

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 Rêve
Architecture Ltd on behalf of Astute Property
Investments Limited to undertake a three lot
subdivision and to relocate a dwelling and construct
two dwellings at 3 Moohan Street, Wainuiomata.

(Legally described as Lot 23 DP 18687 held in computer
freehold register WN703/53)

Council Reference RM140158

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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, as there were not less than three members present, the Hearings Committee 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 Committee, acting under delegated authority from Council and pursuant to sections 10, 104B, and 108 of the Resource Management Act 1991, **GRANTS CONSENT**, subject to conditions, to the resource consent application made by Rêve Architecture Ltd on behalf of Astute Property Investments Ltd to undertake a three lot subdivision and to relocate a dwelling and construct two dwellings at 3 Moohan Street, Wainuiomata.*

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

2 THE SITE AND LOCALITY

- 2.1 Legally described as Lot 23 DP 18687, the site is located at 3 Moohan Street, Wainuiomata. The site has an area of 985m², and contains a single storey detached dwelling and accessory buildings. The site is flat and has little vegetation apart from lawns. The current front wall of the property is set back inside the property, and does not reflect the actual location of the front boundary (as can be seen in Figure 1 below).



Figure 1: Aerial photo showing subject property at 3 Moohan St and submitter's property to the south at 1 Moohan St

- 2.2 The locality was subdivided and rapidly developed as a residential neighbourhood from the mid-1950s onwards; there is, therefore, a great degree of homogeneity in character. Moohan Street is characterised by residential properties with section

sizes similar to the subject site, generally containing single storeyed residential dwellings and accessory buildings. Dwellings tend to be set back from their front boundaries and most properties have large rear yards

- 2.3 To the immediate west of the site is Black Creek which is contained within a Council reserve. To the south is the Wainuiomata Bowling Club and the Wainuiomata Summer Pool.
- 2.4 Other details on the site and the nature and history of its environs were provided in the s42A report.

3 THE APPLICATION

- 3.1 Full details of the proposal are contained in the application and in the Section 42A Council Planner's Report.
- 3.2 Following the close of the submission period, but prior to the hearing, the Council received a number of revised plans, the key change being that the layout of the proposed dwelling on Lot 1 was switched so the garage is to the rear of the unit rather than at the front. This change meant that the occupiers of Lot 1 would need to use the right-of-way to access their garage. The reporting Planner considered that these changes came within the scope of the original application, and therefore based her assessment on the revised plans. Accordingly, these revised plans superseded those submitted at the time of lodgement.
- 3.3 In addition, just prior to the hearing, the Council also received landscape design plans from the applicant to demonstrate how it is intended to 'soften' the development into the surroundings. These plans, along with the revised layout plans, form the basis of the proposed subdivision and multi-unit development: it is these plans on which we assessed and determined the application.
- 3.4 In brief, the applicant is proposing to subdivide the lot into three titles, relocate the existing single storeyed dwelling onto the rear lot, and construct two new dwelling units on the front two lots. Specifically:
 - (a) The proposed front lot, Lot 1, would have an area of 260m². The proposed dwelling would be 91m² in ground floor area, and be set back from the front boundary by 4m;
 - (b) The proposed central lot, Lot 2, would be 323m² in area, including a right-of-way: excluding access legs, the net site area is 260m². The proposed dwelling would also be 91m² in area, and be identical in design as the unit on Lot 1, but reversed in layout;
 - (c) The proposed rear lot, Lot 3, would have an area of 402m² (339m² net site area). The Lot would contain the relocated dwelling, which has a ground floor area of 123m², and would be located a minimum of 5.5m from the rear boundary.
 - (d) Lots 1 and 2 would each have a single garage, plus one car park, one within a single garage attached to each of the dwellings. Lot 3 would have a single vehicle garage. There would also be space next to the dwellings in Lots 1 and 2 to turn a vehicle.

- 3.5 The three dwellings would be on the southern side of the lots, each a minimum of 1.5m from the southern boundary.
- 3.6 The applicant is proposing to use the existing driveway as the basis of a new driveway to provide access to the three units; at the minimum this accessway would be 3m wide, which would extend along the northern side of the lots.
- 3.7 The applicant intends to undertake landscaping and fencing on each of the new sites.

4 CONSENTS SOUGHT

- 4.1 Under the Resource Management Act 1991 ('the Act' or 'RMA'), subdivision and land use of site is managed under the City of Lower Hutt District Plan ('the Plan'). The site is within the General Residential Activity Area. The relevant rules are contained within Chapters 4A (General Residential chapter), 11 (Subdivision chapter) and 14 (General rules).
- 4.2 The proposed subdivision is a **discretionary activity** under Rule 11.2.4(i) of the Plan as it fails to comply with the minimum allotment size (excluding rights-of-way and access legs) of 400m² under the General Residential Activity Area, as follows:
 - (a) Lot 1 would be 260m², a non-compliance of 140m²;
 - (b) Lot 2 would have a net site area of 260m², a non-compliance of 140m²; and
 - (c) Lot 3 would have a net site area of 339m², a non-compliance of 63m².
- 4.3 In addition, there are several other non-compliances for which consent is also required:
 - (a) Width of right-of-way: the required legal width under Rule 11.2.2.1(b)(ii) is 4m; the applicant is proposing a minimum 3m width.
 - (b) Circulation and manoeuvring: Under Rule 14A(ii) 2.1, guided by the provisions of Australian Standard 2890, each site should have sufficient internal roading to allow for all necessary movement within the site without the need to use public roads, and without using the space provided for parking, servicing, loading or storage purposes; Council's consultant traffic engineer advises the proposal will not comply with this requirement •
 - (c) Maximum site coverage: Under Rule **4A 2.1.1, the maximum site coverage by buildings is 35%; the site coverage for proposed Lot 3 will be 35.6%, a non-compliance of 0.6% •**
- 4.4 If the applicant were to construct the new dwellings before seeking new titles, land use consent for the residential development would be required in accordance with Rule 4A 2.3(a), as follows:

4A 2.3 Restricted Discretionary Activities

(a) Residential development of 3 or more dwelling houses on any site, excluding sites located within Petone, Alicetown, Eastern Bays and Moera General Residential Activity Areas and Medium Density Residential Areas as shown in Appendix 17.

4.5 However, as the proposal cannot comply with the access standards under the General Rules (Chapter 14), land use consent is required as a **discretionary activity** under Rule 4A 2.4 (a) as follows:

Except where stated in the General Rules, any Permitted, Controlled or Restricted Discretionary Activity, which fails to comply with any of the relevant Permitted Activity Conditions, or relevant requirements of Chapter 14 – General Rules.

4.6 It is noted that multi-unit developments do not have to meet the minimum net site area requirements of the activity area. For three or more dwellings on one site, it is considered the permitted activity conditions and the design guide will control the bulk, location and effects on character and amenity of developments.

4.7 It is also noted that, if the applicant had simply sought subdivision consent and had chosen to complete the subdivision before constructing the dwellings, the proposed residential development would not have been considered a multi-unit development as the dwellings would be on separate titles: i.e., three individual developments. However, as the applicant is seeking consent for both the subdivision and residential development concurrently, the proposal must be assessed and developed as a multi-unit development, under the provisions that apply to such development.

4.8 Accordingly, both the subdivision and land use consent are considered to be discretionary activities and have been assessed and determined as such.

5 NOTIFICATION AND SUBMISSIONS

5.1 Under delegated authority, the Council determined that the only affected properties were No.s 1 and 5 Moohan Street in that these properties would be affected by the proximity of the two new dwelling units.

5.2 As the written approval of the owners of 5 Moohan Street had been provided, the application was limited notified on 16 October 2014 with notice of the application being served only on the owners and occupiers of 1 Moohan Street, D and J Anderson. A submission was subsequently received from that party.

5.3 A pre-hearing meeting was held on 19 March 2015; we were supplied with the minutes of this pre-hearing meeting.

5.4 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.

6 PROCEDURAL MATTERS

6.1 The revised plans that were submitted following the close of the submission period were circulated to the parties on 27 March 2015. These plans were considered by the reporting Planner to be within the scope of the original resource consent application. We were informed that the owners of 5 Moohan Street had been

supplied with the revised plans and had reaffirmed in writing their approval of the application.

- 6.2 In addition, a set of landscape design plans and information, based on the revised plans, was circulated a day before the hearing.
- 6.3 No procedural objections or concerns were raised at the hearing.

7 THE HEARING

7.1 The resource consent application was heard by a panel comprising Councillor Margaret Cousins (Chair), Councillor Tui Lewis and Robert Schofield (Planning Consultant).

7.2 The Hearing was held in the Wainuiomata Chambers, at the Wainuiomata Library, Queen Street, Wainuiomata, on Thursday 9 April 2015. We closed the Hearing on that same day.

7.3 The following persons presented submissions and evidence to the Hearing:

For the Applicant: Michael Stonyer, Architect, Rêve Architecture Limited
 Craig Foster and Melissa Warman, Directors of Astute
 Property Investments Ltd, owner of 3 Moohan St

Submitters in Opposition: Dave and Jen Anderson, 1 Moohan Street

Reporting Officers: Baylee Pakau, Senior Resource Consents Planner
 Sarah Clarke, Team Leader, Resource Consents
 Bill Barclay, Consultant Traffic Engineer

7.4 The section 42A officer's report was prepared by Ms Baylee Pakau, who tabled a supplementary report to update her opinion and recommendations. We were assisted in an administrative capacity by Committee Secretary, Annie Doornebosch.

7.5 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 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.

7.6 Commissioners Cousins and Schofield undertook a site visit on the afternoon of Tuesday 7 April 2015, while Commissioner Lewis undertook a site visit on the following day. We record that we were not accompanied on the site visits by the applicant, submitters or officers.

8 STATUTORY REQUIREMENTS FOR ASSESSMENT

Relevant Statutory Provisions

8.1 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:

- (i) *To identify the relevant section 104 matters;*
- (ii) *As part of the overall discretion in section 104B, weigh the relevant matters under section 104.*

8.2 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; and*
- *Part II of the Act.*

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

8.4 We have undertaken an assessment of the effects of the proposal in section 9 below, focusing on the outstanding issues in contention. We then addressed the consistency of the proposal with the relevant objectives and policies of the District Plan, with our conclusions set out in section 10 of this decision. Finally we turned to the question of whether the proposal is consistent with the purpose and principles of the RMA, contained in Part 2 of the Act; our conclusions are set out in section 11 of this decision.

Permitted Baseline

8.5 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."

8.6 In short, the permitted baseline for the site would be for one additional dwelling that complied with the conditions for the General Residential Activity Area, which include the following requirements:

- (a) Minimum net site area for each dwelling of 400m²;
- (b) 1m yard setback from all boundaries (for a rear site), excluding one accessory building up to 6m in length;
- (c) Maximum site coverage of 35% of the net site area;
- (d) Up to 8m in height above ground;
- (e) Compliance with recession planes on all net site area boundaries being 2.5m vertical measurement and a 45 degree angle inward;
- (f) Maximum building length of 20m – longer than 20m would be permitted if it could comply with the 20 degree building length angles measured on the boundary;
- (g) Minimum of 30% permeable area such as lawn and gardens;

- (h) Up to 50m³/1.2m height of earthworks; and
 - (i) One on-site park for the existing dwelling and two for the new dwellings.
- 8.7 We agree with the reporting Planner that it would be feasible to establish a second dwelling on this property that complied with the above rules. As net site area calculations must exclude access legs, approximately 100m² would need to be set aside for access to a rear dwelling; the balance area of 885m² would be sufficient to establish a second dwelling. Accordingly, a two-storeyed second dwelling could be constructed on the site within 1.5 m of the side boundaries. In addition, the relocation of the existing dwelling within the site could also be undertaken as a permitted activity if its siting complied with the relevant District Plan set back and height rules.
- 8.8 The permitted baseline is considered to be highly relevant to this proposal, as outlined later in this decision.

Written Approvals

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

A consent authority must not, —

(a) when considering an application, have regard to—

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

- 8.10 The owners and occupiers of 1 and 5 Moohan Street were found to be affected parties. As the written approval of 5 Moohan Street had been provided, the effects on that property could therefore not be considered in the assessment of this proposal.

Assessment Matters for Discretionary Activities

- 8.11 Under Rule 4A 2.4., 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.*

8.12 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.*

8.13 The above matters have been considered in the following assessment as relevant.

Precedence vs Cumulative Effects and District Plan Integrity

8.14 As a discretionary activity, the question of precedent is not strictly applicable, as each application must be judged on its merits, against the particular circumstances pertaining to it. Thus, making a decision on one proposal would not predetermine the outcome of a future similar proposal. However, the question of cumulative effects is pertinent, as is the integrity of the District Plan.

8.15 The definition of "effects" under section 3 of the Act include "any cumulative effect which arises over time or in combination with other effects – regardless of the scale, intensity, duration, or frequency of the effect". Thus, the cumulative effects on the environment of granting consent to the application must be considered.

8.16 An application may not be fully consistent with the objectives and policies relevant to it, but provided it is not contrary to those provisions (in the sense of being 'repugnant' or 'antagonistic'), then it should not challenge the integrity of the District Plan.

9 ISSUES IN CONTENTION

9.1 Based on the material provided in the application, the submissions, the s42A report and evidence presented at the hearing, we consider that the principal issues in contention are:

- Effects on residential character and amenity values
- Construction effects
- Traffic effects
- Provision of services
- Natural hazards

Effects on Residential Character and Amenity

- 9.2 The proposed dwellings all comply with the relevant District Plan requirements for building height, setback and siting, and, apart from a minor non-compliance by Unit 3, the site coverage standards. To a large degree, therefore, the effects of the proposal on the local residential character and amenity values are consistent with those anticipated by the District Plan for the General Residential Activity Area.
- 9.3 Residential amenity values and local character, however, can be affected where undersized sites are established, as the resulting density could be out of character with the neighbourhood, and the subsequent effects of additional residential activity could have adverse effects on the surrounding amenity values. However, a well-designed development should be able to avoid or minimise such effects.
- 9.4 The application was reviewed by Council's consultant urban design expert Morten Gjerde 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.
- 9.5 Mr Gjerde's assessment contained several recommendations to improve the proposal's consistency with the design guide. Since receipt of Mr Gjerde's assessment, the applicant has made amendments to the design, primarily 'flipping' the layout of the front unit so that the garage is behind the dwelling rather than at the front, with the unit's layout being a mirror image of proposed Unit 2. These amendments were reviewed by Mr Gjerde, whose comments were summarised by the reporting Planner as follows:
- (a) The front house still does not address the street;
 - (b) That there has been no change to the driveway space;
 - (c) That the landscaping could be made a condition of consent but there is presently a lack of clarity;
 - (d) The fencing details provided is adequate.
- 9.6 Since that assessment, the applicant has provide a landscape design for the development, which among other matters, shows:
- (a) The proposed areas of lawn and planting;
 - (b) The proposed types and heights of fencing and gates; and
 - (c) Driveway treatment, including the use of exposed aggregate panel to identify front entrances.
- 9.7 The only key area of outstanding design issue was in relation to the relationship of Unit 1 with Moohan Street. The 'fitting in the neighbourhood' assessment matter of the Design Guide (page 50 of Chapter 4A of the Plan) states that '*siting and layout of buildings should respect the existing built character and patterns of the neighbourhood*'. The key inconsistency that Mr Gjerde identifies is that, under the same heading, the Design Guide states '*dwellings facing the street edge should be oriented to front the street, with windows of living areas facing the street providing good visual contact between*

the residents and the street'. Unit 1 is oriented to the north rather than the street, with two of the bedrooms having windows facing the street.

- 9.8 We would note that there are often internal tensions among District Plan provisions, and agree with the reporting Planner that some inconsistency with the Design Guide is not unacceptable. We noted on our site visit there are a number of properties along Moohan Street where the main entrance to a dwelling is from the driveway rather than directly from the street. In that regard, we consider that the siting and layout of buildings does respect the existing built character and patterns of the neighbourhood. We note that, while the majority of properties in the neighbourhood are currently single dwellings, there are a number of multi-unit developments. Thus, this proposal is not totally out of character with the form of the neighbourhood. The external appearance of the proposed dwellings would also be consistent with those of existing dwellings in the neighbourhood.
- 9.9 We were informed by the applicant at the Hearing that a consistent design to both units was important in retaining the economic feasibility of the development by keeping the costs of building relative to the market value of the dwellings within the area. Both units were designed to face the north, and to alter the layout and/or design of one unit would add to the costs of the development. We note that there are other dwellings in the neighbourhood which are not oriented towards the street.
- 9.10 In assessing the effects of this aspect of the development, we consider that inconsistency with one criterion of the Design Guide must be weighed up against the effects of the proposal as a whole and conclude this inconsistency is not significant enough to decline consent. In all other respects, the layout and design of the units is consistent with the design guide for multi-unit development, and we consider that requiring the redesign of the internal configuration of the dwelling on lot 1 so that the entrance and living areas are located towards the front of the dwelling would likely negatively impact on other aspects.
- 9.11 The proposed landscape treatment of the front of Lot 1 would soften the appearance of the front of Unit 1, and be consistent with other existing properties along Moohan Street. We note that the proposed front fencing would be 1.2m high, in line with the Planner's recommendation to restrict the height of the front fencing to protect the connectivity of the unit with the street.
- 9.12 Turning to the effects of the development on 1 Moohan Street, we note that the proposal would result in one additional household unit over that anticipated by the permitted baseline of two dwellings on the subject site. We also note that two two-storeyed dwellings could be built within 1.5m of the boundary with Nos 1 and 1A Moohan Street as a permitted activity.
- 9.13 The overall footprint of all proposed buildings on the net site area of 3 Moohan Street (excluding 100m² for the accessway) will be approximately 34%, compared with the maximum of 35% site coverage as a permitted activity. Thus the overall density of development is generally consistent with that anticipated for the site, and with the overall bulk of building that could be viewed from 1 Moohan Street.
- 9.14 While the three dwellings on the property would likely be visible from 1 Moohan Street, the two new units are relatively modest in footprint and only one storey in height. Intervening fencing would obstruct a lot of that view, as well as the planting on 1 Moohan Street. However, we accept that extending the existing

fence along the entire southern boundary of 3 Moohan Street would enhance the privacy and outlook for No.s 1 and 1A, which could be imposed by a condition of consent. We understand the applicant was agreeable to such a proposal at the hearing. However, as the owner of 1A was determined not to be affected, such a condition could not require such fencing along the boundary with that property unless that owner agreed; the condition would have to reflect this situation.

- 9.15 The design of the new units has limited the amount of outlook from these dwellings towards 1 Moohan Street, such that will be relatively little window space on the southern side of these dwellings. The rooms on the southern side of these units would be bedrooms (two in each unit), bathrooms and garages. These rooms will not be the primary living areas of the new units.
- 9.16 The submitter expressed concern about a loss of wider outlook due to the new units. However, we note that all proposed buildings on 3 Moohan Street would comply with the height, setback and recession plane rules on the adjoining boundary with 1 Moohan Street and thus an acceptable level of amenity can be maintained. We also note that the rules do not seek to protect views from individual properties.
- 9.17 Acknowledging the proposal will result in a more intensive use of the site by accommodating three rather than two units, the buildings will all be modest in scale and the overall proposal is generally consistent with the Design Guide for medium density housing. Conditions of consent would further mitigate the visual and amenity effects of the proposal.
- 9.18 Overall, we find that that the effects of the proposed development on residential character and amenity effects to be no more than minor and within those anticipated by the District Plan, provided suitable conditions of consent are imposed.

Construction Effects

- 9.19 The construction effects would arise from the installation of services, relocation of the existing dwelling and the construction of the new dwellings on lots 1 and 2. We were advised that the only piling required would be to relocate the existing dwelling, and such activity would take about two weeks to complete. In any respect, the level of pile driving needed is likely to be small in scale, given the nature of the buildings.
- 9.20 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'. In addition, conditions of consent have been recommended to mitigate the construction effects on the submitter. There was no evidence that the nature of the construction would be unusual or have characteristics that would generate adverse effects beyond those normally expected with a residential multi-unit development.
- 9.21 The submitter also raised concerns with vegetation on their property being affected by site works; they sought compensation to enable them to replant should such effects occur. While it is possible some construction work could affect root systems, construction work is permitted in the District Plan. Any effects on vegetation across adjoining boundaries would be a civil issue between neighbours,

governed by the Property Law Act 2007. We therefore do not consider it appropriate to impose a condition to address this concern.

- 9.22 We therefore find that the potential construction effects on the submitter to be no more than minor.

Traffic Effects

- 9.23 Proposed Lots 1 and 2 will accommodate two spaces each and the existing dwelling on Lot 3 will accommodate one space. All sites comply with on-site parking requirements in the Plan.
- 9.24 The legal width of the right-of-way will be 3m, less than the 4m required by the Plan. This non-compliance was created through amendments to the design in order for the dwelling on Lot 1 to better address the street frontage.
- 9.25 The proposal was reviewed by Council's consultant traffic engineer Bill Barclay: his assessment was appended to the s42A report. Mr Barclay advised that the reduced right-of-way width can be accepted as the affected length is short and will be felt by the residents rather than the general public.
- 9.26 Mr Barclay questioned the ability of cars to manoeuvre in and out of parking spaces for the dwelling on Lot 2 in the original plans submitted with the resource consent application. In response, the applicant amended the floor plans and parking areas. The reconfigured parking arrangement was subsequently reviewed by Mr Barclay who advised that the proposal is workable but recommends a condition of consent that would require the layout of all car parking spaces to be in accordance with AS/NZS 2890.1-2004.
- 9.27 We were advised by the applicant's architect that the garages, parking spaces and accessways were designed to accommodate larger vehicles. There are also turning areas to allow for vehicles to turn around and exit the site in a forward direction. In terms of manoeuvring, Mr Barclay advised that the layout is "tight but workable". Mr Barclay also advised that the access is well removed from the nearest intersection and have good visibility and therefore he had no concerns about the safety of access.
- 9.28 In terms of vehicles exiting the driveway of No.1 Moohan Street, the submitter expressed concern about the visibility being obstructed by the proposed fencing and planting. The planting plan shows a titoki tree to be planted in the southeast corner of proposed Lot 1, by the driveway to No.1 Moohan Street. We accept his concerns, but consider these could be addressed through appropriate conditions of consent in regard to the front fencing and planting.
- 9.29 Accordingly, we find that the potential adverse effects on traffic would be no more than minor.

Provision of Services

- 9.30 The application was assessed by Council's subdivision engineer who considered the proposal could be accommodated within the existing capacity of the infrastructure network subject to meeting Council requirements. His proposed conditions of consent were included the recommended conditions set out in section 11 of the s42A report.

- 9.31 The submitter's query about needing to relocate the water tobies was referred to the subdivision engineer who verbally advised that Council in principle would agree to the relocation if it were necessary.
- 9.32 Accordingly, we find that the potential adverse effects on services would be no more than minor.

Natural Hazards

- 9.33 The property is flat and we were advised that there are no signs of subsidence, erosion, falling debris or slippage.
- 9.34 The submitter raised concern about the potential of the site to flooding from Black Creek. In response, the reporting Planner acknowledged that, historically, there had been flooding in Moohan Street from overflows from Black Creek (the Street is generally lower than the properties), but this risk had been mitigated by the remedial works undertaken by the Council in 2012. Further, we were advised that the recorded extent of inundation is not within the area of the proposed buildings on the site but is limited to a small portion of the front of proposed Lot 1.
- 9.35 The property is neither within a hazard area identified in the District Plan, nor within any identified 1 in 100 flood extent for any major river as mapped by the Greater Wellington Regional Council.
- 9.36 Accordingly, we find that the risk of natural hazard as a result of approving this resource consent will be no more than minor.

Summary of Findings - Effects

- 9.37 Overall, we find that the adverse effects of the proposal will be minor or less than minor. We consider the applicant has gone some way to adequately mitigate the amenity effects of the proposed development through the layout and design of the dwellings and associated outdoor areas, accessway and parking. We also find that all other effects can be mitigated by way of imposing appropriate conditions.
- 9.38 We find that the cumulative effects of granting consent to be less than minor, as the majority of the residential area of Wainuiomata is predominantly single dwellings on large lots, and this proposal would not adversely affect this form and character.
- 9.39 We have also considered the positive effects arising from the proposal, which we consider to be to provide additional dwellings within Wainuiomata, which will support community growth and services.

10 ASSESSMENT AGAINST RELEVANT PLAN PROVISIONS

- 10.1 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, as well as those relating to subdivision and the general rules relating to minimum net site area, building bulk, engineering matters and transport.

Residential Objectives and Policies

- 10.2 Under 4A 1.1.1 - *Residential Character and Amenity Values*, and 11.1.1 - *Allotment Standards*, the relevant objectives and policies are:

Objective

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

Policies ...

- (c) *To ensure residential amenity values are retained, protected and enhanced through the establishment of a net site area per dwelling house.*

Objective

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.*

10.3 While the proposal will not fully meet the minimum net site area requirements of the Plan, we have concluded that the new units will be an appropriate form, design and scale for the proposed use, and would generally maintain the amenity values and residential character of the neighbourhood.

10.4 In relation to 4A1.1.2 - *Medium Density Residential Development*, the relevant objective and policies are:

Objective

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 ...

- (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.*

10.5 We have concluded that the proposal will be consistent with Policy (b) as the adverse effects of the more intense development of the site would be mitigated by the single storeyed nature of the buildings on the site and the modest size of the two new units, as well as their design and appearance. As noted above, the overall building bulk in terms of footprint is comparable to two permitted dwellings on the site.

10.6 The proposal is sufficiently consistent with the direction provided by the Design Guide. While there could be greater connectivity of the street frontage of the proposed dwelling on Lot 1 with Moohan Street, we have concluded that, on balance, the proposal generally meets the anticipated outcomes of the Design Guide for multi-unit development, and is therefore consistent with the above objective and policies. Thus, granting consent to the proposal would be consistent with Policy (c).

10.7 Under 4A 1.2.1 - *Building Height, Scale, Intensity and Location*, the relevant objective and policies are:

Objective

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.*

10.8 Although the proposal is for a more intensive development than existing residential development in the area, we have concluded that, because of the large degree of compliance with the development standards of the General Residential Activity Area, the modest scale of the buildings and the general consistency with the Design Guide, the proposed residential development is of an appropriate scale and form for the neighbourhood.

10.9 Accordingly, we find that the proposal is consistent with the above objective and policies.

10.10 Under 11.12 - *Engineering Standards*, the following objectives and policies are relevant:

Objective

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

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.

10.11 The proposal was assessed by Council's subdivision engineer and consultant traffic engineer, who concluded that, subject to conditions, all servicing, parking and access matters can be appropriately addressed in this subdivision. We therefore conclude that the proposal is consistent with the above objective and policy.

10.12 Under 11.1.3 - *Natural Hazards*, the relevant objectives and policies are as follows:

Objective

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.*

10.13 As outlined above, the site is not within an identified hazard zone in the District Plan or Greater Wellington Regional Council's mapped flood extents. The allotments would each have a suitable building platform, not susceptible to slope instability.

10.14 We therefore conclude that the proposal is consistent with the above objective and policies.

10.15 Under 14A(iii) 1.2.1 - *On Site Parking Provision For Activities*, the following objective and policy is relevant:

Objective

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 area.

Policy

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

10.16 As outlined above, the proposal has been reviewed by Council's consultant traffic engineer, who advises that, subject to a condition of consent, he supports the proposal. Accordingly, we therefore conclude that the proposal is consistent with the above objective and policy.

10.17 Overall, we find that the proposal is consistent with the relevant objectives and policies of the District Plan.

Other Matters

10.18 There were no other matters raised that we consider are relevant and reasonably necessary to determine the application.

11 PART 2 OF THE ACT

11.1 When considering an application for a resource consent and any submissions received, our assessment is subject to [Part 2](#) 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).

11.2 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.”

11.3 Section 6 of the RMA sets out the matters of national importance. The scale and location of the proposal is such that there are no matters of national importance.

11.4 Section 7 of the Act lists a number of other matters that Council shall have particular regard to when considering the application, with the following matters 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*

11.5 We find the proposal is consistent with s7(b) as it makes better use of an existing developed site, which is an efficient use and development of existing resources and infrastructure.

11.6 We also find that the proposal is consistent with sections 7(c) and (f) as the subdivision and development would maintain the amenity values of the surrounding area and the quality of the local environment.

11.7 In relation to section 8 of the Act, the site is not identified in the District Plan as containing any wāhi tapu or sites of significance to Māori.

11.8 In overall terms, we find the subdivision and development to be consistent with the purpose of promoting the sustainable management of the City's natural and physical resources in accordance with section 5.

12 CONCLUSION AND DECISION

12.1 That the Hearings Committee, acting under delegated authority from Council and pursuant to sections 10, 104B, and 108 of the Resource Management Act 1991, **GRANTS CONSENT subject to conditions** to the discretionary activity resource consent application made by Rêve Architecture Limited on behalf of Astute Property Investments Limited to subdivide and construct a multi-unit development at 3 Moohan Street, Wainuiomata.

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 is consistent with the purpose and principles of the Resource Management Act 1991.

Mrs Margaret Cousins (Chair)

Dated this 29th day of April 2015

SCHEDULE 1 – CONDITIONS

The Consent Holder (and all contracted workers) shall ensure that:

The subdivision consent is subject to the following conditions:

Approved plans

1. That the proposal is carried out substantially in accordance with the information and approved plans (A-0.01, 02, 03 all revision G, A-0.03 revision H, A-0.05 revision F, A-0.06 Revision A of job number 0413 by Rêve Architecture, and Planting Plan by David Goodyear, Landscape Architect, dated 6/4/15, for Project 2600, Drawing 2, Revision R1) and submitted with the application held on file at Council.

Engineering

2. 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.
3. 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 allotment 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.
4. 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.)
5. That the consent holder installs the reticulation as necessary and connects separate sewer and stormwater service leads to the public mains (or to the road kerb or other approved disposal point in the case of stormwater) for each residential lot (and adjust existing services where necessary) in accordance with the Council's codes and standards.

Please note it is Council policy that only existing laterals of less than 25 years old can be re-used for a new vacant lot or new (or relocated) dwelling. Also the consent owner is to investigate the possibility of connecting to the stormwater manhole in front of 1A Moohan

Street rather than to the stream at the rear of the property as proposed. Council's preference is for the domestic storm water from the existing (relocated) and 2 new dwellings is to be fed into the main on Moohan Street rather than directed directly into Black Creek. Council's parks and gardens division prefer to avoid additional pipes under reserves.

6. 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).

Please note that it is Council policy that only existing laterals of polyethylene material can be re-used for a new vacant lot or dwelling. All existing non-polyethylene laterals, including the tobies, are to be renewed, (or removed and sealed at the main if not replaced in same position).

Also note: The consent holder must apply for new water connections at the customer services counter of the Council building at 531 High Street (corner of High Street and Melling Rd), Lower Hutt. GHD Ltd processes applications on behalf of Wellington Water Ltd, which is a Council-controlled company in charge of Council water and drainage assets. The GHD Ltd contact person is Craig Brown (570 0416). 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.

7. That the consent holder submits a copy of the approved water connection application form (signed by GHD Ltd) when applying for the section 224(c) certificate.
8. 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.
9. That the consent holder constructs a standard concrete vehicle crossing to serve lot 1 in accordance with the Council's codes and standards.

Note the crossing is to extend to the front boundary and not just to the back of the footpath as at present – the same applies to the adjacent heavy-duty crossing required above.

10. 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.
11. 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.
12. That the consent holder provides underground electrical and telephone services to each lot.
13. That the consent holder provides the Council with written confirmation from Telecom (or the equivalent network supplier) and Wellington Electricity Lines Ltd that they are satisfied with the supply of their utilities to each lot.
14. That the consent holder provides the Council with written confirmation from a registered surveyor that all services are contained within the lot serviced (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.
15. That the consent holder provides appropriate easements for private services where necessary, with easements shown as a memorandum of easements on the land transfer title plan; and that the consent holder engages a lawyer at the consent holder's expense to prepare easement documents.
16. That the consent holder provides appropriate easements of rights of way, shown as a memorandum of easements on the land transfer title plan; and that the consent holder engages a lawyer at the consent holder's expense to prepare easement documents.
17. That the consent holder moves all buildings clear of the new boundaries before applying for a section 224(c) certificate.
18. That the consent holder provides the Council with three copies of the as-built plan, certified by a surveyor or engineer, showing, where applicable, the levels and alignment of all the mains and the location of all service connections (and new work within private property) relative to the lot boundaries.

Consent notices

19. That, in accordance with section 221 of the Resource Management Act 1991, the Council registers a consent notice on the certificate of title of all of the lots to ensure future owners are aware that the properties share private stormwater (and possibly sewer) drains.

20. That, in accordance with section 221 of the Resource Management Act 1991, the Council registers a consent notice on the certificate of title of lot 3, which shares a boundary with Council reserve land, in order to exclude the Council from the cost of shared fencing under the Fencing Act 1978 or equivalent legislation.
21. That, in accordance with section 221 of the Resource Management Act 1991, the Council registers a consent notice on the certificate of title of lot 1 to state that any fence on this lot that front legal road shall be no higher than 1.25m.
22. That the consent holder meets the cost of registering consent notices.

Parking design

23. That the layout of all parking spaces shall be in accordance with AS/NZS 2890.1-2004.

Landscaping

24. That the consent holder submits a landscaping plan prepared by a suitably qualified expert to the Team Leader Resource Consents for consideration and approval before starting any site works. The plan must provide planting in the front yard of Lot 1 facing Moohan Street and on the southern boundaries of Lots 1 and 2 to mitigate the visual amenity effects on 1 Moohan Street. The plan must include information about:

- The location and size of the planting area;
- The name of each species to be planted;
- The number, size and spacing of each species to be planted;
- The time and method of planting and post-planting maintenance;
- Details on how the driveway material will be softened through landscaping materials and paving accents; and
- The height and form of fencing internally and on external boundaries.

The fencing on the southern boundary shall extend along the entire shared boundary with 1 and, if the owner agrees, with 1A Moohan Street, and shall be of a height and nature that is consistent with the existing fencing on the boundary with 1 Moohan Street. The height of the fencing between Lots 1 and 2 shall be consistent with the height of the existing fencing on the southern boundary with 1 Moohan Street where these fences join. The fencing and planting shall not obstruct sightlines for exiting vehicles from the driveway to 1 Moohan Street. For the planting the consent holder shall select species which, at maturity, will ensure the maintenance of sight lines for 1 Moohan Street.

The plan must be implemented as soon as the seasons make practicable, but must be finished within six months of the completion of works.

25. Works related to the landscape plan outlined in condition 24 above shall be undertaken as soon as seasonally practicable, but must be completed prior to an application for section 224 certification.

Note that Council's reserves planner advises that planting should be carried out between late May and late August.

The land use consent is subject to the following conditions:

Approved plans

26. That the proposal is carried out substantially in accordance with the information and approved plans (A-0.01, 02, 03 all revision G, A-0.03 revision H, A-0.05 revision F, A-0.06 Revision A of job number 0413 by Rêve Architecture, and Planting Plan by David Goodyear, Landscape Architect, dated 6/4/15, for Project 2600, Drawing 2, Revision R1) and submitted with the application held on file at Council.

Pre-commencement and construction works

27. That the consent holder keeps a copy of this decision on site when work starts and makes it available on request to Council staff.
28. 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.

29. All development and construction shall be undertaken in such manner as to comply 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.

Advice 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 licence 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.