

IN THE MATTER OF: Sections 104, 104B, 108 and 220 of the Resource Management Act 1991

AND

IN THE MATTER OF: A resource consent application made by First Class Builders (2007) Limited to undertake a three stage, 11 lot subdivision and construct 10 townhouses at 95-97 Cuba Street, Petone.

(Legally described as Pt Lot 18 DP 709 held in Computer Freehold Registers WN588/110 and WN579/30)

Council Reference: RM150194

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1. 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 (the RMA), 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:

*That the Hearings Subcommittee, acting under delegated authority from Council and pursuant to sections 104, 104B, 108 and 220 of the Resource Management Act 1991, **GRANTS CONSENT, subject to conditions**, to the Discretionary Activity resource consent application made by First Class Builders (2007) Ltd to undertake a three stage, 11 lot subdivision and construct 10 townhouses at 95-97 Cuba Street, Petone.*

- 1.2. The reasons for the decision on the application are discussed more fully below.

2. THE SITE AND LOCALITY



Figure 1: Aerial photo showing subject property at 95-97 Cuba Street (Pt Lot 18 DP 709) and submitter's property to the south at 1 Atiawa Street (Lot 5 DP 1840).

- 2.1 Legally described as Pt Lot 18 DP 709 held in Computer Freehold Registers WN588/110 and WN579/30, the site is located at 95-97 Cuba Street, Petone. The flat site comprises two adjoining lots, both of 657m² with identical rectangular shapes. The overall area of the application site is 1314m². The property at 95 Cuba Street contains a large building (387m²) currently used for the sale of recycled building materials. The front of 97 Cuba Street is currently used for parking. The rear yards of both properties are used for storage of building materials and contain various dilapidated accessory buildings.
- 2.2 The area to the north, east and west of the site is predominantly residential with one single storey commercial building located directly east (92-94 Cuba Street) which appears to be vacant. The residential area to the north of the site is separated by a 6.0m wide access way and the site is separated from properties in the east by the Cuba Street carriageway.
- 2.3 The Suburban Commercial centre immediately to the south contains a convenience store, fast food store, restaurant and several vacant shops. The majority of these buildings are two storeys, although they have a three storey parapet wall facing the street. It appears that the second storeys of these buildings are either vacant or used for residential purposes.
- 2.4 The certificates of title have no interests registered on them that may affect the proposal.

3. THE APPLICATION

- 3.1 Full details of the proposal are contained in the application and in the Council Planner's s.42A report.
- 3.2 In summary, the applicant seeks resource consent to subdivide 95 and 97 Cuba Street into eleven allotments and construct ten new dwellings. The subdivision will be completed in three stages. Stage One would create four residential lots (Lots 1, 2, 3 & 10), the shared access way (Lot 20), and a balance lot (Lot 101). Stage two would create three additional residential lots from Lot 101 (Lots 4, 8 & 9) and a balance lot (Lot 102). Stage Three would divide the balance of Lot 102 into the remaining three lots (Lots 5, 6 & 7).
- 3.3 Landuse consent is sought to construct ten dwellings. Dwellings 1-9 are all semi-detached units in two or three storey blocks, with dwelling 10 being a stand-alone three storey unit. An access lot will be located central to the site, providing vehicular and pedestrian access off Cuba Street. The proposal also includes 600m³ of earthworks being undertaken on the site, comprising 360m³ of cut and 240m³ of fill. The entire site will be subject to earthworks from 0.15m to 1.0m deep. This is part of the remediation required to address contamination issues on this site. Excavations of 0.6m-1.0m will also be undertaken in the landscaped areas to provide adequate growing conditions.

4. SITE HISTORY

- 4.1 The applicant's Detailed Site Investigation (DSI) provides a comprehensive summary of the site history. Council records reveal that the site was originally used for residential purposes and then used for a variety of commercial/industrial purposes since the 1950's. At least two activities understood to have been undertaken on the site are listed in the Hazardous Industries and Activities List (HAIL) under the National Environmental Standard

for Assessing and Managing Contaminants in Soil to Protect Human Health. Specifically, the site has been used as a motor vehicle workshop (HAIL category F4) and activities relating to cement products (HAIL category E4).

5. CONSENTS SOUGHT

5.1 Under the RMA, subdivision and land use of sites are managed under the City of Lower Hutt District Plan (the District Plan). The site is within the Medium Density General Residential Activity Area. The relevant rules are contained within Chapters 4A (General Residential chapter), 11 (Subdivision chapter) and 14 (General Rules).

Subdivision Consent

5.2 The proposed subdivision is a **Discretionary Activity** under Rule 11.2.2.1 (a) of the Plan as it fails to comply with the minimum allotment size (excluding rights-of-way and access legs) of 300m² under the Medium Density General Residential Activity Area, as follows:

- Lot 1 would be 96m², a non-compliance of 204m²;
- Lot 2 would be 91m², a non-compliance of 209m²;
- Lot 3 would be 127m², a non-compliance of 173m²;
- Lot 4 would be 127m², a non-compliance of 173m²;
- Lot 5 would be 97m², a non-compliance of 203m²;
- Lot 6 would be 96m², a non-compliance of 204m²;
- Lot 7 would be 119m², a non-compliance of 181m²;
- Lot 8 would be 104m², a non-compliance of 196m²;
- Lot 9 would be 108m², a non-compliance of 192m²;
- Lot 10 would be 64m², a non-compliance of 236m².

The right of way is 64m² which creates a further non-compliance with the minimum allotment size.

5.3 Rule 11.2.2.1 (a) also requires a shape factor of 9m by 14m clear of yards. None of the proposed lots can comply with the shape factor requirement.

5.4 Rule 11.2.2.1 (b)(ii) requires access ways servicing 7-10 dwellings to be formed with a 5m carriageway plus a 1m footpath. The access way does not meet the formation design as it does not contain a 1m footpath.

5.5 Rule 14A (ii) 2.1 (b) requires that the access way shall be a minimum separation distance of 15m from any intersection as the maximum number of vehicle movements is likely to be between 5-20 per hour. The access way is 1.5m from an intersection.

5.6 Rule 14I 2.1.1 (b) permits 50m³ of earthworks. The proposal involves 360m³ volume of cut and 240m³ volume of fill, a total of 550m³ over the permitted amount.

Land Use Consent

5.7 The land use consent is a **Discretionary Activity** as multi-unit development is an identified Discretionary Activity in the Medium Density General Residential Activity Area. In addition, the proposed development fails to comply with the minimum net site area,

shape factor and yard standards, the maximum site coverage and permeable surfaces standards and the height and height recession plane.

- 5.8 As the proposal involves soil disturbance and subdivision or change of use of a site that has likely involved historical HAIL activities, the proposal must be assessed against the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. The applicant's DSI confirms that the concentrations of soil contaminants on this piece of land exceed the applicable standard in regulation 7 of the NES for soil contaminants. Therefore, both the soil disturbance and subdivision activities are considered to be Restricted Discretionary Activities under the NES for contaminants in soil.
- 5.9 Accordingly, both the subdivision and land use consent are considered to be **Discretionary Activities** and have been assessed and determined as such.

6. NOTIFICATION AND SUBMISSIONS

- 6.1 The applicant supplied the written consent of the owner and occupiers of 91 and 93 Cuba Street; the owner of 1/99 and 101 Cuba Street, and 48, 50 and 52 Udy Street; and the owner and occupier of 103 Cuba Street. Under s104(3)(a)(ii) of the RMA, Council must therefore disregard any actual or potential effects on these properties.
- 6.2 The application was limited notified to the owners and occupiers of 2/99 Cuba Street and 1 Atiawa Street, and to the occupier of 1/99 Cuba Street on 23rd October 2015.
- 6.3 Clinton Maulder, the owner and occupier of 1 Atiawa Street submitted in opposition and wished to be heard.
- 6.4 A pre-hearing meeting was held on 21 December 2015 attended by the submitter, a representative of the applicant and Council officers. We were supplied with the minutes of this pre-hearing meeting.
- 6.5 We record that we read the submission and the above minutes in full prior to the Hearing and had regard to them all as part of our evaluation of the application.

7. PROCEDURAL MATTERS

- 7.1 Upon initial deliberations, having visited the site and adjoining property (number 1 Atiawa Street) and having considered the evidence presented to the Hearing, we had concerns about the bulk and potential adverse dominance effects of proposed Unit 3 on the residential amenity values of the small back yard of number 1 Atiawa Street. Our concern was that the extent of non-compliances of proposed Unit 3 may create adverse effects that will be contrary to the objectives and policies of the District Plan.
- 7.2 In answer to a question from us at the Hearing, the applicant clarified that if the Committee found it could not support proposed Unit 3, the applicant would like an opportunity to re-visit the design to attempt to reduce the potential adverse effects of Unit 3.

- 7.3 We considered that it was reasonable to give the applicant the opportunity to re-consider the design of proposed Unit 3 and, in particular, to explore amendments to reduce the extent of the recession plane infringement by that proposed Unit. Accordingly, we released an Interim Decision on 22 February 2016 and a Minute on 24 February 2016, directing the Applicant in this regard.
- 7.4 In due course, amended plans for proposed Unit 3 were received by us, having been pre-circulated to all parties for their written comments. After considering the amended proposal, we closed the Hearing on 11 March 2016.

8. THE HEARING

- 8.1 The resource consent application was heard by the Hearings Subcommittee comprising Councillor Margaret Cousins (Chair), Councillor Max Shierlaw and Independent Commissioner Christine Foster.
- 8.2 The Hearing was held in the Hutt City Council's (HCC) Wainuiomata Chambers, Queen Street, Wainuiomata, on Thursday 18 February 2016 commencing at 11am. We closed the Hearing on Friday 11 March 2016 after receipt of the additional information requested.
- 8.3 The following persons presented submissions and evidence to the Hearing:
- For the Applicant: Mr James Beban, Senior Resource Consents Planner, Cuttriss Consultants Ltd
 Mr Gavin Barber, Architectural Designer, Design Networks
 Mr John O'Toole, the Applicant
- Submitter: Mr Clinton Maulder, owner and occupier of 1 Atiawa Street, Petone
- For the Council: Ms Peri Zee, Reporting Planning Officer
 Mr Tim Johnstone, Team Leader Resource Consents
 Mr Bill Barclay, Consultant Traffic Engineer
 Mr Morten Gjerde, Urban Design Advisor
- 8.4 The section 42A officer's report was prepared by Ms Peri Zee. We were assisted in an administrative capacity by Mrs Heather Clegg, Hearings Administrator for HCC.
- 8.5 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 of 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.
- 8.6 The Hearings Subcommittee undertook a site visit on 18 February 2016 before the Hearing commenced, including being granted access to 1 Atiawa Street by the submitter. We record that we were not accompanied on the site visit by the applicant, submitter or officers.

9 STATUTORY REQUIREMENTS FOR ASSESSMENT

Relevant Statutory Provisions

- 9.1 As a Discretionary Activity, the application must be assessed in accordance with the provisions of sections 104 and 104B of the Resource Management Act 1991 (the Act). The process for considering a discretionary activity is as follows:

To identify the relevant section 104 matters;

As part of the overall discretion in section 104B, weigh the relevant matters under section 104.

- 9.2 We consider that 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 District Plan, objectives, policies and rules;

The relevant provision of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health; and

Part II of the Act.

- 9.3 In addition, section 108 sets out the requirements for imposing conditions of consent.

- 9.4 We have undertaken an assessment of the effects of the proposal in section 10 below, focusing on the issues in contention. We then address the alignment of the proposal with the relevant objectives and policies of the District Plan, and turn to the question of whether the proposal is consistent with the purpose and principles of the RMA contained in Part II of the Act, in section 11 of this decision. Our conclusions are set out in section 12 of this decision.

Permitted Baseline

- 9.5 Section 104(2) states:

...when forming an opinion for the purpose of subsection 1(a) [in regard to any actual and potential effects on the environment of allowing the activity], 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.

- 9.6 The District Plan would permit two dwellings on each site (four dwellings in total), up to 8.0m in height and covering 40% of their respective net site area. However, given that the application site is contaminated, we concur with the applicant that the permitted baseline is set by the National Environmental Standards. Further, given the level of contamination on the site, the permitted baseline is largely limited to the removal of soil for testing purposes. As such, we find the permitted baseline for the site is of limited relevance for this application.

Written Approvals

- 9.7 Section 104(3) of the Act states that:

A consent authority must not, —

when considering an application, have regard to—

... (ii) any effect on a person who has given written approval to the application:

9.8 The owners and occupiers of 91 and 93 Cuba Street; the owner of 1/99 and 101 Cuba Street, and 48, 50 and 52 Udy Street; and the owner and occupier of 103 Cuba Street provided their written approvals for this proposal and as a result the effects on those properties have not been considered in the assessment of this proposal.

Assessment Matters for Discretionary Activities

9.9 Under Rule 4A 2.4.1, the District Plan identifies the following assessment matters for discretionary activities:

- (a) *The matters contained in Sections 104 and 105, and Part II of the Act shall apply.*
- (b) *The degree of compliance or non-compliance with any relevant Permitted Activity Conditions.*
- (c) *With respect to residential development of 3 or more dwelling houses consideration shall be given to:*
 - (i) *How the proposal addresses the Design Guide for Medium Density Housing (Appendix 19).*
 - (ii) *The adverse effects on the amenity values of both adjacent properties and the surrounding residential area, including:*
 - *Whether the proposal will cause significant loss of sunlight, daylight or privacy of adjoining residential properties.*
 - *Whether the form, scale and character of the proposal is compatible with residential development of the surrounding area.*
 - *Whether the proposal maintains or enhances existing streetscape.*
 - (iii) *Whether public transport facilities, high quality pedestrian networks and open space and non-residential services such as education facilities, places of assembly, medical and emergency facilities and small retail activities which provide for residents' daily needs, are accessible within reasonable walking distances.*
 - (iv) *Whether there is a recorded flood risk associated with the site.*
 - (v) *The capacity of the City's infrastructure to service additional development on the site.*

9.10 In addition, section 11.2.4.1 of the Subdivision Chapter identifies the following assessment matters for discretionary activities:

- (a) *The matters contained in sections 104 and 105, and in Part II of the Act shall apply.*
- (b) *Compliance with the engineering design standards.*
- (c) *The degree of compliance or non-compliance with any relevant Permitted and Controlled Activity Standards and Terms.*
- (d) *Those matters listed in the Assessment Criteria for Controlled Activities.*

9.11 The above matters have been considered in the following assessment as relevant. Assessment in accordance with sections 104 and 105 of the Act is contained in section 10 of this decision. Our assessment of the proposal in relation to the degree of non-compliances with the relevant District Plan standards is also contained in section 10 of this report. Our Part II assessment can be found in section 11.

- 9.12 In relation to 4A 2.4.1 (c)(i), the proposal has been assessed by Council's Urban Design Adviser who considers that it meets the Design Guide for Medium Density Housing (Design Guide) in that it fits in with the neighbourhood, has well integrated buildings and spaces with quality outdoor areas for each unit, provides for amenities on site, provides for a reasonable level of privacy and is landscaped to a reasonable standard.
- 9.13 In relation to 4A 2.4.1 (c)(ii), we consider the amended proposal will not cause significant loss of outlook, sunlight, daylight or privacy of adjoining residential properties. We find that the proposal will contribute positively to the streetscape particularly when compared to the current use.
- 9.14 In relation to 4A 2.4.1 (c)(iii), the site is located on a main transport route with a bus stop directly across the road with buses that travel to Wellington, Lower Hutt and Upper Hutt. The suburban commercial centre adjacent will provide for residents daily needs and the Jackson Street retail area is within walking distance.
- 9.15 In relation to 4A 2.4.1 (c)(iv), the site does not have any recorded history of inundation on Council records.
- 9.16 In relation to 4A 2.4.1 (c)(v), the proposal has been assessed by Council's Subdivision Engineer who has confirmed that the nearby infrastructure has sufficient capacity to accommodate the proposed development. Council's Subdivision Engineer considers it can meet the required engineer standards subject to meeting certain conditions as per 11.2.4.1 (b).
- 9.17 With regards to 11.2.4.1(d), the proposal has been considered against the assessment matters for Controlled Activities in section 10 of this report.

10. ISSUES IN CONTENTION

10.1 Based on the material provided in the application, the submission, the s42A report and evidence presented to the Hearing, we consider that the principal issues in contention are:

- Bulk and Location of Unit 3 including shading
- Privacy Effects
- Compliance with the Design Guide for Medium Density Housing
- Degree of Non-Compliances
- Temporary Construction Effects
- Transport Effects
- Effects on Character and Amenity Values
- Site contamination Effects
- Other Matters
- Positive Effects

Bulk and Location of Unit 3

10.2 We heard from the submitter, Mr Clinton Maulder, of 1 Atiawa Street, that he had concerns regarding the degree of recession plane non-compliance posed by proposed Unit 3 on the southern boundary of the subject site (his common boundary), and with the closeness to the boundary of this Unit, which he stated would result in significant building bulk dominance, compromised privacy and shading. We also initially shared his concerns and provided the applicant an opportunity to re-design Unit 3.

- 10.3 The amended plans for Unit 3, received and commented on by all parties, address the concerns of bulk, dominance and recession plane infringement. The applicant has removed a portion of the third floor of Unit 3, and redesigned the floor plans, to result in the third level being set back from the lower levels. This significantly reduces the building bulk especially when viewed from the backyard area of 1 Atiawa Street. This re-design has also reduced the amount of recession plane angle infringement along the southern boundary, to the extent of there being no infringement when the angle is measured at 45⁰ from the north eastern corner of 1 Atiawa Street. We note the District Plan only requires recession plane compliance at 90⁰ to the boundary, and that the proposal does comply with this requirement at the common boundary (between proposed Unit 4 and 1 Atiawa Street).
- 10.4 Shading diagrams were provided at the Hearing, and these did show that there would be additional amounts of shading emanating from the proposal, onto 1 Atiawa Street, compared with a fully complying development. The Architectural Designer for the applicant explained these additional shading periods would be primarily up until 10am on the shortest day, and primarily on parts of the property potentially not in great usage at that time of the day and would barely be discernible. He further explained that much of the potential additional shading from the proposal occurs in the early mornings due to the low altitude of the sun on its path in the sky, and sunlight at that time will also be impeded by existing vegetation. We understand that the amended plans for Unit 3 reduce the amount of shading onto 1 Atiawa Street further.
- 10.5 We are satisfied that the adverse effects of bulk and location of Unit 3 have been adequately mitigated.

Privacy Effects

- 10.6 Mr Maulder explained his concerns over the reduced privacy of his property, primarily from proposed Unit 3. We note with the redesign of this Unit, the third level contains 2 bathrooms and 2 bedrooms, with only two high level bathroom windows facing 1 Atiawa Street. We further note the second level of this unit (containing the living areas) has no windows facing 1 Atiawa Street. At the redesign stage, the applicant offered to include privacy screens on the level 1 Dining Room window (facing west, and not directly into 1 Atiawa Street). Mr Maulder indicated that this privacy screen coupled with the floor plan changes would address his privacy concerns. We concur with this and have included a condition to reflect this.
- 10.7 We note unit 4 which is immediately adjacent to the submitter's property has been designed as a 2 level apartment, with very few windows facing that property. It steps back from the common boundary and complies with the recession plane requirements. We find that due to the vertical and horizontal design setbacks and the strategic placement of windows, this Unit does not adversely affect the privacy of any site.

Compliance with the Design Guide for Medium Density Housing

- 10.8 The application was reviewed by Council's Urban Design Adviser to assess whether it meets the Design Guide for Medium Density Housing (contained within Appendix 19 in Chapter 4A of the District Plan): his assessment was appended to the s42A report. His conclusion was that the proposal largely met the requirements of the Design Guide. He found that the proposal will fit with the adjacent suburban commercial area, whilst maintaining a spatial separation to the residential area to the north. Specifically, he found

that the clear distinction in building height between the proposed development and the adjacent suburban commercial area and the lower level residential properties is a positive aspect of this proposal, ensuring that the development will read as part of the existing suburban commercial centre. We concur with this view, noting that the reduced bulk of Unit 3 will further enhance this outcome.

- 10.9 With regards to the landscaping of the site, the revised landscaping plans (submitted by the applicant prior to the hearing, and circulated to all parties) address any concerns regarding amounts of vegetation and outdoor private spaces for each unit.
- 10.10 With regards to “fitting in with the neighbourhood”, we concur with the Urban Design Adviser and the applicant, that the proposed height is generally consistent with the height of the suburban commercial buildings to the south and that it relates primarily to this Activity Area. We note the subject site is separated from the residential areas to the north by two access ways (of approximately 6.0m total width), which we consider provide a sufficient distance barrier. We concur with the Council Planner that the overall form of the development decreases to the rear of the site, even more so due to the redesign of Unit 3, resulting in a permitted height transition to the residential areas to the rear of the subject site.

Degree of Non-Compliances

- 10.11 We find that, although the proposal fails a number of rules of the District Plan, on balance, the amenity and privacy levels afforded each unit and surrounding properties, the site location and the fact the proposal largely meets the design criteria, all combine to allow this development to fit within the neighbourhood.

Temporary Construction Effects

- 10.12 The applicant has estimated that the proposal will take 14 months to complete. The District Plan anticipates construction activity on this site and allows for some additional noise during such times in accordance with NZS 6803P ‘Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work’.
- 10.13 The applicant offered to prepare a Construction Management Plan (CMP) prior to the commencement of site works. The applicant’s witness explained the CMP will detail how traffic, dust, noise and vibration effects associated with construction activities will be managed. The hours of operation will be nominated and a contact person will be made available to liaise with for any complaints. We have included condition 36, which also requires that the details of the contact person for complaints are to be provided to the Team Leader Resource Consents, which will adequately mitigate any construction effects.

Transport Effects

- 10.14 The proposed access way for this development will be located closer than the permitted distance from an intersection. Both the applicant’s and the Council’s Traffic Engineers agreed that the proposed development will not result in a discernible increased risk of conflict between right turning vehicles and this intersection, given the current activity undertaken on the site. They consider this location to be acceptable from a traffic safety point of view.
- 10.15 The proposed access lot does not comply with the formation requirements of the District Plan as no footpath is proposed to be located alongside the edge of the access way. The

applicant's Traffic Engineer stated in her evidence that even at the busiest times there would be on average no more than one vehicle every five to ten minutes, and as such, the use of the access way as a shared space for vehicles and pedestrians is both safe and appropriate.

10.16 It was the Council's Traffic Engineer's opinion that a separate footpath would not be well used and that the access way is better utilized as a shared space. He added that full width driveways are available within the proposal, which will aid in manoeuvrability.

10.17 The proposal complies in all respects with the number of on-site carparks provided, (providing 12 carparks compared to the 10 required) and that there is also public parking available in the immediate neighbourhood, such parking able to accommodate any additional parking demand without detracting from the traffic safety and efficiency of the local roading network. We further heard that the proposal complies in all respects with all other traffic and parking rules.

10.18 We find that the traffic effects associated with the proposal are less than minor.

Effects on Character and Amenity Values

10.19 We note the Unit 4 which is directly adjacent to the submitter's property, is to be two storey, and set back from the boundary. This greatly reduces any perceived bulk, and results in the proposed Unit better relating to the residential neighbouring properties. We consider the bulk and any shading or privacy effects from Unit 4 would be similar or less than a complying development would present and there will be a visual transition into the single storey residential area when viewed from properties adjacent to the west.

10.20 The building design for all units uses three different cladding materials to create contrasts, visual interest and assist with breaking up perceived building bulk. All elevations are varied and modulated.

10.21 We consider the three storey height on the Cuba St frontage to be acceptable in the context of the setting. The site is somewhat unique in having Suburban Commercial and General Residential as well as Medium Density General Residential zoning abutting it. It is also located on a busy transport route. The adjacent Suburban Commercial buildings, whilst being of two storey construction, also have a high parapet front facade, resulting in their appearance being similar to a three storey building. We find that the scale and form of the buildings proposed on the Cuba Street frontage are consistent with the Suburban Commercial centre to the south. While the three storey height of proposed Unit 10 is not consistent with the single storey residential dwellings to the north, the spatial separation ensures that this Unit does not detract from the overall residential character to the north.

10.22 In comparison with the existing use, we find that the proposal is more consistent with the local character as the proposal reconciles the Suburban Commercial centre with the surrounding residential area and the current building recycler's yard is consistent with neither.

10.23 Regarding density and site coverage, we find the site to be appropriate for a higher than permitted density of development due to its unique location and the specific design of the proposal which will provide a good standard of residential development. Strata

boundaries have been used to accommodate the modulated apartment design and are considered appropriate in this case.

Site Contamination Effects

10.24 We were presented with evidence explaining the site has a known history of HAIL activities being undertaken which have resulted in contamination of the soil. The applicant engaged Pattle Delamore Partners Ltd (PDP Ltd) to undertake a detailed Site Investigation (DSI). This determined the levels of contaminants and proposed options for remediation. The DSI confirmed that the levels of contaminants found in the soil samples exceeded the applicable standard in regulation 7 for the proposed change of use to residential.

10.25 The remediation recommended by the PDP Ltd DSI included removal of soil to a depth of 0.5m in areas where landscaping is proposed. They further recommended these excavated areas are to be backfilled with clean soil and contaminated soil is to be deposited at a Class A landfill. The DSI also recommended that a Remediation Action Plan be produced prior to remediation being carried out on site.

10.26 We consider that the DSI has effectively identified the potential risk from site contamination and that the proposed mitigation measures will be sufficient to ensure these risks are managed appropriately. Condition 38 requires the applicant to undertake all works on the site in accordance with the recommendations of the DSI.

10.27 With compliance of the proposed consent conditions referred to above, we consider that the contamination risk is adequately mitigated. We also find that the earthworks will not alter the overall ground level of this relatively flat site and that there will be no change to the topography of the site.

Other Matters

10.28 There is no known history of inundation occurring on the site. The site is not within the Wellington Fault Line Special Study Area and is not erosion prone land.

10.29 There are no identified significant natural, cultural or archaeological resources located on the site. The buildings on the site are not listed as protected in the District Plan Heritage Building List. The proposal will not adversely effect on any culturally or historically significant buildings, artefacts or areas.

10.30 The site does not contain any natural watercourses with an average width of over 3m, resulting in the District Plan rules relating to esplanade strips and reserves being not applicable to this development.

Positive Effects

10.31 Construction of the proposed townhouse units will:

- enable further intensification of housing on a site that is located close to main transport links and a suburban centre;
- allow for the development potential of the site to be achieved;

- add to the supply and diversity of the housing stock in Lower Hutt (in this regard we note that all but one of the Units will have an internal lift accessing all floors making them particularly suitable for people with mobility impairments and the elderly);
- support the intent of the Hutt City Council's Urban Growth Strategy;
- make efficient use of the existing infrastructure in the local area.

Summary of Assessment of Effects

10.32 Overall, we find that the adverse effects of the proposal will be minor or less than minor. We consider the amended design will adequately mitigate all potential adverse effects of the proposed development through the layout and design of the Units and associated outdoor areas, accessway and parking and landscaping.

11. ASSESSMENT AGAINST THE RELEVANT PLAN PROVISIONS

11.1 We now turn to assessing the proposal against the relevant objectives and policies of the District Plan. The key objectives and policies are those for the General Residential Activity Area (chapter 4), as well as those relating to subdivision (chapter 11) and the general rules (chapter 14) relating to minimum net site area, building bulk, engineering matters and transport.

Residential Objectives and Policies

11.2 *Objective 4A 1.1.1 - Residential Character and Amenity Values*

To maintain and enhance the amenity values and residential character of the General Residential Activity Area of the City.

Policies

- (a) *That opportunity be provided for a diversity of residential activities...*
- (c) *To ensure residential amenity values are retained, protected and enhanced through the establishment of a net site area per dwelling house.*
- (d) *That adverse effects arising from noise, dust, glare, light spill and odour be managed.*

11.3 We find that this proposal will offer another style of residential accommodation, and one that is anticipated by the Design Guide. The proposal is largely consistent with the Design Guide. Despite the net site area not being met, we consider each allotment is of sufficient size to accommodate the proposed Unit and provide a suitable living environment for future residents because of the particular design of the Units. We have imposed conditions of consent to address any potential construction effects. We therefore find that the proposal is consistent with this Objective and associated Policies.

11.4 *Objective 4A 1.1.2 - Medium Density Residential Development*

To ensure opportunity is made for medium density residential development around some commercial centres, along major transport routes, and where amenity values will not be affected adversely and where there is appropriate servicing of development.

Policies

- (a) *That opportunity for higher dwelling densities be made along major transport routes, around some commercial centres, in the residential area between Jackson Street and The Esplanade, Petone, where existing dwelling densities are higher, and where amenity values will not be affected adversely and where there is appropriate servicing of development.*
- (b) *To avoid, remedy or mitigate the adverse effects of higher dwelling densities on the surrounding area, caused by height of buildings, intensity, scale and location.*
- (c) *That medium density development be encouraged where it is in general accordance with the direction provided by the Design Guide for Medium Density Housing (Appendix 19) and maintains and enhances on site amenities and consistency with the surrounding residential character and minimises impact on the natural environment.*

11.5 We find that the location of the site is well suited for medium density development as it is along a major transport route, directly adjoining a Suburban Commercial centre. The proposal has been reviewed by Council's Urban Design Adviser who considers that it largely meets the Design Guide for Medium Density Housing as on-site amenity has been adequately provided for through landscaping, outdoor areas and integrated open spaces. The location of the site, being separated from the residential area to the north, and the progressive lowering of building height ensure that the proposal does not adversely affect the surrounding residential character. Therefore, we find the proposal is consistent with the above objective and policies.

11.6 *Objective 4A 1.2.1 – Building Height, Scale, Intensity and Location*

To avoid, remedy or mitigate adverse effects caused by building height, intensity and location on the amenity values of adjacent residential sites and the residential character of the surrounding residential area.

Policies

- (a) *To establish a minimum net site area and maximum site coverage requirement to ensure medium density development is achieved.*
- (b) *To establish a minimum net site area and maximum site coverage to ensure opportunity is provided for higher density residential development where appropriate, without affecting adversely the amenity values.*
- (c) *To ensure all new development is of a height and scale, which is compatible with surrounding residential development.*
- (d) *To ensure a progressive reduction in height of buildings the closer they are located to a site boundary, to maintain adequate daylight and sunlight to adjoining properties.*
- (e) *To manage the siting of all buildings so as to minimise detracting from the character and visual attractiveness of the surrounding residential activity area.*
- (f) *To manage the siting of all buildings so as to minimise detracting from the amenities of adjoining properties.*
- (g) *To establish a minimum permeable surface area to assist with the sustainable management of stormwater.*
- (h) *That where practicable, the siting of accessory buildings be managed to maintain safety and visibility during manoeuvres...*

- (j) *To ensure that the developments are in general accordance with the Design Guide for Medium Density Housing (Appendix 19) to control other aspects of design, such as quality of onsite amenity, integration of buildings and landscaping in respect to open space and compatibility with surrounding development patterns and low environmental impact.*

11.7 The proposed Units include various non-compliances with the permitted activity conditions. On assessing the effects of these non-compliances in section 10 above, we concluded that the effects will be minor overall and therefore they will not be to a degree where the residential character will be adversely impacted upon. Specifically, it is anticipated that the proposed multi-unit development will read as part of the suburban commercial centre to the south while maintaining a spatial separation from the residential properties to the north. The progressive reduction of building bulk to the rear of the site provides a visual transition into the residential area behind. The proposal achieves the outcomes in general, sought by the Design Guide. On this basis we consider the proposal is consistent with the above Objective and Policies.

Subdivision Objectives and Policies

11.8 *Objective 11.1.1 – Allotment Standards*

To ensure that land which is subdivided can be used for the proposed use or development.

Policy

- (a) *To ensure that allotments have minimum design standards such as minimum size, shape and frontage, which are suitable for the proposed use or development.*

11.9 Once the subdivision is complete, none of the lots will meet the net site area minimum requirements or the shape factor requirements of the District Plan. The boundaries of the proposed lots will reflect the layout of the proposed Units.

11.10 The proposal includes fully developed Unit designs that demonstrate that the site layout is appropriate for the proposed use. The density is considered appropriate due to the location of the site and the design of the Units, and we have found that the Units are generally consistent with the outcomes sought by the Design Guide for multi-unit developments. We therefore find that the proposed lots are of a suitable size and shape to accommodate their proposed use for residential activities and on this basis we consider the proposal is consistent with the above Objective and Policy.

11.11 *Objective 11.1.2 - Engineering Standards*

To ensure that utilities provided to service the subdivision protect the environment and that there are no adverse effects on the health and safety of residents and occupiers.

Policy

- (a) *To ensure that utilities provided comply with specified performance standards relating to such matters as access, street lighting, stormwater, water supply, wastewater, gas, telephone, electricity and earthworks.*

11.12 All dwellings will be serviced in terms of sewer, water, stormwater, power and telecommunications. The proposal has been assessed by Council's Subdivision Engineer and Consultant Traffic Engineer. We consider that subject to conditions, all engineering matters can be appropriately addressed. The proposal is therefore consistent with the above objective and policy.

Natural Hazard Objective and Policies

11.13 *Objective 11.1.3 Natural Hazards*

To ensure that land subject to natural hazards is subdivided in a manner that the adverse effects are avoided, remedied or mitigated.

Policies

- (a) Subdivision of land within the Wellington Fault Special Study Area should be managed to ensure that the allotments are of sufficient size and shape so that buildings and structures are not sited within twenty metres of a faultline.*
- (b) Subdivision of land subject to flooding is discouraged as this can lead to greater intensity of use and development and have adverse effects on the environment.*
- (c) Subdivision of land should be managed to ensure that within each allotment there is a suitable building platform so that buildings and associated structures will not be adversely affected by slope instability, including the deposition of debris.*

11.14 The site has no known history of inundation occurring upon it. It is not located within the Wellington Fault Line Special Study Area and is not considered to be erosion prone land as the ground level is flat. We find that the proposal complies with the above Natural Hazards Objective and relevant Policies.

Transport Objective and Policy

11.15 *Objective 14A(iii) 1.2.1 – On-Site Parking and Provision for All Activities*

To provide adequate on site car parking in a safe and visually attractive manner, to maintain the safety and efficiency of the roading system, and the amenity values of the areas.

Policy

- (a) That adequate on-site parking space is provided for each type of activity in a safe and visually attractive manner.*

11.16 The District Plan requirement is one carpark per dwelling. This proposal complies. We find that the vehicle manoeuvring areas have been incorporated into the landscaping design of the site thereby helping to reduce any effect of dominance of vehicles that may exist in a 10-Unit development. All parking and manoeuvring areas will be sealed in an attractive manner, resulting in a visually attractive development.

11.17 We have found that legal and physical access can be provided to the proposed lots via the proposed right-of-way, and that given the scale and nature of the proposed residential

activity on site, safe pedestrian and vehicular access can be provided by way of a shared accessway. Therefore, we find the proposal meets the above Objective and Policy.

Other Statutory Documents

- 11.18 At least two activities understood to be undertaken on the site are listed in the Hazardous Industries and Activities List (HAIL) under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. The applicant provided a Detailed Site Investigation (DSI) which is assessed within section 10 of this report. Overall, we are satisfied that the contamination risk will be appropriately managed subject to all conditions being complied with.
- 11.19 We have given consideration to all other the relevant national environmental standards; other regulations; national policy statements; New Zealand Coastal Policy Statement 2010; regional policy statement/proposed regional policy statement; or plan/proposed plan. None of the provisions of those documents is directly relevant to this proposal.
- 11.20 We note the agreed view of the applicant and the Council Planner that the proposal is consistent with the Hutt City Council's Urban Growth Strategy.

Other Matters

- 11.21 We heard from Mr Maulder of his concerns regarding precedent. We regard the site to be sufficiently unique in that it is zoned residential but reads as part of the Suburban Commercial centre due to the scale and nature of the current buildings and that it is spatially separated from residential properties to the north. The remaining residential sites in the immediate area (aside from the existing commercial building opposite) are residential in nature and are separated in such a way that they are not likely to be read as part of the suburban commercial centre.
- 11.22 There can be no question of precedent, anyway, where a proposal falls to be considered as a Discretionary Activity. The District Plan provides for multi-unit development, including development that is non-compliant with Permitted Activity standards, subject to a site-specific assessment. In this respect, the proposal does not compromise the integrity of the District Plan.

Part II of the Act

- 11.23 When considering an application for a resource consent and any submissions received, our assessment is subject to Part II of the Act, which includes:
- a) The purpose of the Act (section 5);
 - b) Matters of national importance that the consent authority must recognise and provide for when determining a resource consent (section 6);
 - c) Other matters the consent authority must have particular regard to (section 7); and
 - d) The principles of the Treaty of Waitangi that must be taken into account (section 8).
- 11.24 The purpose of the Act as set out in section 5 is to promote *the sustainable management of natural and physical resources while managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and*

communities to provide for their social, economic and cultural wellbeing and for their health and safety while... avoiding, remedying, or mitigating any adverse effects of activities on the environment.

- 11.25 The proposed development is a suitable use for the site and any adverse effects are considered to be either less than minor or sufficiently mitigated by the proposed design or by conditions of consent. The proposal will contribute positively to the streetscape and provide good quality housing in an area that is suitable for higher density housing.
- 11.26 Section 6 of the Act lists matters of national importance. None of the matters of national importance are relevant to this proposal.
- 11.27 Section 7 of the Act lists a number of other matters that Council shall have particular regard to when considering such an application. Under section 7 the following matters are considered applicable:
- (b) The efficient use and development of natural and physical resources:*
 - (c) The maintenance and enhancement of amenity values:*
 - (f) Maintenance and enhancement of the quality of the environment:*
- 11.28 The proposal will make better use of an existing developed site, which is an efficient use and development of existing resources and infrastructure (a relevant s7(b) matter).
- 11.29 In terms of sections 7(c) and (f), the subdivision and development will maintain the amenity values of the surrounding area and the quality of the local environment.
- 11.30 Section 8 of the Act requires that the Council, in achieving the purpose of the Act, in managing the use, development and protection of the natural and physical environment, shall take into account the principles of the Treaty of Waitangi. We are satisfied that the proposal is not contrary to section 8 of the Act. We note the subject site is not adjacent to any land subject to the Port Nicholson Block Settlement Act 2009 that would warrant notification of the application to the Port Nicholson Settlement Trust or Ngati Toa. The site is not identified in the District Plan as containing any wāhi tapu or sites of significance to Māori.
- 11.31 Overall we consider the proposal to be consistent with Part II of the Act. A grant of consent for the subdivision and development will promote the purpose of promoting the sustainable management of the City's natural and physical resources in accordance with section 5. The proposal will create multiple medium density dwelling units within an established urban area zoned for such an activity. The units will be compact in form, well designed and on balance will meet the aims of the Design Guide for Medium Density Housing providing for the development potential of the site to be achieved.

12. CONCLUSION AND DECISION

- 12.1 That the Hearings Subcommittee, acting under delegated authority from Council and pursuant to sections 104, 104B, 108 and 220 of the Resource Management Act 1991, **GRANTS CONSENT subject to the conditions contained in Appendix 1** to the

discretionary activity resource consent application made by First Class Builders (2007) Ltd to undertake a three stage, 11 lot subdivision and construct 10 townhouses at 95-97 Cuba Street, Petone.

12.2 This decision is made for the reasons discussed above and, in summary, because:

- (a) The activity that is granted is unlikely to have any significant adverse effects on the environment provided the conditions imposed are fully implemented;
- (b) Subject to the imposition of appropriate conditions, the activity is consistent with the provisions of the operative City of Lower Hutt District Plan; and
- (c) The activity will promote the sustainable management purpose and principles of the Resource Management Act 1991.

Margaret Cousins (Chair)
Hearing Committee

Dated this 5th day of April 2016

APPENDIX 1 – CONDITIONS OF CONSENT

Approved Plans

1. That the proposal is carried out substantially in accordance with the information and approved plans:

Scheme Plans:

- Drawing Number 28375SCH, sheets 1-7, dated August 2015, prepared by Cuttriss Consultants;

Resource Consent Application Plans:

- Code L16K, REF 7251-RC, Sheets 1 (dated 08-06-2015), 2E (dated 26-02-2016), 3E (dated 26-02-2016), 4A (dated 06-10-2015), 5A (dated 06-10-2015), 6A (dated 06-10-2015), 7A (dated 06-10-2015), 8D (dated 25-02-2016), 9D (dated 25-02-2016), 10D (dated 25-02-2016), 11E (dated 26-02-2016), 12D (dated 25-02-2016 and including the privacy screen as offered by the applicant 4 March 2016), 13B (dated 02-02-2016), 14D (dated 25-02-2016 and including the privacy screen as offered by the applicant 4 March 2016), 15D (dated 25-02-2016 and including the privacy screen as offered by the applicant 4 March 2016), 16A (dated 06-10-2015), 17 (dated 08-06-2015), 18A (dated 06-10-2015), 19A (dated 06-10-2015), all prepared by Design Network; and

Landscaping Plans:

- Project Number 2565, Drawing Numbers 01-02, Revision R3, dated 01-10-2015 prepared by Good Year Design and amended by condition 46 and held on file at Council.

The subdivision consent is subject to the following conditions:

Engineering

STAGE 1 – lots 1-3, 20 and balance

2. That Lot 10 and Lot 101 hereon be held in the same computer freehold register – pursuant to Section 220(1)(b)(iii) Resource Management Act 1991.
3. That Lot 20 hereon (legal access) be held as to three undivided 1/10 share with Lots 1 – 3 hereon and as to an undivided 7/10 shares with Lots 10 and 101 hereon and that individual computer registers be issued in accordance therewith. All pursuant to Section 220(1)(b)(iv) Resource Management Act 1991.
4. That the consent holder pays the Council an engineering fee to meet the cost of work carried out by the Council Subdivision Engineer in assessing, inspecting, testing and approving water, sewer and stormwater services, access or any other aspect of the proposal so assessed by the engineer or any representatives of the engineer (as distinct from work which must be monitored as a result of any building consent). That fee is **3.36** per cent of the consent holder's construction costs (including GST) and is calculated using a scale of engineering fees based on the number of new lots created. The minimum fee is **\$150.00**, irrespective of whether any construction work is necessary. Payment is necessary before or at the time of applying for a section 224(c) certificate.

5. That the consent holder ensures all development and construction work complies with the provisions of NZS 6803:1999 Acoustics - Construction noise; and that notwithstanding this standard, machinery operating hours, including machinery start-up times, are limited to between 7am and 6pm Monday to Saturday, with no work on Sundays or public holidays.
6. That the consent holder constructs the private way, including a **heavy-duty vehicle crossing** and necessary stormwater control in accordance with the Council's codes and standards.
7. That the consent holder diverts the existing 750mm stormwater pipe clear of all the proposed residential lots, excavates and removes the abandoned pipes across the site and seals both ends at the boundary with a concrete "biscuit".
8. That the consent holder installs the reticulation as necessary and connects separate sewer and stormwater service leads to the public mains for each residential lot (and adjust existing services where necessary) in accordance with the council's codes and standards. Note that a terminal manhole/cleaning eye is required on the proposed sewer branch line up the drive to the rear of 50 Udy Street.
9. That the consent holder supplies water reticulation as necessary and supplies separate connections for each residential lot that meets the Council's code for domestic supply and the firefighting capability required under the New Zealand Fire Service code of practice (SNZ PAS 4509:2008).

Note: The consent holder must apply for new water connections at the customer services counter of the Council Building, 30 Laings Road, Lower Hutt. GHD Ltd processes applications on behalf of Capacity Infrastructure Services Ltd, which is a Council-Controlled Company in charge of Council water and drainage assets. The GHD Ltd contact person is Hayden Pipe (tel. (04) 474 7331). GHD Ltd may impose special requirements or conditions for new connections depending on, among other things, the existing reticulation system's condition and layout, flow rates, pressure zones and proposed future work. It is important the consent holder makes an application early in the design or construction phase. The Council recommends that the consent holder makes this application before submitting engineering plans to the Council Subdivision Engineer.

10. That the consent holder submits a copy of the approved water connection application form to Council (signed by GHD Ltd) when applying for the section 224(c) certificate.

11. That the consent holder removes the existing concrete vehicle crossings and reinstates the kerb and footpath as necessary, all in accordance with the Council's codes and standards.
12. That the consent holder severs all abandoned service pipes at the mains and removes abandoned tobies and surface boxes.
13. That the consent holder submits two copies of engineering plans for the above construction work to the Council Subdivision Engineer for approval; that the plans provide information on the materials to be used, including the size, type and class of pipes, as well as indicate pipe gradients; and that all this work is carried out in accordance with the approved plan.

Please note that this condition is necessary, even for minor works, as the engineering approval letter will list further engineering requirements in regard to Corridor Access Requests, pipe materials, inspections, as-built information, etc.

14. That the consent holder appoints a representative to carry out the design and supervision of construction work, as well as certification upon completion, as provided for by clause 1.4.1 of NZS 4404:2004; and that the consent holder submits the name, contact details and experience of the representative to the Council Subdivision Engineer for approval before submitting engineering plans. The consent holder must document the representative's experience in a resume and show the relevance of that experience to the works and services required under this consent. The certification must include confirmation that the materials, installation and testing meet the Council's codes and standards.
15. That the consent holder appoints an approved contractor or contractors to complete the works to the approved design; and that the consent holder submits to the Council Subdivision Engineer for approval the name, contact details and experience of the contractor(s) at the time of submitting engineering plans for approval. The approved contractor(s) must give a minimum of 24 hours' notice to the Council Subdivision Engineer before starting work.
16. That the consent holder provides underground telephone and electrical services to each lot.
17. That the consent holder provides the Council with written confirmation from Chorus (or the equivalent network supplier) and Wellington Electricity Lines Ltd that they are satisfied with the supply of their utilities to each lot.
18. That the consent holder provides the Council with written confirmation from a surveyor that all existing services have been adjusted so they are contained within the lot (or are protected by an appropriate easement) and that the ends of all abandoned

lines have been sealed in accordance with Council requirements, or alternatively that the consent holder provides the Council with written confirmation from a surveyor that no such adjustments and sealing are necessary.

19. That the consent holder provides appropriate easements for public and private services where necessary (over the subject site), with the easements shown as a memorandum of easement on the land transfer title plan. The consent holder must show easements for public services on a plan with a minimum three-metre width centred over the service, or twice the depth of the trench, whichever is greater; show the Council as the grantee in gross; and engage a lawyer at the consent holder's expense to prepare easement documents.
20. That the consent holder gives the new access way a name after first contacting the Council's Road and Traffic Administration Co-ordinator about the procedures to follow to formalise the suggested name. The process can take several months, so an early application is encouraged. A payment of \$250.00 (GST incl.) to meet the cost of making and installing each street name sign is to be made to Council at time of application for the 224(c) certificate.

Note: This condition is necessary because LINZ now require private access ways to be named if they serve more than 5 address sites.

21. That the consent holder moves all buildings clear of the new boundaries before applying for a section 224(c) certificate.
22. That, at the time of requesting a section 224(c) certificate, the consent holder provides a schedule of assets detailing each item to be transferred to Council ownership as part of the subdivision process; and that the consent holder supplies a full description of the item, material type, size, length, area, volume, et cetera, following the format set out in Council form RAS-FORM-014.
23. That the consent holder sets out the value of services to be taken over by the Council to enable the creation of a buyer-created tax invoice, with the details provided to be in accordance with Council buyer-created tax invoice form RAS-FORM-015.
24. That the consent holder provides the Council with two copies of the as-built plan/s, certified by a surveyor or engineer, showing, where applicable, the levels and alignment of all the mains and road work, and the location of all service connections (and, if applicable, new work within private property) relative to the lot boundaries.

STAGE 2 – lots 8, 9, 10 and balance

25. That Lot 20 hereon (legal access) be held as to four undivided 1/10 share with Lots 4, 8, 9 and 10 hereon and as to an undivided 3/10 shares with Lot 102 hereon and that

individual computer registers be issued in accordance therewith. All pursuant to Section 220(1)(b)(iv) Resource Management Act 1991.

26. That the consent holder pays the Council an engineering fee to meet the cost of work carried out by the Council Subdivision Engineer in assessing, inspecting, testing and approving water, sewer and stormwater services, access or any other aspect of the proposal so assessed by the engineer or any representatives of the engineer (as distinct from work which must be monitored as a result of any building consent). That fee is **3.29** per cent of the consent holder's construction costs (including GST) and is calculated using a scale of engineering fees based on the number of new lots created. The minimum fee is **\$150.00**, irrespective of whether any construction work is necessary. Payment is necessary before or at the time of applying for a section 224(c) certificate.
27. That the consent holder provides the Council with two copies of the as-built plan/s, certified by a surveyor or engineer, showing the location of all service connections relative to the lot boundaries.

STAGE 3 – lots 4-7

28. That Lot 20 hereon (legal access) be held as to three undivided 1/10 share with Lots 5 – 7 hereon and that individual computer registers be issued in accordance therewith. All pursuant to Section 220(1)(b)(iv) Resource Management Act 1991.
29. That the consent holder pays the Council an engineering fee to meet the cost of work carried out by the Council Subdivision Engineer in assessing, inspecting, testing and approving water, sewer and stormwater services, access or any other aspect of the proposal so assessed by the engineer or any representatives of the engineer (as distinct from work which must be monitored as a result of any building consent). That fee is **3.29** per cent of the consent holder's construction costs (including GST) and is calculated using a scale of engineering fees based on the number of new lots created. The minimum fee is **\$150.00**, irrespective of whether any construction work is necessary. Payment is necessary before or at the time of applying for a section 224(c) certificate.
30. That the consent holder provides the Council with two copies of the as-built plan/s, certified by a surveyor or engineer, showing the location of all service connections relative to the lot boundaries.

Reserves contributions – to be paid at each stage

31. The consent holder shall pay a contribution to Council's Reserves Purchases and Development Account at Council's standard rate of 6.5% of the value of the additional residential allotments or capped at \$10,000 per allotment whichever is the lesser. The amounts required will be determined on the basis of a market value assessment from a Registered Valuer. It is the consent holder's responsibility to instruct the Valuer and

supply Council with this assessment. The amount to be paid will be determined when the consent holder submits the qualified Valuer's assessment.

Section 224(c) Certification

32. Prior to section 224(c) certification for Stages 1-3 of the subdivision, the proposed townhouses shall be completed to a stage in which they are weatherproof – certification of this shall be provided by an appropriately qualified person with the s224 application.

The land use consent is subject to the following conditions:

Approved plans

33. That the proposal is carried out substantially in accordance with the information and approved plans:

Scheme Plans:

- Drawing Number 28375SCH, sheets 1-7, dated August 2015, prepared by Cuttriss Consultants; Resource Consent Application Plans:

- Code L16K, REF 7251-RC, Sheets 1 (dated 08-06-2015), 2E (dated 26-02-2016), 3E (dated 26-02-2016), 4A (dated 06-10-2015), 5A (dated 06-10-2015), 6A (dated 06-10-2015), 7A (dated 06-10-2015), 8D (dated 25-02-2016), 9D (dated 25-02-2016), 10D (dated 25-02-2016), 11E (dated 26-02-2016), 12D (dated 25-02-2016 and including the privacy screen as offered by the applicant 4 March 2016), 13B (dated 02-02-2016), 14D (dated 25-02-2016 and including the privacy screen as offered by the applicant 4 March 2016), 15D (dated 25-02-2016 and including the privacy screen as offered by the applicant 4 March 2016), 16A (dated 06-10-2015), 17 (dated 08-06-2015), 18A (dated 06-10-2015), 19A (dated 06-10-2015), all prepared by Design Network; and

Landscaping Plans:

- Project Number 2565, Drawing Numbers 01-02, Revision R3, dated 01-10-2015 prepared by Good Year Design and amended by condition 46 and held on file at Council.

Pre-commencement and construction works

34. That the consent holder keeps a copy of this decision on site when work starts and makes it available on request to Council staff.
35. That the consent holder advises the Council (enforcement@huttcity.govt.nz or (04) 560 1044) at least two working days before starting any work on site; and that the consent holder also supplies the name, phone number and address of the main contractor and, if applicable, the same details for the earthworks company.

Important note: When given notice of a start date, a compliance officer will suggest an on-site meeting to run through a checklist of things to make sure the project runs as smoothly as possible. This service is included in the resource consent application fee. Using it could avoid difficulties later on.

36. That the consent holder shall provide a Construction Management Plan for approval by the Team Leader Resource Consents prior to starting works. It shall detail how traffic, dust, noise, and vibration effects associated with the construction activities will be managed. The Construction Management Plan shall also have details of the hours of operation of any construction activities and give details of a contact person available to respond to any complaints. The contact person's details shall be made available to the Team leader, Resource Consents. The development must be carried out in accordance with the approved Construction Management Plan.
37. All development and construction shall be undertaken in such manner as to comply with the provisions of NZS 6803:1999 Acoustics - Construction Noise.

Contamination

38. That the consent holder undertakes all work on the site in accordance with all recommendations of the Detailed Site Investigation prepared by Pattle Delamore Partners Ltd and dated 11 March 2015.
39. That, in satisfying condition 38, the consent holder provides a Remediation Action Plan prepared by a Suitably Qualified Environmental Practitioner for approval by the Team Leader Resource Consents prior to any remediation work being carried out. This should detail the particulars of the remediation, precautions required during the remediation (in effect a Site Management Plan), as well as validation sampling and record-keeping requirements.
40. That the consent holder shall ensure that any contaminated materials need to be disposed off-site that they shall be disposed of at an appropriate facility suitable for the nature of the contaminated materials. Advice in writing of this disposal including its quantity shall be submitted to the Team Leader, Resource Consents.
41. That the consent holder provides a Site Validation Report from a Suitably Qualified Environmental Practitioner to the Team Leader Resource Consents within 2 months of work being completed on the site that all work has been conducted in accordance with the recommendations/objectives of the Detailed Site Investigation prepared by Pattle Delamore Partners Ltd and dated 11 March 2015.

Earthworks

42. That the consent holder undertakes all earthworks (including for trenching purposes) in such a way that no sediment leaves the site or enters streams or the stormwater system; and that the consent holder installs and maintains sediment control measures in compliance with Greater Wellington Regional Council's Erosion and Sediment Control Guidelines (issued in April 2003).

43. That the consent holder provides a Remediation Action Plan to satisfy condition 37 which details how the consent holder will pave, metal, re-grass, hydro-seed or plant all areas exposed by earthworks, trenching or building work as soon as possible after excavation or, at the latest, within a month of completing earthworks to the satisfaction of the Council Subdivision Engineer; and that the consent holder repeats any seeding or planting that fails to become fully established within 12 months of the completion of earthworks.
44. That the consent holder ensures all earthworks are carried out in a way that prevents dust blowing beyond site boundaries. Control measures may include use of a water cart, limiting the vehicle speed to 10 kilometres an hour, applying water to exposed or excessively dry surfaces, or applying a coating of geotextile, grass, mulch or the like.
45. That the consent holder ensures vehicles and machinery leaving the site do not drop dirt or other material on roads or otherwise damage road surfaces; and that if such spills or damage happen, the consent holder cleans or repairs roads to their original condition, being careful not to discharge the material into any stream, stormwater system or open drainage channel in the process. (The term "road" includes footpaths, vehicle crossings and berms.)

Landscaping

46. The landscape planting plan submitted with the application ('Planting Plan' reference 2565 sheet 01 dated 01.10.15 prepared by David Goodyear Landscape Architect) shall be amended by replacing the two '*Knightsia excelsa*' along the Cuba Street frontage adjacent to townhouse number 10 with two '*Ulmus Frontier*'. The consent holder shall submit to the Council the revised landscaping plans (reference 2565 sheets 01 and 02) and shall implement those plans, in stages as relevant, within the first planting season following construction of the townhouses within each stage. All landscape planting must be completed in accordance with the amended plans 2565 sheets 01 and 02, within the first planting season following construction of the townhouses but prior to occupation of the townhouses authorised by this consent.
47. That the consent holder replaces any dead or dying plants for a period of four years from the date of planting.
48. That the consent holder will provide fencing along the southern boundary of the site, shared with 1 Atiawa Street. Details of the fence shall be submitted to the Team Leader Resource Consents for consideration and approval prior to commencing work on the fence. The approved fence must be erected prior to occupation of the townhouses next to this boundary.

Notes

- *The applicant for resource consent, consent holder or any person who made a submission on the application may also appeal this decision to the Environment Court within 15 working days of notice of the decision being received.*
- *This resource consent is subject to payment of a Development Contribution Fee under the Council's Development and Financial Contributions Policy.*
- *In accordance with section 125 of the Resource Management Act 1991, the consent lapses if not given effect to within five years from the date of the application being granted.*
- *This resource consent is specific to the application received by Council. Any changes to the proposal may require a new resource consent and additional application fee.*
- *Plans submitted with the application have only been checked for compliance with the City of Lower Hutt District Plan.*
- *Any building work associated with the proposed activity should not commence until a building consent has been obtained under the Building Act 2004.*
- *The consent holder is reminded that this resource consent is not a license to create adverse effects. You still have a duty under the Act to avoid, remedy or mitigate adverse effects. Notwithstanding any resource consents held, section 17 of the Act continues to apply and will take enforcement action where necessary.*
- *Council may issue an abatement notice if the conditions of this resource consent are not complied with. Contravention of an abatement notice may incur a fine up to \$300,000 or two years imprisonment for a natural person and a fine of up to \$600,000 to a person other than a natural person.*