dwellings towards the rear of allotments which has maintained the development grain along the street edge;
- (g) There is extensive mature landscape vegetation throughout the area including large trees that add considerable visual amenity;
- (h) Front garden and building setback patterns vary and, whilst most original dwellings remain well set back, subsequent additions and garages as well as infill subdivisions have resulted in greater variation.

10.14 Submitters⁴ described the neighbourhood as comprising well-kept and aesthetically-pleasing dwellings within an attractive setting of mature trees and generous gardens in quiet streets with no busy traffic. Submitters emphasised that the neighbourhood is characterised by single-family dwellings which are all unique. Submitters acknowledged that there are some exceptions to this. For example, there are double-units (that the submitters referred to as 'duplexes') at number 28 Hathaway Avenue and at number 26 Military Road. However, they noted (and Council advisers confirmed) that these double-units had been established before the SRAA provisions were inserted into the District Plan and were not developments authorised under the SRAA rules.

10.15 Submitters generally considered that the absence of sameness between properties and the low-density, single-family dwelling pattern of development form the distinctive characteristics of the neighbourhood. Several submitters referred to homes that had been architecturally designed and to the high quality of materials featured in the dwellings which they consider contribute positively to the charming character of the neighbourhood. One submitter summarised the special quality of the area as the fact that residents don't generally see their neighbours because all neighbouring dwellings are cleverly positioned and designed and have mature gardens and that, in combination, these features achieve privacy. He commented that the low density allows for views across properties without looking into neighbouring dwellings which is an attractive feature that sets this neighbourhood apart from other higher-density neighbourhoods in the General Residential Activity Area.

10.16 Mr Gordon, representing 6 submitters (including the Boulcott Preservation Society Inc⁵), stated in his legal submissions that it is the open spaces between residential buildings, albeit contained within private gardens by fences and hedges, which delivers the low density that is the cornerstone of the special character the District Plan seeks to protect. It was Mr Gordon's submission that it is this low density that would be undermined by Summerset's proposal with flow-on adverse effects for the special, low density, character identified by the District Plan⁶.

10.17 Submitters were all concerned that the proposed development would introduce a pocket of higher density development and a mass and 'sameness' of building that would erode the distinctive characteristics and special amenity values described above. Some

⁴ Including Mr O'Neill, Mr Toomey, Mr Tomlinson, Mr Paddison, Mr Hussey, Mr McGuinness, Mr Curran, Mr McLauchlan and Mr McClure

⁵ According to Mr Gordon, the membership of the Boulcott Preservation Society Inc includes 119 of the 123 dwellings in the Hathaway Avenue/Military Road/Troon Crescent SRAA

⁶⁶ Ian Gordon legal submissions paragraphs 27 to 29

submitters were also critical of the lack of quality in the design and materials to be used in the proposed dwellings and fences.

10.18 Mr Gjerde's assessment was that the proposed development is not in keeping with the distinctive character of the SRAA and the special amenity values that derive from that character. It was his opinion that the proposed built form is out of step with the character of the area primarily because of the volumes of the proposed buildings which he considered would contrast with the established pattern and character. Mr Gjerde was not opposed to some form of multi-unit development on the site. However, he considered the extent of difference between the proposal and the existing character to be problematic in terms of the relevant objectives and policies of the SRAA. Ms Sweetman adopted Mr Gjerde's assessment and concluded that the proposal could not be supported in terms of the relevant policy framework.

10.19 Mr Gjerde stated that some variation in building sizes, 'design language' and three-dimensional articulation would go a long way toward helping the development to mesh appropriately with the existing character. In response, Mr Munro presented a plan of the proposed building elevations and perspective drawings annotated to indicate some amendments to the building materials, windows, gate location and fence type that he considered would address Mr Gjerde's concerns. Mr Bartlett confirmed that the amendments shown on Mr Munro's plans were not offered by Summerset but were indicative of the types of changes the applicant would accept if the Panel were of a mind to require them.

10.20 The three architectural and urban design experts (Mr Bryant, Mr Munro and Mr Gjerde) helpfully engaged in expert conferencing during a break in the Hearing. They presented a joint statement dated 16 February 2015 to the Hearing which identified some limited areas of agreement (in terms of the beneficial impact of additional large specimen trees along the Hathaway Avenue frontage and retention of the only tree on the site). However, the three experts did not reach agreement on the merits of the proposal. Mr Munro and Mr Bryant supported the proposal in its current form (unchanged by Mr Munro's suggested amendments to the façades, materials and fences). Mr Gjerde did not support the proposal in its current form. His primary concerns remained the repetition of design and the proposed building volume.

10.21 After considering Mr Munro's suggested amendments, Mr Gjerde stated that they did not address all of his concerns about the volume and lack of variation in proposed building design. It was his opinion that some building volume must be removed (he indicated that, perhaps, one of the middle two units could be removed to reduce overall volume). The applicant was not willing to make such a structural change to the proposal.

10.22 Mr Gjerde explained in supplementary evidence that the proposed development is 'maximised' in every dimension in that all three proposed buildings are to be two storeys high whereas the surrounding houses have a 70:30 ratio of two-storey to single-storey type. He also noted that they are 'maximised' in that the building footprints are at the upper end of the range observed in the local area rather than featuring a range of footprint size. However, Mr Gjerde was careful to acknowledge that the proposed building height is not maximised compared with the District Plan height limit of 8m and the daylight recession plane limit (all of the proposed buildings are below these limits). He stated that the critical urban design matters are:

- (a) The consistently large size of all three buildings;
- (b) The architectural consistency (sameness);
- (c) A lack of meaningful variation in building setbacks;
- (d) Consistency (sameness) of front fences; and
- (e) The amount of hard paving across the site.

10.23 Although Mr Gjerde stopped short of recommending against the proposal on the grounds of architectural standard adopted by the applicant, he clarified that it is the similarity of architectural language, form and detail that grates with the surrounding character.

10.24 Mr Munro's assessment, based on his own standardised assessment framework and the SRAA provisions, was that the only 'character' elements that can be relied on are:

- (a) An expectation that the visual appearance of sites and the streetscape may change considerably over time (as provided for by the permitted activity rules);
- (b) The general proportion of open space to maximum permitted building footprint, with building footprint focussed towards the street (noting that many sites already have site coverage higher than 30% and many sites are already smaller than 700m²);
- (c) The recurrence of medium to large-scale building footprints in a 'detached' pattern between sites of relatively similar lot widths;
- (d) The frequency of landscaping including large mature trees (a function of the open space available around buildings); and
- (e) A mix of architectural designs, building colours, building materials, and roof forms between sites.

- 10.25 Mr Munro also noted his observation that pitched roof forms, weatherboard, brick and concrete as well as buildings composed from numerous smaller masses, are common in the existing building stock and form one logical (although not compulsory) starting cue for design.
- 10.26 It was Mr Munro's assessment that the proposal exhibits a more successful activation of Hathaway Avenue than many of the existing dwellings do. It was his opinion that, overall, the SRAA and Hathaway Avenue in particular are not defined by any unifying design elements or qualities other than the fairly ubiquitous 'suburban' label denoting detached dwellings, and a parade of very different design outcomes from site to site. He conceded that this particular housing neighbourhood is based on site sizes that are larger than is now considered average⁷.
- 10.27 Submitters who commented on Mr Munro's suggested amendments echoed Mr Gjerde's conclusion that the suggested amendments were largely superficial 'tinkering' and did not address their concerns about building bulk, scale, site coverage and density. Mr Munro agreed with Mr Bryant's assessment that the proposal would fit into the SRAA. Mr Munro considered that the proposal would result in buildings that are consistent with the location, scale and rhythm of building already existing within and contemplated by the District Plan rules for Hathaway Avenue. He did not agree with Mr Gjerde's opinion in relation to building volume when considering what the District Plan rules permit. He was critical of Mr Gjerde for focussing only on the existing physical environment – without consideration for how the area could be permitted by the rules to change.
- 10.28 It was Mr Gjerde's opinion that attempting to envisage future changes in the environment would be an act of speculation. His assessment had been made in terms of how the environment is currently, which he considered was the correct approach given the wording of the relevant objectives and policies. Mr Gjerde highlighted the point, in the conclusion of his 29 January 2015 assessment report, that the District Plan policies expect new development to *maintain and enhance* the distinctive characteristics and special amenity values that are actually present, that this particular area has been identified as 'special'. It was his view that the bar for meeting these objectives is high.
- 10.29 All relevant experts agreed, in answer to our questions, that the underlying three-lot subdivision pattern is relevant in terms of what might otherwise be expected on this site. They all agreed that, if the necessary division of title occurred (and Ms Sweetman agreed that it would likely be approved), it is reasonable to expect a single dwelling on each separated allotment. For these purposes, they were not suggesting that this would be the 'permitted baseline' development. They were simply saying that the future environment might reasonably include three separate dwelling units and they agreed that these could each be reasonably large whilst still complying with the 30% coverage and 8-metre height limits. We were interested to understand from the urban design and planning experts and from submitters what the difference would then be between that reasonably foreseeable three-unit scenario and Summerset's three-building proposal. For submitters, the difference seemed to be the density of development and the intensification created by six as opposed to three individual dwelling units. Summerset's witnesses considered there would be little or no difference.
- 10.30 Interestingly, Mr Gjerde's assessment was that there would be little apparent functional difference when viewed from the street. His concerns remained with the physical volume

⁷ Evidence in chief of Ian Munro paragraph 8.2

and bulk of the development which, as explained above, he considered 'grated' against the established pattern and would not be compatible with the distinctive characteristics of the neighbourhood. Equally interestingly, Ms Sweetman (at odds with Mr Gjerde's assessment) considered that when viewed from the street the three buildings would not 'read' as individual household units but rather would be perceived as multiple units which she considered would be out of step with the distinctive characteristic pattern of development in the SRAA.

10.31 We also note that Mr Gjerde clarified, in a supplementary statement of evidence that he considered that three detached dwellings would provide a better chance of the development fitting in with the neighbourhood. Mr Bartlett's view is that limiting development to three dwelling units does nothing more than cement in place the historical three-lot subdivision which he considers is not the inevitable result of the SRAA policy framework.

10.32 The Council's advisers provided, at our request, an analysis of the building footprints, site coverage and building height within the entire Boulcott SRAA and we are grateful to them for that work. The data provided are based on a desk-top analysis of the Council's GIS aerial photographs. As a result, Ms Clarke explained, the calculation of site coverage may include eaves whereas eaves are actually exempt from the District Plan definition of site coverage. In this respect, therefore, the data are conservative (that is, they may depict existing site coverage as being more extensive than strictly defined). Ms Clarke also clarified that the site coverage calculation was based on gross rather than net site coverage. However, Mr Gordon accepted that net site area will broadly approximate net site area for most sites (other than some rear sites). The data provided suggest that site coverage in the SRAA ranges between less than 10% and over 45% with an average of 23%. Perhaps not surprisingly, some of the highest site coverage ratios are associated with the few instances of multi-unit housing (for example at 28 Hathaway Avenue and 26 Military Road which we were told were created before the SRAA was established) and infill housing (for example at numbers 22, 26A, and 30 Hathaway Avenue). Interestingly, within the near vicinity of the site, there are properties with single household dwelling units that have coverage in excess of 30% (for example numbers 3, 9, 11A, 17, 19 and 21 Hathaway Avenue).

10.33 Mr Gordon clarified that the members of the Boulcott Preservation Society Inc believe that the SRAA has amenity values in a wider sense than their individual properties. They consider that these amenity values will be diluted by the proposal with its ratio of building volume to open space and uncharacteristic appearance. He emphasised that Policy 4B1.1.1 (a) seeks to maintain these special values for the entire SRAA. It was Mr Gordon's submission that the methods the District Plan adopts to achieve the outcomes intended by the policy framework are the SRAA-specific limits in relation to net site area (per dwelling unit) and site coverage. The thrust of Mr Gordon's submissions was that the proposal fails substantially to comply with those limits and, in doing so to the extent proposed, will fail to maintain (or enhance) the special amenity values of properties adjacent to and opposite the site as well as for the special amenity values and distinctive character of the wider SRAA. In this respect, Mr Gordon considered the proposal is fundamentally and directly in conflict with the clear policy intention for the SRAA.

Findings: Special Amenity Values and Distinctive Characteristics

10.34 We find that the distinctive characteristics and special amenity values that gave rise to the identification of this area as a *Special Residential Activity Area* are still present. Although

there is variability in the standard of maintenance and quality of some individual buildings and gardens within the SRAA, the SRAA and the Hathaway Avenue neighbourhood in particular, retain distinctive characteristics and special amenity values. In particular:

- The prevalent building typology remains as detached single family dwellings on relatively large allotments (notwithstanding the historical infill development that has occurred);
- There is a distinctive relatively fine grain of development along the street edge;
- There is extensive mature vegetation including large trees that add considerable visual amenity and privacy and buildings are generally below the tree canopies;
- Whilst most original dwellings in the area are set back from site frontages, subsequent additions and subdivision have resulted in greater variation in building setback and the depth of gardens separating buildings from the street edge;
- There are distinguishable open spaces between residential dwelling units comprised in the lawn and garden areas separating neighbouring dwelling units;
- Building coverage varies throughout the SRAA and, averaged across the SRAA, it is approximately 23% per dwelling unit (compared with the permitted activity standard of 30% for the SRAA);
- Although many individual dwelling units are large two-storey buildings, the impression of their bulk, scale and volume is moderated by the open spaces surrounding each dwelling (reflected in the ratio of building footprint to net site area) and the individuality of architectural design.

10.35 We can see why the submitters who live in this SRAA find it to be a pleasant and attractive neighbourhood in which to live. Having visited the area and reflected on the evidence heard, we must also observe that there is considerable variability in the age, architectural style, quality and standard of maintenance of properties and gardens within the SRAA. In this respect, we found the reality somewhat at odds with the descriptions given by some submitters. Notwithstanding that however, the SRAA and the Hathaway Avenue neighbourhood in particular do exhibit distinctive characteristics and residential amenity values associated with the historical pattern of single household unit development on relatively large sites.

10.36 We note that sections 7 (c) and 7 (f) of the RMA require us to have particular regard to the maintenance and enhancement of amenity values and the quality of the environment. These matters are directly addressed by the relevant District Plan objectives and policies and we have given them the particular regard they are due.

10.37 We find that the proposal would fail to maintain, and would not enhance, the distinctive characteristics and special amenity values we identified above. In particular:

10.38 We find that the form of the proposed buildings (double units having highly similar design which adopts a narrow range of construction materials) is at odds with the characteristic single household unit building typology that prevails in this neighbourhood. That is

largely, in our view, because of the number of units proposed and their design. Summerset's witnesses explained that, in order to meet the expected needs of the intended market of residents (older people), the design provides for a bedroom at ground floor level as well as bedrooms on the second floor. This enlarges the ground floor footprint and determines the overall building footprint and building volume which, in our view, are atypical of the characteristic form in the SRAA. The incompatibility is compounded by the number of units proposed and by the absence of clearly-defined separation between them. The buildings are separated by shared paved driveways and paved patios rather than fenced garden and open spaces and private areas. The refinements to building design suggested by Mr Munro do not, in our view, overcome the overall impact of building sameness, juxtaposition relative to street frontage and building volume.

10.39 Although the proposed layout retains the grain of development along the street edge found elsewhere in the SRAA, the overall size of buildings (vertical as well as in footprint as identified by Mr Gjerde) and lack of genuine variability between them will create a mass of building that is at odds with the characteristic pattern in this SRAA. Large buildings are a feature of this SRAA. However, where they occur, they are generally surrounded by spacious gardens which separate them from neighbouring properties and moderate the visual impression of their bulk. Summerset's proposal cannot achieve that because of the number and size of units proposed.

10.40 We find that the extent of paved area including paved patio areas shown on the plans would leave little space available for creating the depth and substance of garden vegetation characteristic of the SRAA. The spaces created in the proposed design will not maintain the generous pattern of spaces and separation between dwellings that is a characteristic feature of the SRAA. Mr Munro's suggested addition of a small number of specimen trees along the frontage does not, in our view, overcome this outcome. We accept that whatever trees and gardens are established in the available spaces on the site will, over time, achieve height and substance. However, we do not expect that will achieve the characteristic mass and depth of vegetation that contributes positively to the privacy and separation between household units in the SRAA.

10.41 There is insufficient variation between the proposed buildings to avoid, in our view, the impression that the three proposed buildings are part of one overall development entity. This is underscored by the absence of separation between the buildings that is elsewhere in the SRAA created by private fenced gardens. This degree of sameness of design and building setback from boundaries is directly at odds with the characteristic variation in design and materials palette and setback from boundaries found generally within the SRAA.

10.42 Mr Peter McGuinness, a submitter, summarised the issues relating to individual building design and materials succinctly in his submission in the following way:

"The building materials have to be individual to each dwelling and not a plethora of exterior cladding materials and designs common to the three buildings. The proposed development lacks a sophisticated approach to design where typically in the SRAA one or two exterior cladding materials are used per dwelling. This allows the individuality of design that is characteristic to those dwellings in the SRAA."

- 10.43 The applicant's own witnesses highlighted the positive contribution that the individuality of building design makes to the distinctive character of the SRAA. For example, Mr Bryant described the built form within Hathaway Avenue as an *"eclectic mix of styles, setbacks and orientation, with a coherence provided by the broad landscape, the highly landscaped frontages, the scale of built form and large tree backdrops."* We consider that this eclectic mix of styles contributes significantly to the distinctive character of the area and find that the proposal would be at odds with that distinctive character.
- 10.44 Although there are examples close to the site of properties with site coverage in excess of 30%, the site coverage of the proposed development (applied correctly in relation to individual dwelling units) vastly exceeds the average found within the SRAA. The consistently high coverage of all of the proposed dwelling units also contrasts with the variation in site coverage found within the Hathaway Avenue neighbourhood and throughout the SRAA.
- 10.45 The bulk, scale and volume of the proposed dwelling units are not moderated by the limited extent of non-paved open space in the proposed yard areas. Mr Gordon's submissions were correct, in our view, that the proposal fails to comply by a substantial margin with the two primary standards intended to maintain and enhance the distinctive characteristics and special amenity values of this SRAA – net site area and site coverage per dwelling unit. Our conclusion is that the extent of non-compliance places the proposal in direct conflict with the policy framework for the SRAA and is diametrically opposed to the clear purpose of those policies. The refinements to building design, materials and fences suggested by Mr Munro do not, in our view, address the adverse outcomes we have identified.
- 10.46 Mr Bartlett stated in his legal submissions in reply that there was no evidence before us that says that large single unit housing constitutes a higher level of amenity in terms of the RMA. The factual position is that, for this SRAA, the District Plan policy explicitly seeks to achieve low density housing development (involving individual dwelling units on relatively large net site areas) and seeks to maintain and enhance the special amenity values associated with that development pattern.
- 10.47 We acknowledge that Policy 4B 1.2.1 (f) provides for the erection of buildings as contemplated when the title originally issued even though the maximum site coverage may exceed the SRAA limit of 30%. The policy directs us to consider the scale, intensity, visual attractiveness of buildings as well as adverse effects on the amenity values of adjoining properties and the streetscape in assessing the suitability of the proposed development. Our conclusion is that the proposal raises issues greater than simply the non-compliance with site coverage. The scale and density (intensity) of development are compounded by the lack of architectural variation and lack of green space separating the buildings such that material adverse effects on the amenity values of adjoining and nearby properties and the streetscape will result.
- 10.48 Reference was made by the applicant, submitters and Council advisers to an Environment Court decision involving the subdivision of land in Military Road within this SRAA (McLauchlan v Hutt City Council ENV-2008-WLG-000121). That case concerned a boundary adjustment creating one "undersized" lot and one "oversized" lot. In that decision, the Court noted that despite there being a 700m² net site area standard, 45% of the 118 lots within the whole SRAA were (at that time) less than 700m². That remains, broadly, the current position. However, we consider that the comments made by Mr McGuinness on page 4 of his submission are relevant in this regard – he said: *"Zoning*

provisions are rarely retrospective. This zone has been created to preserve these areas not by righting the wrongs of the past but to ensure that future developments preserve the area and ensure the integrity of the special character of the zone."

10.49 The Court found, at paragraph 20 of the McLauchlan decision that:

".... the core question about the plan provisions is whether, viewed overall, this proposal is compatible with the provisions of the Plan. It is important to bear in mind that this is not a non-complying activity, and one thus needs to be careful about not imposing upon it tests or thresholds which do not really exist. Given that this is a discretionary activity, it can be taken that it will not, per se, be contrary to (in the sense ofin conflict with) the Plan."

10.50 We find that Summerset's proposal is directly contrary to the stated purpose for this SRAA.

10.51 Mr Bartlett stated, in his closing legal submissions, that it is inconceivable that Summerset could not achieve some level of multi-unit residential development on this site as a result of this application. It was his suggestion that, if this Panel concludes that it cannot endorse the number of units proposed, we ought to issue a decision that prescribes parameters for the number, layout and design of dwelling units that we consider could be supported. We have carefully considered Mr Bartlett's suggestion. Our conclusion is that Summerset's proposal does not meet the objectives and policies of the SRAA or the sustainable management purpose of the RMA. We expect that a residential development involving more than three dwelling units could indeed be successful on this site. However, the adverse outcomes of Summerset's six-unit proposal that we have identified cannot, in our view, be remedied by minor adjustments to design. They require, in our view, a fundamentally different approach to the development of the site that cannot reasonably be prescribed in parameters by a consent authority. Our task has been to consider Summerset's proposal and the submissions made in respect of that. We do not consider that it is open to us to grant a consent framed as a set of design parameters. We received no evidence that would assist us in determining precisely what those parameters should be for this site. In any event, we do not consider that re-designing the proposal applied for is within the scope of our task.

10.52 One of the concerns expressed by the immediate neighbours of the site is that their outlook to the green areas of the golf course and beyond would be adversely affected by this proposal. We agree with paragraph 29 of Mr Bartlett's submissions that construction on this site of a fully compliant residential dwelling would inevitably represent a change for a neighbour who is used to looking out over open space. It is not reasonable, in our view, for neighbours to expect the clear views over this currently-vacant site to continue forever. The land is privately owned (it is not a public park) and some level of development of it must be anticipated. We also note that the District Plan does not protect views across private properties generally and does not identify any protected viewshafts in this SRAA. We further note that the proposed buildings comply with the yard setback and daylight recession planes in relation to the site's exterior boundaries. Certainly, we would expect a less intensive development could retain more outlook for neighbours. However, the District Plan provisions would permit a large building on the site, compliant with the relevant rules, which could have a similar effect in blocking views from neighbouring properties.

11 DENSITY

- 11.1 As already noted, Policy 4B 1.1.1 seeks to maintain a low density of residential dwellings in the SRAA. To achieve that, the rules set a minimum net site area of 700m² per dwelling unit and limit site coverage to 30%. Mr Gjerde presented, in a supplementary statement of evidence, a calculation of the overall density of the proposal on this site. He calculated that it equates to 35 dwelling units per hectare. He stated that, in New Zealand, medium density housing is considered to fall between 33 and 66 dwelling units per hectare. He also stated that the net site area requirement of one dwelling unit per 700m² equates to approximately 14 dwelling units per hectare. We also note that the net site area for the *General Residential Activity Area* is 400m² per dwelling unit and for multi-unit housing within the identified *medium density* overlay within the *General Residential Activity Area* it is 300m² per dwelling unit. The proposal is for six dwelling units on the 1,709m² site (that is, an average of approximately 285m² gross site area per dwelling unit). Mr McLauchlan estimated that the net site area, excluding shared driveways, would actually be 1,475m² or 245m² per dwelling unit.
- 11.2 Mr Gjerde clarified that it is not the number of units per se that he has a concern with. Rather, he explained, it is the consequences of the density of the six proposed units that are of concern (and we have detailed his concerns in the previous section of this decision).
- 11.3 Mr Bryant's conclusion was that the proposed development would have a positive effect in achieving the District Plan aims and objectives relating to density. His assessment was that the proposal has a low proportion of building footprint to allotment size comparable to the typical built lots in the SRAA. According to figures supplied in Ms Sweetman's section 42A report, the building footprints are approximately 193m², 203m² and 197m². According to the data supplied by Council advisers, building footprints elsewhere in the SRAA range from 100m² to 390m² (excluding the very large dwelling at number 33 Military Road).
- 11.4 Mr Munro considered the proposal to be low to medium density housing in the context of the wider Hutt City and New Zealand context. However, he did not address what 'low density' means in the context of this SRAA.
- 11.5 Submitters consistently opposed the six-unit density of development proposed on the basis that it is at odds with the clear *low-density* outcome sought for this SRAA. As earlier noted, it was Mr Gordon's submission that the extent of non-compliance with the net site area standard and the resultant density of development place the proposal in direct conflict with the clearly stated purpose of the SRAA. He considered that it was not meaningful to suggest (as Mr Munro had done) that the proposal is low to medium density in a wider non-Hutt City sense because the District Plan provisions for this SRAA represent this community's view of 'low density' and those provisions are what is relevant for this application.

Finding: Density

- 11.6 Mr Bryant's comparison of building footprint to allotment sizes does not accurately analyse the density of residential dwelling units in the SRAA. The correct approach, in our view, is to consider the number of *dwelling units* (not residential buildings) per area of land. Our conclusion is that the proposal cannot be said to achieve low density of development. We agree with Mr Gordon that comparison with low density that might

exist in the *General Residential Activity Area* or in other cities is not helpful or relevant. What is relevant is the policy intention for this SRAA and that is clearly for *low density*. The proposal does not even meet the usual requirements for more intensive *medium density* residential development contemplated in the *General Residential Activity Area* of this District Plan. In this respect, it can hardly claim to be *low density*.

- 11.7 We are not suggesting that, simply by virtue of not achieving the minimum 700m² net site area per dwelling this proposal should be rejected. We accept that some multi-unit development of this site could be achieved. However, our conclusion is that this particular proposal will not achieve the overall low density outcome intended by the District Plan policy framework.

12 DISTRICT PLAN INTEGRITY

- 12.1 Several submitters had raised concerns that a grant of consent for Summerset's proposal would create a precedent for future similar intensive development in the SRAA and about the cumulative adverse amenity effects that would result from that.
- 12.2 Ms Sweetman stated in her report that the general principle is that any resource consent must be considered on its own merits and that the potential for precedent would only be of concern where a grant of consent to one proposal may undermine the integrity of the Plan provisions or lead to future applicants expecting to receive similar consent outcomes. Ms Sweetman referred to the McLauchlan decision (earlier referenced) which she stated had addressed the issue of plan integrity. She quoted the Court's finding in that case that:

'if this proposal creates no adverse effects of significance, is not in conflict with the provisions of the Plan, and the extent of non-compliance is slight, then confidence in the Plan could hardly be shaken by granting it, or any future applications sharing the same characteristics.'

12.3 It was her opinion that Summerset's proposal has clear differences compared to the McLauchlan decision in that the McLauchlan proposal involved a boundary adjustment between separate sites which were each 1,095m² in area and contained existing dwellings and the degree of non-compliance was slight. By contrast, Ms Sweetman explained, Summerset's proposal is to increase the residential density substantially greater than the benchmark set by the 700m² net site area standard. Her view was that the degree of non-compliance is far from slight and that there is nothing unusual or unique about this site or application to differentiate it from other potential applications involving other sites within the SRAA.

12.4 Mr Gordon's analysis was that the SRAA provisions confirm that the standards should be treated as a 'bottom line' to protect the character and amenity of the area and that development below these minimums will fail to provide the desired protection⁸. He accepted that the provisions do not prohibit development that is non-compliant with those standards however. As earlier discussed, it was his submission that Summerset's proposal challenges head-on the objectives, policies and standards of the SRAA in a manner that places it in direct conflict with those provisions and the overarching purpose of the SRAA. Mr Gordon referenced a number of Court decisions (which we have read) and drew from those the following principles:

- (a) Where there is a clear overarching purpose to the Plan provisions, the granting of an application that is contrary to that purpose undermines the integrity of the Plan;
- (b) If subsequent applications come forward with similar shortcomings in terms of the permitted activity standards, they can be expected to be treated similarly, and where a consent authority feels bound to accept them (because it has done so previously and is bound to treat like with like), the low density policies are cumulatively eroded and the integrity of the Plan is further undermined;
- (c) Public confidence in the administration of the Plan is capable of being undermined by the grant of applications that are contrary to a clear overarching purpose to the Plan provisions;
- (d) An application for a discretionary activity is capable of being so contrary to an overarching purpose of Plan policy that it puts the very integrity of those provisions at risk and should be declined.

12.5 Mr Gordon contended that the resource which the SRAA provisions set out to protect is the special character of this area. The policy relating to net site area, in his submission, irrefutably seeks to preserve open space between residential buildings and exclude multi-unit development. It was his submission that it is this policy, together with the standards for net site area and site coverage, which drive low density and special qualities. Mr Gordon observed that the SRAA is small, relative to the *General Residential Activity Area* and can reasonably be considered to be a scarce resource in the context of this City. He submitted that a grant of consent for this proposal (which he described as '*out-of-scale and over-sized multi-unit residential development*') would be contrary to the clear overarching purpose of the Plan provisions. He considered that a grant of consent would

⁸ Legal submissions of Ian Gordon paragraph 41

signal a policy shift away from low density to a pattern of high density achieved through infill and multi-unit dwellings and it was his submission that such an outcome should only be able to occur as the result of a plan change process. It was Mr Gordon's submission that there is nothing that differentiates this proposal from the generality of cases.

- 12.6 Mr Bartlett agreed with Mr Gordon that the density and site coverage provisions are important however he did not agree that they are the *only* controls protecting amenity. He stated that there can be no issue of precedent for an application involving discretionary activity where the provisions explicitly contemplate such development subject to an assessment of effects.

Finding: District Plan Integrity

- 12.7 It is correct that the District Plan does not prohibit multi-unit residential development in the SRAA or on this site. We do not accept Mr Gordon's submission that proposals that fail the net site area will necessarily fail to provide the level of protection of amenities desired in the SRAA or that the provisions explicitly or implicitly exclude multi-unit housing. However, we do accept Mr Gordon's submissions that there is a clear overarching purpose to the SRAA plan provisions. Central to that overarching purpose is the maintenance of a low density of development. Our conclusion is that Summerset's proposal is directly contrary to that outcome and overarching purpose. We agree with Mr Gordon that a grant of consent to this proposal that is so directly opposed to the standards and overarching purpose of the SRAA risks undermining the integrity of the Plan provisions and undermining public confidence in the administration of the Plan. We note that Mr Bartlett's closing legal submissions did not directly address or refute these submission points. We agree with Ms Sweetman and Mr Gordon that there is nothing inherently different or unusual about this site or this proposal that differentiates it from the generality of potentially similar proposals for multi-unit development in this Activity Area.
- 12.8 Mr Bartlett stated that the Courts have found that the discretionary activity technique is fundamentally about tuning proposals to their particular environments and using the power to impose conditions as a means of developing and enforcing an acceptable proposal and that, if conditions will not work, the application will fail. Our conclusion is that there are no suitable conditions (and none were proposed) that will mitigate the adverse outcomes we earlier identified or mitigate the potential risks to plan integrity.

13 MERITS OF A CONDITION RESTRICTING HOUSEHOLD SIZE

- 13.1 Mr Bartlett observed that the SRAA permitted activity rules permit the establishment of a wide range of residential housing types including residential facilities for up to 7 people. It was his submission that the Plan takes a very permissive approach in this respect. Responding to concerns from residents and Ms Sweetman about the number of units and the multi-unit nature of the proposal, Mr Bartlett suggested that the applicant would be prepared to accept a condition restricting the number of persons housed in each unit. He suggested a limit of 7 per building (i.e. 7 per two units).
- 13.2 In answer to our questions about enforceability of such a condition, Ms Sweetman considered that it would be almost impossible for the Council to enforce such a condition. She explained that Council officers are not able to enter a dwelling, under current warrants, without agreement of the owner/occupier.

Finding: Restriction on Household Size

- 13.3 We anticipate that there would be practical difficulties enforcing a condition of the kind described by Mr Bartlett and we do not see that it would address the adverse physical outcomes that we earlier identified.

14 TRAFFIC IMPACTS

- 14.1 Mr Mark Georgeson, a consultant Chartered Professional Engineer specialising in traffic engineering called by Summerset, prepared an assessment of the traffic impacts of the proposed development. Mr Bill Barclay, a consultant Traffic Planner called by the Council, also made an assessment of the proposal (which was attached to Ms Sweetman's section 42A report).
- 14.2 Mr Georgeson and Mr Barclay were in agreement that the proposal would have traffic effects that are no more than minor in terms of the adequacy of vehicular access, separation distances from the Military Road intersection, traffic safety, vehicle crossings over the footpath and the location and design of on-site car parking and manoeuvring space.
- 14.3 Mr Georgeson noted that the Golf Club is currently developing a replacement car parking area accessed directly from Military Road. When that is complete, Mr Georgeson expects (and Mr Barclay agreed) that Hathaway Avenue will experience significantly reduced parking demand and traffic movement. Mr Georgeson stated that Hathaway Avenue has a good traffic safety record with no reported accidents in the last 10 years.
- 14.4 Some submitters raised concerns about the narrow width of Hathaway Avenue and highlighted an existing issue of the narrow carriageway available between parked vehicles to allow trucks to pass (such as rubbish collection trucks). They are also concerned about accessibility for emergency vehicles. However, the photographic evidence presented in support of these concerns confirmed that, for example, rubbish trucks are able to make their way along the road notwithstanding the narrowness. Mr Barclay explained that Hathaway Avenue operates as a series of 'one lane bridges' which acts to slow traffic. It was his opinion that this creates a safer traffic environment than a full two-way system and he was satisfied that there is ample space available to allow trucks and emergency vehicles to travel along the street. He also stated that, if issues associated with kerbside parking were to be experienced in the future, he doubted those would be associated with Summerset's proposal. He stated that the Council has a number of tools available to manage these issues (such as painting yellow no-parking lines and imposing time restrictions or residents-only restrictions).
- 14.5 Mr Barclay did not consider the proposal would exacerbate any existing issues associated with road width and reiterated the point that the proposed change of use of this site from Golf Club carpark to six residential dwellings would improve road conditions by reducing parking demand and traffic movement. Mr Barclay considered there would, overall, be a favourable traffic impact resulting from the proposed change of use.
- 14.6 Mr Barclay agreed with submitters that the intersection of Military Road and High Street is currently under pressure and has, at times, poor levels of service. He stated that this is likely to continue but that this is due to increased traffic volumes on High Street rather than activity within the SRAA. He had no concerns about the impact of the proposed six-

unit development on levels of service at that intersection or at the intersection of Military Road and Hathaway Avenue.

Finding: Traffic Impacts

- 14.7 The evidence assures us that the proposal will have no adverse effects on the safety or convenience of traffic movements in Hathaway Avenue or other roads within the SRAA. Our expectation is that the proposed change of use from Golf Club car park to six residential units would provide a net positive traffic benefit for Hathaway Avenue.

15 CONSTRUCTION EFFECTS

- 15.1 Some submitters raised concerns in their submissions about the potential for dust and disruption associated with construction of the proposed six residential units.
- 15.2 The applicant's witnesses confirmed that the current asphalt surface of the car parking area will need to be removed and that this will involve only a minor change in topography (not triggering the maximum earthworks height limit). Although the volume of material to be removed is likely to be greater than 50m², it would be of a similar order to that associated with development of each of the three underlying allotments.

Finding: Construction Effects

- 15.3 Our conclusion is that the extent and likely duration of earthworks would be little different from that associated with construction of a complying development on the site. These effects would be temporary and would not, in our view, be any more than minor.
- 15.4 As earlier noted, Powerco raised a particular concern about the security of its gas supply pipeline beneath the site. That concern is capable of being satisfactorily addressed by the imposition of a condition that has been agreed between the applicant and Powerco.

16 CONCERNS ABOUT THE 'TYPE' OF PERSON ACCOMMODATED

- 16.1 Some submitters raised concerns about the form of ownership proposed by Summerset and the fact that the people accommodated in the proposed dwelling units would be tenants. Others were concerned that the residents would be frail elderly who might need support services to live successfully in the dwelling units.

Finding: 'Types' of Persons Accommodated

- 16.2 In our view, the nature of the ownership or tenancy arrangements or the fact that the intended residents of the dwelling units might be tenants as opposed to owners are not relevant matters for consideration under section 104 of the RMA. There was no evidence presented that the 'types' of people likely to be accommodated would create any adverse effects on the environment. It may be that some residents of the proposed dwellings may require or use in-home support services in order to live comfortably (for example meals on wheels or mobile podiatrists or cleaning services). This may create demand for on-site parking and for kerb-side parking. However, as clarified by the evidence of Mr Barclay, the level of demand is likely to be considerably less than that associated with the existing Golf Club carpark. In any event, it is quite usual for residents anywhere in the SRAA to make use of such services. The proposal is not remarkable in that respect. Notably, the Plan contains no restrictions on the type or age or condition of people who may be permitted to occupy individual dwelling units. The submitters' concerns hinted at some kind of discrimination on the basis of age or ability or socio-economic status which has no place in RMA decision-making.

17 ADEQUACY OF CONSULTATION

- 17.1 Several submitters raised concerns about the adequacy of Summerset's pre-hearing consultation about the proposal applied for.
- 17.2 We encountered some confusion, in the presentations by submitters to the Hearing, between the plan change request that Summerset is pursuing separately and this application for resource consent. Many of the comments of submitters about the adequacy of consultation actually related to the plan change process affecting land other than this application site. We acknowledge that Summerset is the proponent for both and understand how the confusion arises. However, we must confine our consideration to the application for resource consent. In this context, section 36A of the RMA is clear that there is no obligation on either an applicant or the consent authority to consult with any persons about an application prior to lodgement. The only consultation that is required is the public notification that results from the consent authority's exercising its discretion under sections 95A to 95E of the RMA. Accordingly, it is not necessary for us to reach a finding on this matter.

18 IMPACTS ON PROPERTY VALUES

- 18.1 A number of submitters included in their submissions concerns about the impact that the proposal would have on the value of their properties. It is a generally-accepted principle that impacts on residential amenity values and impacts on the physical environment are representative of perceived impacts on property values. To additionally consider impacts on property value would be to potentially double-count those other effects already accounted for. In any event, no qualified evidence was presented that Summerset's

proposal would in any way impair the ability of landowners within the SRAA to sell their properties or affect the price able to be achieved on sale.

19 ASSESSMENT AGAINST RELEVANT RMA POLICY DOCUMENTS

Regional Policy Statement

19.1 We note that there was no submission received from Greater Wellington Regional Council regarding this application.

19.2 One submitter raised concerns about potential flood hazard associated with the Hutt River floodplain. The Regional Council has undertaken, and plans future, flood mitigation works to protect the urban area of Hutt City from flooding. Ms Sweetman stated that GWRC has confirmed that the site is no longer subject to flood hazard from the Hutt River for floods up to and including the 1:440-year return period event. This is apparently due to the flood mitigation works already completed.

19.3 We are satisfied that the proposal creates no new or residual flood hazard effects in terms of the relevant objectives and policies of the Regional Policy Statement (RPS).

19.4 Ms Sweetman set out, in her section 42A report, the relevant provisions of the RPS. Her analysis of those was not disputed by any party and we include it in this decision by reference (specifically, paragraphs 8.6 to 8.17 and 8.19 to 8.23 of her report). We endorse the conclusions reached in those paragraphs of Ms Sweetman's report.

19.5 We note that several submitters expressed the view that the proposal fails to achieve Policy 54. That policy seeks to achieve the region's urban design principles and refers to design principles in Appendix 2 of the RPS. It expressly states that it applies only:

'When considering an application for a notice of requirement, or a change, variation or review of a district or regional plan, for development...'

19.6 This application for consent involves none of those RMA processes and Ms Sweetman clarified that Policy 54 is not relevant for this application for land use consent.

19.7 We also note that Policy 67, referred to in paragraph 8.14 of Ms Sweetman's report, is described in the RPS as a 'non-regulatory policy' intended to help achieve the RPS objectives. We note also that it is directed at maintaining compact *regional* form rather than at the detail of design of urban spaces *within* that regional form. We do not identify any aspect of the proposal that offends against Policy 67.

19.8 Ms Sweetman, drawing on Mr Gjerde's assessment, concludes that the proposal is inconsistent with the RPS policies in the following respects:

- *'The development is not well-designed for its location and does not achieve a good urban design outcome; and*
- *The proposal involves intensification in an area that is not clearly identified in the relevant growth strategy for such intensification to occur (although Ms Sweetman notes that the Urban Growth Strategy does not preclude such intensification).'*

- 19.9 We do not agree that, in the above respects, the proposal is directly inconsistent with any specific RPS policies and Ms Sweetman has not identified the specific policies on which she relied in coming to that conclusion.
- 19.10 Some submitters expressed the view that the SRAA is a 'special amenity landscape' as defined by the Regional Policy Statement and that therefore it must be assessed in terms of the relevant objectives and policies for special amenity landscapes and deserves the additional protection intended by the RPS for such landscapes. We agree with Ms Sweetman and Mr Aburn that the SRAA does not meet the RPS definition of 'special amenity landscape'. Identification of the area as a *Special Residential Activity Area* under the District Plan does not automatically qualify the area as 'special amenity landscape' of concern in a regional context. Nothing in the evidence presented to us suggests that there is anything of regional significance about this SRAA.

District Plan

- 19.11 We earlier identified and discussed the relevant District Plan provisions applying specifically to the SRAA. In addition to those matters, Ms Sweetman and Mr Aburn and some submitters identified the other issues, objectives and policies that are relevant from Chapters 1.10, 4A and 14I of the District Plan. We agree with Mr Aburn that the district-wide issues and policies are relevant, including policies in relation to infill housing. However, we also agree with Mr Gordon that those district-wide policies should not be applied in a way that dilutes the express intention of the SRAA-specific policies in relation to density and amenity values.

Hutt City Council Urban Growth Strategy (2012-2032)

- 19.12 Ms Sweetman identified the Hutt City Council Urban Growth Strategy 2012-2032 as a potentially relevant matter. This is a non-statutory document, prepared under the Local Government Act. It seeks to achieve growth in population and number of homes in the City by 2032, targeting specific areas (yet to be specifically determined) for intensification of development. Ms Sweetman informed us the Strategy will only be given statutory weight through future District Plan changes.
- 19.13 We note the Strategy mentions that intensification does not come without costs, and highlights a reduction in the amount of open space, and increases in scale, are factors which need to be carefully managed. It is our finding that it would go against the grain of development and intent of the policies of the SRAA if this strategy were to be applied to the SRAA.
- 19.14 We note that both the applicant and Council conclude this proposal is not inconsistent with the UGS – Mr Aburn going further and stating this proposal is consistent with the UGS. We agree this proposal would provide housing for an identified portion of the population, however this does not mean the type of housing as proposed is suitable for the land in question. Mr Gordon's view was that it is unhelpful to say that this application is consistent with a non-statutory Growth Strategy when the City has yet to decide how that strategy should be implemented and where intense infill housing might be located.
- 19.15 Our conclusion is that the proposal raises no issues of inconsistency with the Growth Strategy.

20 PART 2 OF THE RMA AND OVERALL BROAD JUDGMENT

20.1 We note that the assessment required by section 104 (1) of the RMA is subject to Part 2 of the RMA. No party identified any matters identified in section 6 of the RMA as relevant. We have identified in our earlier discussion, the matters that were highlighted as relevant in section 7 and, in particular, in:

- 7 (b) – the efficient use and development of natural and physical resources;
- 7 (c) - maintenance and enhancement of amenity values;
- 7 (f) – maintenance and enhancement of the quality of the environment; and
- 7 (g) – the finite characteristics of natural and physical resources (to the extent that the small size of the SRAA and its special qualities are a scarce resource as described by Mr Gordon).

20.2 As required by section 7, we have given particular regard to those matters. We acknowledge the positive benefits of the proposal, outlined by Mr Bartlett, Mr Aburn and Ms Sweetman. The current car park use is a non-residential activity that is very different from and much less attractive than the neighbouring residential dwellings. Residential development of the site would remove those differences and the landscaping that is proposed would improve the current visual appearance.

20.3 As an asphalt car park within this SRAA in central Hutt City, the efficiency of use of the site is not optimised in terms of urban residential development. The proposal would make more efficient use of a scarce resource. It would also add to the City's housing stock and meet need for housing that is identified by the Council's Urban Growth Strategy (namely, housing for older persons). Some submitters considered that the alleged benefits of the proposal in contributing to the housing stock were overstated because the dwellings are unlikely to be 'affordable housing'. However, we are satisfied that the proposal would meet an acknowledged need for housing and would contribute to the diversity of housing stock in the City whether it is low-cost affordable housing or not.

20.4 Mr Barclay and Mr Georgeson agreed that removing the car parking use would have positive traffic and parking benefits for Hathaway Avenue.

20.5 A grant of consent would enable Summerset and the future residents of the six dwelling units to provide for their social and economic wellbeing. However, our conclusion is that a grant of consent would not promote the sustainable management purpose of the RMA because:

- (a) For the reasons earlier explained, the proposal would fail to maintain and would not enhance the special residential amenity values and the distinctive characteristics that define the quality of the identified SRAA; and
- (b) For these reasons, the proposal is directly contrary to the clear policy purpose of the SRAA; and
- (c) The proposal and conditions suggested in the evidence of the Council advisers and the applicant's witnesses do not avoid, remedy or mitigate the anticipated

adverse effects on the special amenity values of the SRAA in the manner intended by the relevant objectives and policies; and

- (d) Whilst the proposal would enable the realisation of the aspirations of Summerset and the future residents of the six dwelling units, a grant of consent would significantly dis-enable the aspirations of the wider community in relation to the SRAA and the aspirations of residents of the immediate neighbourhood who derive their residential amenity values from maintenance of the District Plan's low density development objectives for this area; and
- (e) A grant of consent would undermine the integrity of the policy framework for the SRAA and make it difficult to achieve the intended low density development outcomes for the area.

20.6 This is not a case where an application fails because of non-compliance or inconsistency with District Plan policy on a narrow or peripheral range of matters. The degree of non-compliance is substantial. Summerset's proposal directly challenges, and is contrary to, the clearly-stated low density development intentions that are central to achieving the residential amenity values and maintaining the distinctive and special characteristics of this SRAA. We reiterate our earlier comments that this decision should not be taken to mean that no multi-unit development could proceed on this site. However, for all of the reasons explained in this decision, our conclusion is that this particular proposal must be declined.

21 CONSENT IS DECLINED

21.1 Acting under delegated authority pursuant to section 34A of the Resource Management Act 1991 and pursuant to section 104B of that Act, consent for the application made by Urban Perspectives Limited on behalf of Summerset Group Holdings Ltd for the establishment of three residential buildings containing a total of six dwelling units on land at numbers 10 to 14 Hathaway Avenue, Lower Hutt (being Lots 6, 7 and 8 DP 9877 comprised in computer freehold register WN473/13) is **DECLINED** for the reasons explained throughout this decision and summarised in Part 20 above.

DATED this 20th day of March 2015

CR Margaret Cousins (Chair)