

WAIMAKARIRI DISTRICT COUNCIL

SECTION 42A REPORT

FILE NO: RC215625 / 220727128259

VALUATION NO: 2159125100

DATE: 2 August 2022

REPORT TO: Independent Commissioner

FROM: Resource Management Planner – Emma Frazer

SUBJECT: Publicly notified resource Consent Application

ACTIVITY: Operative Waimakariri District Plan – Non-complying activity

RECOMMENDATION: Decline

INTRODUCTION

1. My name is Emma Frazer and I have been engaged by the Waimakariri District Council to process resource consents and in this instance to provide planning evidence in relation to an application referenced RC215625. I have a Bachelors degree in Resource Studies from Lincoln University and over 20 years' experience in Resource Management Planning. I have experience within Territorial Authorities and within consultancy firms.
2. I have been operating my own business, Planning North Canterbury Ltd, for the past 16 years.
3. I have experience both in District Plan policy and administration. I have been involved in preparing private and Council initiated plan changes and resource consent applications. I have presented evidence at local authority hearings both as a Council planning officer and on behalf of resource consent applicants and submitters on resource consents and plan changes.

PREAMBLE

4. This report reviews the application for resource consent and addresses the relevant information and issues raised. The recommendation made in this report is not binding on the Council and it should not be assumed that the Commissioner will reach the same conclusion having considered all the evidence brought before them by the applicant and submitters.

APPLICANT

5. Bourke Family Trust

PROPERTY LOCATION

6. 17 Paisley Road, Flaxton

LEGAL DESCRIPTION

7. Lot 1 DP 61798, containing 6ha

ZONING

8. Waimakariri Operative District Plan – Rural zone
9. Waimakariri Proposed District Plan – Rural Lifestyle Zone (RLZ)

DESCRIPTION OF PROPOSED ACTIVITY

10. Land use consent for a non-complying activity is sought to:
 - Retain two dwellings on 6ha, where there is no delineated 4ha area per dwelling and where one dwelling was established as a temporary activity
 - Access the two dwellings from an existing crossing to Paisley Road, which does not meet the standard for a local road
11. The applicant has proposed that Dwelling 1 (described in paragraph 15 and shown on Figure 1 below) be retained as a secondary dwelling. They acknowledge that it does not meet the definition of dwellinghouse however submit that the 110m² Dwelling 1 located more than 100m from the principal Dwelling 2 (described in paragraph 15 and shown in Figure 1 below) is equivalent to a secondary dwelling.
12. The secondary dwelling is proposed to be restricted in use to family members or staff at the applicant's crane business in Rangiora (3km to the north of the site).
13. In addition, the applicant has offered a condition of consent that the site must not be subdivided where it results in the dwellings being located on separate lots, and a condition requiring retention of vegetation around the dwellings that acts to screen the dwellings from the road and adjoining sites.

SITE DESCRIPTION



14. The application site is 17 Paisley Road, Flaxton. Paisley Road runs parallel to Lineside Road, on the south-western side of the railway line.
15. The site contains 6ha of relatively flat land which is divided into paddocks and a small forestry block. There are two dwellings located on the site;

Dwelling 1 (see Figure 1 below) – the original dwelling on the property is set back approximately 11m from Paisley Road and 32m from the north-western boundary. Dwelling 1 has a floor area of some 110m² and contains three bedrooms, one with en-suite, a bathroom and laundry, kitchen, dining and lounge areas and a patio entrance. There is a detached single garage located in close proximity to this dwelling. A floor plan was included in the application. The finished floor level appears variable.

Dwelling 2 (see Figure 1 below) – was relocated to the site post-earthquakes under RC135396. This dwelling has a floor area of 175m² and an attached three car garage of 58m². It is two storied with multiple bedrooms, bathroom, kitchen and living areas. Dwelling 2 is over 110m away from Dwelling 1 and some 150m away from Paisley Road. It has a finished floor level of 600mm above adjacent natural ground.

FIGURE 1: site plan



- Dwelling 1 
- Dwelling 2 



Dwelling 1 – original dwelling



Dwelling 2 – relocated to site post-earthquakes

16. Both dwellings share an on-site well and have separate on-site effluent disposal systems. Dwelling 1 septic tank and effluent disposal system is the original system and I have no information on whether it is functioning effectively. Dwelling 2 had a new septic tank and disposal system designed and consented by Ecan in January 2014 under CRC144252. The shared well and septic tank locations are marked on the site plan in Figure 1 above.
17. Paisley Road is a local no-exit road (stopped at the Fernside Road intersection as part of the cycle trail development) and makes up part of the Passchendaele Memorial Cycle Path. It has a 4-5m wide sealed formation with undeveloped grass berms. The legal width is some 15m wide. A traffic count in July 2018 was taken 400 m north of Mulcocks Road – just north of 17 Paisley Road and found to have average daily traffic of 39 vehicles/ day (total in both directions) and a peak hourly traffic total of 16 vehicles/ hour.
18. Paisley Road intersects with Mulcocks Road near the uncontrolled level crossing onto Lineside Road. Access to the Fernside Road intersection to the west has been stopped as part of the cycle trail development.



Paisley Road, looking north-west from the Mulcocks Road intersection. Lineside Road is to the north-east of the railway line.

19. The majority of the site is located within a medium flood hazard area in a 200 year return flood event and the Engineering Report prepared by Graduate Engineer Tasha Tan (**Appendix A**) notes that there is an overland flow path covering the site. Ms Tan notes that the 1 in 200 year flood depth over the site is 0.82m.

BACKGROUND

RC135396

20. In 2013 an application for resource consent for Dwelling 2 (RC135396) was made under the Temporary Residential Accommodation – One Additional Unit on any One Lot policy and under the Canterbury Earthquake (Resource Management Act) Permitted Activities Order 2011 Attached at **Appendix B**. This policy was a result of the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011.
21. The resource consent RC135396 (see **Appendix C** for other resource consents) application stated Dwelling 1 would be removed or the kitchen removed once Dwelling 2 was established on site. Dwelling 2 was relocated to the site post-earthquakes under RC135396, however Dwelling 1 was not removed or modified as per the application.
22. Conditions of the resource consent included: date of removal for a dwelling of 16 April 2016, fixing the relocated dwelling (Dwelling 2) to permanent foundations and replace or repair external fabric, finished floor level of 600mm above adjacent natural ground level and a general inspection condition.
23. The resource consent noted that the Temporary Residential Accommodation policy required the consent to be non-notified. The policy restricted consideration to setbacks, recession planes and height, and required all units to be relocatable or be easily able to be removed as per the following extract from the policy;

The Waimakariri District Council undertakes to process a resource consent at no cost and on a non-notified basis where the following District Plan standards are met, relevant to the applicable zone, or the necessary affected persons approval has been obtained:

- *Setbacks;*
- *Recession Planes; and*
- *Height.*

In addition all temporary residential accommodation units must be relocate-able, or easily able to be removed.

The resource consent issued will be for the activity to have a limited duration, up to a maximum of 5 years from the date of consent.

RC165217

24. RC165217 was approved on 30 August 2016, granting an extension of time to RC135396, allowing the two dwellings to be retained until 30 July 2021, at which date the second dwelling must be removed as a condition. The extension was granted to meet the limits of duration of consent set by the Council order regarding Temporary Residential Accommodation – Single

Additional Unit on Any One Lot Policy.

25. Conditions of RC165217 included that the activity be carried out in accordance with the approved plan and that the dwelling shall be removed from site no later than 30 June 2021, and a general inspection condition.

AB210001

26. On 28 July 2021, an abatement notice (AB210001) was served pursuant to section 322(1)(b)(ii) of the Resource Management Act 1991, giving a twelve month timeframe to resolve the non-compliance with condition 2 (date of removal) of RC135396/RC165217.

RC215625

27. Resource consent to retain the two dwellings on 6ha was lodged on 30 November 2021. It was put on hold at the applicants request under section 37 of the Act on 15 December 2021.
28. On 2 March 2022 supplementary information was submitted showing vegetation to be retained for screening and providing more detailed information on the layout of Dwelling 1.
29. On 24 March 2022 a notification decision was made by WDC and the applicant advised and invoiced relevant fees. The fees were paid on 15 May 2022 and the public notification was made on 25 May 2022 with submissions closing on 27 June 2022. Four submissions were received in support of the application.
30. Dwelling 1 and Dwelling 2 are located on the site due to the permissive nature of the Temporary Residential Accommodation – One Additional Unit on any One Lot policy developed under the Canterbury Earthquake (Resource Management Act) Permitted Activities Order 2011, as a direct result of Canterbury Earthquake response.
31. Although both dwellings are established on the site, it is noted that this situation has only occurred as a result of the applicants not following through with commitments made in the RC135396 application and not meeting the conditions of the consent for RC135396 or RC165217. The permissive Temporary Residential Accommodation policy set out conditions in good faith, which were replicated through conditions of RC135396 / RC165217 and have not been met by the applicant / consent holder. As such, I consider that the retention of two dwellings on 6ha must be assessed as a new activity.

SUBMISSIONS

32. Four submissions have been received in support of the application, as follows:

Robert Blair – 98 Mulcocks Road, Kaiapoi – does not wish to be heard; supports application

Keiran Taituha – 17 Paisley Road, Kaiapoi – wishes to be heard; supports the application for mental health reasons

Destiny Wiringi – 17 Paisley Road, Kaiapoi – wishes to be heard; supports the application for mental health and challenging rental market reasons

Wayne and Jessica Cooper – 17B Paisley Road, Kaiapoi – happy to attend the hearing; supports the application for challenging rental market reasons

33. There are limited relevant resource management matters addressed in the submissions that can be taken into account, in my opinion. The tenancy agreements are between the land owner and the tenants, and the landowner is aware of the temporary nature of the original consent and subsequent abatement notice.
34. I sympathise with the tenants (Wiringi and Taituha) regarding their recent bereavement and with the three submitters residing at 17 Paisley Road on the challenges of the rental market. However, I consider these emotive issues must be set aside and the resource management matters considered with objectivity.

EXISTING ENVIRONMENT

35. The site at 17 Paisley Road is 6ha in land area. It is accessed from Paisley Road, a sealed local road that runs adjacent to the south-western side of the main trunk line railway. Lineside Road is on the opposite side of the railway line, providing a strategic connection between Rangiora and Kaiapoi and Rangiora and the Main North Road (SH1).
36. A number of 4ha lots have been developed along the Mulcocks and Bramleys Road frontages (running perpendicular to Lineside Road). Beyond the 4ha lots are larger lots, including 17 Paisley Road at 6ha and a larger pastoral farm containing the Flaxton historic homestead, which forms a boundary with 17 Paisley Road along the northern side.
37. Activities in the area include pastoral farming and lifestyle blocks with lower scale pastoral grazing. Graceworks is located on the corner of Paisley Road and Mulcocks Road and includes a consented repurposed building material retail activity.
38. The application site is largely obscured from Lineside Road by the width of the transport corridor, which includes Lineside Road, the railway line and Paisley Road. The railway line is raised above the level of the roads. The road reserve includes a line of 10m or so high conifers for a partial width of the site that contains Dwelling 1. Within the site are mature pine trees and informal vegetation up to 10m in height.



Conifers within the road reserve on the left (north) of Paisley Road and vegetation within the site shown on the right (south) of Paisley Road under the overhead power lines. Dwelling 1 is located behind the vegetation directly behind the lattice tower.

39. Mulcocks Road is developed within 4ha blocks, and there is significant screening, shelterbelts and developed vegetation associated with dwelling houses rather than pastoral activities. The rural character is more modified with smaller pastoral activities apparent between hedges and shelter belts, and established gateways and maintained landscaping around dwellings.
40. Paisley Road has a low traffic volume and significant cycle volume. The road serves as legal access to the site at 17 Paisley Road, one other dwelling located at 77 Paisley Road and to the larger pastoral farm land to the north.
41. A traffic count on the road was taken 400 m north of Mulcocks Road, just north of 17 Paisley Road . It was last surveyed July 2018 and found to have average daily traffic of 39 vehicles/ day (total in both directions) and peak hourly traffic total of 16 vehicles/ hour. The Engineering Report provided by Ms Tan notes cycle movement along Paisley Road /Passchendaele Memorial Path as increasing since 2018.
42. Rangiora town centre is approximately 5km to the north of the site and Kaiapoi town centre is 4km to the south. Alternative transportation options include the cycle way adjacent to Lineside Road that provides cycle access between Kaiapoi and Rangiora. The Blue Line Bus route is along Lineside Road, however I don't believe there are stops on Lineside Road in the high speed zone, with the nearest being 3.5km to the west within the Rangiora urban boundary.

PLANNING FRAMEWORK

43. As previously noted, I have assessed the retention of two dwellings on 6ha as a new activity. The application to retain two dwellings on 6ha is a non-complying activity under the Operative District Plan (see **Appendix D** for extracts from the Operative District Plan). The definition of dwelling/dwellinghouse is in Chapter 1:

***Dwellinghouse** means any habitable structure, occupied or intended to be occupied in part or in whole as a residence and, except in relation to any cluster housing within Maori Reserve 873, includes one additional physically separated dwellinghouse that is no more than 75 square metres in gross floor area and is located within 30 metres of the primary dwellinghouse. For the purposes of this definition there shall be only one kitchen facility under any individual roof structure.*

44. Dwelling 1 and Dwelling 2 are over 110m apart and both have floor areas greater than 75m². Therefore, they are both considered to be separate and independent dwellings, equating to two dwellings on one site of 6ha as a non-complying activity.
45. The following rules from the Operative District plan are relevant:

Chapter 21: General Rules

21.8.2

Any erection of a dwelling and/or subdivision of land, except for designation purposes, that does not meet the existing or required density of the zone is a non-complying activity.

Chapter 31: Health, Safety and Wellbeing

31.1.1.1

In the Rural Zone any dwellinghouse shall be on a site which has a minimum area of 4ha.

31.1.1.3

In the Rural Zone, where there is more than one dwellinghouse on a site, it shall be able to be shown that:

a. each dwelling can be contained within its own delineated area and there is no overlap between delineated areas;.....

31.5.1

Any land use which does not comply with Rules 31.1.1.1 to 31.1.1.6 (standards for a site, or delineated area, containing a dwellinghouse) or Rules 31.3.2 and 31.4.2 is a non-complying activity except where exempted under Rule 31.1.2.

46. In addition, Paisley Road does not meet the minimum standards for local roads, triggering a discretionary activity status when a site does not have access to a legal road of an appropriate standard (Rule 30.6.1.1 and 30.9.1).
47. Dwelling 1 is also located closer than 20m to Paisley Road (Rule 31.1.1.15) as a discretionary activity (Rule 31.4).
48. Overall the proposed activity is **non-complying** under the Operative District Plan.

SECTION 104 OF THE ACT

49. Section 104 of the Act sets out matters to which regard must be had in deciding a non-complying activity.

104 Consideration of applications

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to [Part 2](#) and [section 77M](#), have regard to—

(a) any actual and potential effects on the environment of allowing the activity; and

(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and

(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

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

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

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

104D Particular restrictions for non-complying activities

(1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

- (a) the adverse effects of the activity on the environment (other than any effect to which [section 104\(3\)\(a\)\(ii\)](#) applies) will be minor; or*
- (b) the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

- 50. The application may be granted if it is considered that adverse environmental effects are minor or if the application will not be contrary to the objectives and policies of the relevant District Plans. Only one of the gateway test needs to be met.
- 51. In this case, Waimakariri District Council has the Operative District Plan and a Proposed District Plan. At the writing of this report, the Proposed District Plan is at submission stage and the summary of submissions is not yet available. There are no rules with immediate legal effect in relation to the site or activity.

PART 2 OF THE ACT

- 52. The matters to which regard must be had in considering an application for resource consent are subject to Part 2 of the Act. As both the relevant District Plans have been prepared under the provisions of the Act and address Part 2 matters, and there are no questions of invalidity, incompleteness or uncertainty, I consider that Part 2 of the act has been addressed through those documents.

ACTUAL OR POTENTIAL ENVIRONMENTAL EFFECTS

- 53. Section 104(1)(a) requires consideration of actual or potential environmental effects of allowing the activity.

Permitted baseline

- 54. Section 104(2) requires consideration of adverse effects which are permitted by the plan, as a permitted baseline test.
- 55. In this instance, one dwelling is permitted per 4ha of land area. Two dwellings can locate on the same site as a permitted activity where a delineated 4ha area is available to each dwelling.

56. The Operative District Plan definition of dwelling allows for a principal dwelling and a secondary dwelling within 30m of the principal dwelling and not greater than 75m² in floor area.
57. Dwelling 1 and Dwelling 2 do not meet the size and location conditions required by the definition of one 'dwellinghouse' and are therefore considered separate dwellings, equating to two dwellings on the 6ha site. There is not adequate land area within the site to provide a delineated 4ha area for each dwelling. There is no relevant permitted baseline for Dwelling 1 and Dwelling 2 on the site in their current physical states.
58. If one dwelling had a kitchen removed, the remaining dwelling and the kitchen-less structure could be permitted on the site. It is noted however that the original dwelling is located within 20m of Paisley Road and that Paisley Road is sub-standard but could be upgraded. Existing use rights could be applied to the dwelling/structure within 10m of Paisley Road, as it pre-dates the RMA and District Plan setback rules. Removal of a kitchen from one dwelling would also change the level of activity anticipated, and is not a comparable baseline, in my view.
59. Overall, I consider there is no relevant permitted baseline for the proposed retention of two dwellings within the 6ha site.

Effects on Rural Character and Amenity

60. The actual or potential adverse effects on the environment relate to effects on rural character and amenity including visual and physical effects of fragmentation, effects associated with intensity of use (traffic, noise, level of activity), and the effects of the urban nature of the activities in the rural area.
61. The applicant has submitted that the visual effects of the proposal will be avoided and mitigated by the screening that the established vegetation provides to the site, and has offered a condition of consent to retain that vegetation.
62. The applicant has also offered a condition of consent to avoid fragmentation of the rural landscape by restricting subdivision, so the site cannot be subdivided in such a way that it would result in the dwellings being located on separate lots.
63. While the existing vegetation and screening surrounding the site and dwellings does avoid visual effects to an extent that is minor or less than minor, I consider that the two dwellings on land areas equating to 3ha each will create permanent and on-going effects associated with domestic uses. The District Plan acknowledges that screening alone is not considered a mitigation measure for the protection of rural character (Explanation to Policies 14.1.1.1 – 14.1.1.4). While the effects of two dwellings may have been acceptable in the short term for temporary accommodation in response to the Canterbury Earthquakes, the previous resource consent approvals were based on a commitment to remove one dwelling within a specified time period. In addition, the matters considered under RC135396 were restricted to setbacks, height and recession planes. This application seeks to make the intensification of the site permanent.
64. The applicant has submitted that the dwellings will be used for family or as worker accommodation for their crane business located in Rangiora. The additional dwelling house, especially with itinerant workers, will increase traffic movements to a road that does not currently meet the local road minimum standards. The level of noise and activity, and increased traffic movements, will be more than anticipated with one dwelling on the site given the separation between the two dwellings exceeds that anticipated for a secondary dwelling under

the definition of 'dwelling'. The increase in effects will be derived from separate areas of the site as opposed to one area of the site that may be anticipated under the definition of 'dwelling'. In my opinion, the magnification of activities from within the site will result in adverse effects that are more than minor.

65. I consider that retaining the two dwellings as permanent activities (as opposed to temporary accommodation) is urbanising the rural landscape, especially given the size of the dwellings and the large separation between the two dwellings which emphasises the fragmentation of the land resource.
66. Use of Dwelling 1, as noted by the applicant, for itinerant workers accommodation is an urban use of the property, in my view, as the business is located in Rangiora and is not associated with the rural site in any obvious way. Worker accommodation in a location that is remote from the place of business and not adjacent to an accessible public transport network is not an efficient use of the transport network and will emphasise the fragmentation of the rural area.
67. I note that the density rules for the Rural Lifestyle Zone in the Proposed District Plan, although having no legal effect, currently indicate that 4ha is the density sought for dwellings in order to avoid adverse environmental effects on the zone. I believe this confirms the density sought by the Operative District Plan continues to be a relevant critical standard for this rural area.
68. While there are no neighbours with dwellings close to the site at present to be affected by the increased intensification and fragmentation, there is potential for development to the north of the site where a dwelling could be established as a restricted discretionary activity (non-reticulated water supply), and could expect to enjoy a density of one dwelling per 4ha.
69. Future subdivision and development of land to the north into 4ha lots (as a controlled or restricted discretionary activity) has the potential to further emphasise the fragmentation of land proposed with the retention of the two dwellings on 6ha. At present the site has a boundary with a large pastoral farm to the north which provides significant open space to 'borrow' land area from and provides a buffer to potential visible effects of fragmentation. Relying on adjacent large scale private farmland to provide open space character will not avoid adverse effects in my opinion.
70. I consider that the effects of intensification and fragmentation are more than minor.

Effects on People and Families in Relation to the Tenancy Market

71. The wellbeing of people and communities is a Part 2 matter that is considered to be addressed through the relevant District Plans.
72. The three submitters have supported the application on the basis of rental challenges. In this instance the application is made on the basis that the dwellings onsite will be restricted to family members and/or employees of the applicant. I am not sure if these conditions would include the current tenants/submitters as it is not clear whether they are family or employees.
73. While the tenancy market may be tight, I consider there are likely to be greater efficiencies in residing closer to places of work, schools and accessible public transport routes, both for families and for community infrastructure. While the applicant may benefit from family and employees living on the site, these benefits appear limited and do not extend to the wider community or environment.
74. Overall I consider the effects on people and families in relation to the tenancy market to be a neutral point.

Effects on Paisley Road

75. Paisley Road is formed and sealed to 5m in width and is within a 15m wide legal corridor. The legal corridor is a fixed boundary between private land to the west and the railway line to the east.
76. A second dwelling retained on the site will increase traffic movements from 8 – 10 additional temporary/short term movements per day to 8 – 10 additional permanent vehicle movements per day.
77. The actual or potential effects on Paisley Road were not considered as part of the application under RC135396, due to the temporary nature of the activity and under the provisions of the policy. They are a relevant consideration to this application to make the two dwellings on 6ha permanent.
78. The road has been assessed by Ms Tan as adequate to cater for the increase in demand, as a result of recent upgrade to a sealed standard to accommodate the shared cycleway/road network. No upgrade to the physical standard of the road is required, however, due to the status of the road as a shared cycleway/road network, minimal vehicle use on the road is preferred from a traffic safety perspective.
79. The level crossing has not been assessed and Kiwi Rail have not submitted on the application.
80. Overall I consider the effects on Paisley Road to be less than minor.

Effects of Flooding

81. The Engineering Report notes that ground water is high in this area, permeability is low and the site is within a medium risk overland flow path with water levels predicted to be at 0.82m in a 1 in 200 year return flood event. The finished floor level of Dwelling 2 is 600mm above natural ground and the finished floor level of Dwelling 1 appears to be variable.
82. In the event of a flood event there is a risk to both dwellings from flooding. In relation to Dwelling 1, being an existing dwelling established prior to flood modelling, the FFL is not a relevant consideration other than to note that there is a risk to people and property from flood waters.
83. The 600mm FFL on Dwelling 2 was established under the temporary activity RC135396, based on the information available at the time. It was noted in the planning officers report that the FFL imposed would reduce the risk of flooding, rather than avoid flooding. If the dwelling was established as a permanent activity under the flood modelling and Council requirements today, a FFL of 1.32m above existing ground level would be required in order to protect property and human health.
84. The depth of flood water is less than 1m, which is the level noted in the Regional Policy Statement as 'high hazard areas' for *avoiding new.... development*. Chapter 11 of the Policy Statement includes relevant matters associated with hazard and risk, set out in Objective 11.2 and Policy 11.3.
85. Overall, I consider that allowing the retention of Dwelling 2 as a permanent activity on the site will knowingly risk the physical resource to damage and effects of flood waters. I consider there is a minor adverse effect in relation to flood risk.

Effects of Non-reticulated Water Supply

86. The shared well on the site has been assessed under the Engineering report. It is noted by Ms Tan that the shared water supply would need to be registered with Taumata Arawai, the new water services regulator.

Positive Effects

87. Positive effects associated with the proposal include retaining physical resources that have been established (albeit as temporary accommodation) with an appropriate level of servicing, which can cater to the needs of two families and support the residential needs of a local business. This is an effect that benefits the applicant and their commercial activities as the application is made on the basis that the dwellings onsite will be restricted to family members and/or employees of the applicant. There is no wider community benefit to retaining the two dwellings, in my opinion.

Summary of Actual or Potential Environmental Effects

88. I consider that the actual or potential environmental effects associated with the proposed activity relate to fragmentation and intensification of rural land, and risk of flooding, and are more than minor.

RELEVANT PROVISIONS OF THE DISTRICT PLANS

89. Section 104(1)(b) requires regard to the relevant provisions of the District Plans. In this instance the Operative and Proposed District Plans have objectives and policies that must be considered. The Proposed District Plan was publicly notified in September 2021 and is still at summary of submissions stage (summary has not been notified as being available at time of writing). The site has a Rural Lifestyle Zoning under the Proposed District Plan.

Operative District Plan Objectives and Policies (see Appendix D for District Plan extracts)

90. Objective 11.1.1 and Policy 11.1.1.3 seek to maintain or enhance community wellbeing by directing that new development should not proceed within areas that do not have access to appropriate utilities. In this instance there is no reticulated water supply in the vicinity of the site and Paisley Road does not meet the minimum standards for local roads.
91. The explanation to the objective and policies describes that utilities are activities that include the construction and operation of roads and the transmission of water. The policy states that development can proceed if the existing utilities are upgraded to provide the appropriate capacity for the health and safety of the present and future populations. In this instance, Paisley Road has been assessed as adequate to support the volume of traffic and that the shared water supply is sufficient for the two dwellings.
92. Overall conditions of consent requiring upgrade of the shared water supply to meet the current standards and registration with the water regulator will go some way to ensure wellbeing of people, and while the policy is not directly met, the proposal is not contrary to it, in my view.
93. Chapter 12 Health Safety and Wellbeing Objective 12.1.1 seeks to maintain the amenity values and a quality of environment which protects the health, safety and wellbeing of present and future generations, and ensure that any potential adverse environmental effects from buildings and structures and noise are avoided or mitigated.
94. Associated Policy 12.1.1.5 seeks to ensure that the Rural Zones maintain amenity values and quality of the environment by ensuring that the land is not dominated by dwellinghouses. The

explanation notes that the Council would not anticipate the establishment of dwellinghouses on lots smaller than four hectares. It acknowledges that there is a desire by people to provide for family members close to the family home and that is recognised in the Plan by permitting a second dwellinghouse of a limited floor area located in close proximity to a primary dwellinghouse.

95. While the proposed activity is not seeking to create lots of less than 4ha, the density of dwellings will be one per 3ha, which is contrary to the outcome the policy is seeking to achieve. The size and location of the dwelling is not consistent with the definition of dwelling, and the distance apart adds to the domination of dwellings within the site, in my opinion. I consider that the proposed activity is contrary to this objective and policy.
96. Chapter 14 Rural Zones Objective 14.1 seeks to maintain and enhance both rural production and the rural character of the Rural Zones. Rural character is set out through the objective including the dominant effect of paddocks, trees, natural features, and agricultural, pastoral or horticultural activities; and separation between dwellinghouses to maintain privacy and a sense of openness; and a dwellinghouse clustered with ancillary buildings and structures on the same site.
97. Policies 14.1.1.1 – 14.1.1.3 set out the pathway for achieving the objective and include direction in Policy 14.1.1.1 to avoid dwellinghouse development that results in a loss of rural character, Policy 14.1.1.2 to maintain the continued domination of the Rural Zone by rural uses, and Policy 14.1.1.3 to maintain and enhance the distinctive character of the Rural Zone.
98. The explanation to the objective and policies above explains that the threshold of 4ha is important in order to protect the Rural Zone characteristics. It notes that dwellings on less than four hectares are undesirable because they fail to meet those characteristics listed in the objective that contribute to the maintenance or enhancement of the rural character of the Rural Zone. It also notes that screening of dwellinghouses alone is not considered a mitigation measure for the protection of rural character.
99. The explanation notes that Policy 14.1.1.2 recognises it is important for agriculture, pastoral farming and horticulture to continue to be the predominant land use in the Rural Zones because this will contribute most to the maintenance and enhancement of rural character. It states that Policy 14.1.1.3 recognises that natural features and quietness are important environmental qualities in the District's Rural Zones as these are attributes that can be prejudiced by the increased density of dwellinghouses and related residential activity below development standards set for the zone.
100. Objective 14.2.1 and associated Policy 14.2.1.1 seek to protect the life supporting capacity of the water resource from the adverse effects of on-site land based sewage treatment and wastewater disposal systems by avoiding the deterioration of the quality of the water resource as a result of the operation of on-site land based sewage treatment and wastewater disposal systems in the Rural Zones. The explanation to the objective and policy recognises the cumulative impact of onsite land based sewage treatment and wastewater disposal systems and development of 4ha leads a direct increase of domestic wastewater disposal systems. It goes further to state where on-site land based sewage treatment and wastewater disposal systems are proposed, it is considered appropriate to restrict the dwellinghouse density to one per four hectares.

101. Objective 14.6.1 and Policy 14.6.1.1 seek to facilitate the rebuild and recovery of Greater Christchurch by directing future developments to existing urban areas and to avoid new residential development outside of existing urban areas.
102. Both Objective 12.1.1 and Policy 12.1.1.5 and Objective 14.1.1. and Policy 14.1.1.1 seek to achieve similar outcomes with opposite approaches, one seeking to avoid the domination of dwellings in the rural zone and the other seeking to maintain the domination of rural activities, while both approaches seek to protect rural character and amenity. I consider that the retention of Dwelling 1 and Dwelling 2 on 6ha, with a density of 3ha per dwelling, does not maintain rural amenity or avoid domination of dwellings. This is largely due to the land area per dwelling being less than 4ha each, the size of the dwellings being greater than 75m² and the distance apart being over 100m. These factors contribute to emphasise the 3ha/dwelling density and fragment the productive land resource, in my opinion. While the applicant has offered to retain existing vegetation to screen the activities, the explanation to Policy 14.1.1.1 notes that screening alone is not mitigation for effects on rural character.
103. The proposal is to retain two dwellings that are located over 110m from each other, on a 6ha site. The area of land available for productive use is reduced as a result of the separation between the dwellings and the provision of a long driveway to the centre of the site to access Dwelling 2, curtilage for two separate dwellings, two septic tank and disposal areas and protection zone for the well. Overall I consider that the productive potential of the land will be reduced by the retention of the two dwellings, especially given their size and distance from each other in distinct parts of the site, which I consider emphasises the increased density.
104. Objective 14.2.1 and Policy 14.2.1.1 address land based effluent disposal systems and the potential adverse effects on water quality. While Dwelling 2 has a modern system consented by Ecan in 2014, the land based system with Dwelling 1 may not be functioning and has not to my knowledge been checked. Given the age of the dwelling it is likely that the system may be a conventional boulder hole rather than a disposal field. The explanation to the policy notes 4ha per dwelling is the threshold for land based systems in order to avoid adverse effects. The installation of new systems is controlled by Ecan and the Council via building consents, old systems are not necessarily monitored or managed. Approving the application would be contrary to this objective and policy which seeks a density of one dwelling per 4ha of land area in order to avoid adverse effects on water quality.
105. The most strongly worded objective and policy in relation to the rural zone are found at Objective 14.6.1 and Policy 14.6.1.1. Future developments are directed to existing urban areas and new residential activities are to be avoided other than in urban areas or priority areas.
106. The proposed retention of two dwellings on 6ha is considered a 'new residential' activity in my opinion, as Dwelling 2 was only granted consent subject to Dwelling 1 being removed or decommissioned by removing the kitchen. The application to relocate Dwelling 2 onto the site was on the basis that Dwelling 1 would be removed once Dwelling 2 was established on the site. The applicants commitment set out in the original application and the condition of RC135396 have not been fulfilled, and therefore Dwelling 2 is not legally established. The application must be looked at as if there were only one dwelling on the site, and the second dwelling is proposed as a new residential activity.
107. New residential activity is not defined in the Operative District Plan or the Regional Policy Statement. By default, residential activities are activities with a land area of less than 4ha, based on the definitions of Rural Activity, Urban Activity and Rural Residential Activity from the RPS

definitions for Greater Christchurch (depicted in Map 6, Chapter 6 of the RPS) (underlining added);

Rural activities means activities of a size, function, intensity or character typical of those in rural areas and includes:

- Rural land use activities such as agriculture, aquaculture, horticulture and forestry. Businesses that support rural land use activities.
- Large – footprint parks, reserves, conservation parks and recreation facilities. Residential activity on lots of 4 ha or more.
- Quarrying and associated activities.
- Strategic infrastructure outside of the existing urban area and priority areas for development.

Urban activities means activities of a size, function, intensity or character typical of those in urban areas and includes:

- Residential units (except rural residential activities) at a density of more than one household unit per 4 ha of site area;
- Business activities, except those that fall within the definition of rural activities;
- Sports fields and recreation facilities that service the urban population (but excluding activities that require a rural location);
- Any other land use that is to be located within the existing urban area or new Greenfield Priority Area or Future Development Area

Rural residential activities means residential units outside the identified Greenfield Priority Areas and Future Development Areas at an average density of between 1 and 2 households per hectare.

108. Policy 14.6.1.1 of the operative District Plan sets out that new residential activities must be avoided unless they occur in certain areas, which are limited to existing urban areas, priority areas within the area identified in Map A in Chapter 6 of the Canterbury Regional Policy Statement and rural residential development can only occur in areas identified in the Rural Residential Development Plan and MR873.

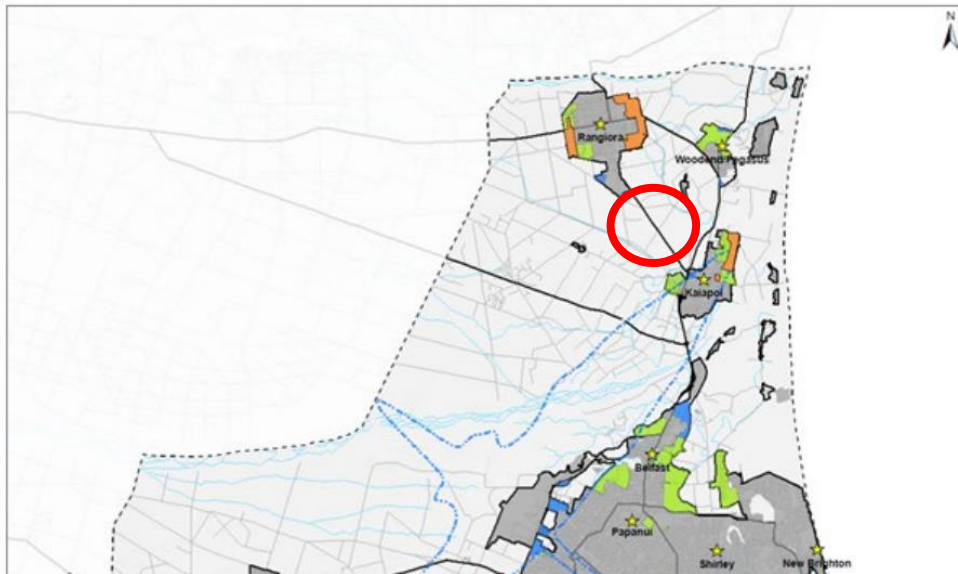
109. The site is not in an existing urban area. Map A (inserted below) from the RPS does not include the site or surrounds as a priority area for development and the site is not identified in the Rural Residential Development Plan and is not part of MR873.

Map A RPS



Site location

Map A - Greenfield Priority Areas and Future Development Areas (viewable in more detail at www.ecan.govt.nz)



110. I consider that the proposal is contrary to Objective 14.6.1 and Policy 14.6.1.1 as Dwelling 2 is considered a 'new residential activity' by creating a density of 3ha per dwelling in the Rural Zone, which the objective and policy seek to avoid in order to facilitate the rebuild and recovery of greater Christchurch.
111. Overall I consider that the proposal is contrary to the relevant objectives and policies in Chapters 12 and 14 of the Operative District Plan, which seek to maintain and enhance rural amenity by ensuring the zone is not dominated by dwellings, that productive uses are dominant, that ground water is protected from on-site septic tank and effluent disposal systems, and that residential development outside of urban or priority areas is avoided.

Proposed District Plan Objectives and Policies (Appendix E)

112. The Proposed District Plan was notified in September 2021 with submissions closing in November 2021. The submissions summary is yet to be advertised as available. A number of rules within the Proposed District Plan have immediate legal effect, however, there are none that relate to the proposed activity.
113. The Proposed District Plan Strategic Directions chapter provides the overarching objectives to provide high level direction for the District Plan. The introduction explains that the objectives within this chapter are informed by the Waimakariri District Development Strategy, which is a document that addresses a range of matters related to growth and development, and give effect to higher order documents as required by the RMA. For the purpose of determining resource consent applications, the strategic objectives may provide guidance for related objectives and policies in other chapters; and the relevant objectives and policies of the District Plan, including strategic objectives in this chapter, are to be considered together and no hierarchy exists between them.
114. Strategic Direction SD-O4 addresses rural land management, to ensure that it remains available for productive activities by providing for rural production activities and activities that directly

support or are reliant on rural zones and to limit activities that are not associated with rural production or support activities.

115. This objective is supported by relevant objectives and policies for the Rural Lifestyle Zone (RLZ), in which the site is located. RLZ-O1 sets out the purpose of the zone as being for primary production activities while recognising a more intensive pattern of land use and buildings. RLZ-P1 seeks to maintain the character of the zone comprising of modified rural landscapes with a predominance of small rural lots with residential units, and with a dominance of human modified open space and vegetation over buildings.
116. The objective and policy relating to rural character is closely aligned to similar objectives and policies in the Operative District Plan. It could be argued that rural character is maintained by the retention of two established dwellings within the site. However, my position is that Dwelling 2 is not legally established and should be treated as if it were a new residential activity. The separation between the dwellings encompasses more land area than buildings that are clustered together, or where a dwelling includes a secondary dwelling located close to each other, and in my view this fragments the land and constrains productive use. The open space opportunities within the site are also interrupted with the spread of the dwellings. I do not consider that the proposed dwellings within 6ha meets the objective and policy as rural amenity determined by productive use and modified open space is compromised.
117. Policy RLZ-P2 addresses activities in the RLZ. Opportunities for land to be used for primary production are sought to be retained by avoiding residential units on sites less than 4ha in land area. A minor residential unit with a dwelling on a site of 4ha or greater is one of four exceptions within the policy.
118. Minor residential units is defined within the Proposed Plan as;
- means a self-contained residential unit that is ancillary to the principal residential unit, and is held in common ownership with the principal residential unit on the same site.*
(National Planning Standard definition)
119. Rule RLZ-R4 does not have legal effect yet. However, if it were able to be considered, it provides for one minor residential unit up to 90m² gross floor area (excluding any garage or carport up to 40m²) to be erected in association with a primary dwelling. It is noted that both Dwelling 1 and Dwelling 2 are larger than 90m².
120. I consider that the application would equate to two residential units on 6ha, providing a density of one dwelling per 3ha, which is contrary to the outcomes sought by the policy. RLZ-O1 and P2, in my view, confirm the strategic objective of SD-O4.
121. Overall I consider that the proposed activity is contrary to the relevant objectives and policies in the Proposed District Plan.

WEIGHTING ASSESSMENT

122. Section 104(1)(b) requires the Council to take account of any relevant plan or proposed plan. Where there is conflict between an operative and proposed plan, a weighting assessment is required to consider which objectives and policies in which plan should be given dominant weight.

123. In my view there is no tension between the objectives and policies of the proposed and operative district plans. As a result, a weighting assessment isn't required.

REGIONAL POLICY STATEMENT

124. The site is located within greater Christchurch defined through Map A of Chapter 6 Recovery and Rebuilding of Greater Christchurch of the RPS. Chapter 5 addresses Land Use and Infrastructure and includes objectives and policies for the entire region.

125. Objective 5.2.1 relates to the entire region and directs development to be located and designed so that it achieves consolidated growth in and around existing urban areas and enables people to provide for their social and economic wellbeing, including;

- providing sufficient housing choice, minimising energy use and/or improves energy efficiency,
- enables rural activities that support the rural environment including primary production
- is compatible with, and will result in the continued safe, efficient and effective use of regionally significant infrastructure

126. The site is not located in an existing urban area being half way between Kaiapoi and Rangiora in rural zoned land. Retaining the two dwellings on the site, with a density of 3ha each, may provide housing choice, however it will not minimise energy use or improve energy efficiency. Both the applicant and submitters have noted that residents of the dwellings would work in Rangiora (or Kaiapoi) and there are no schools or retail services within the vicinity of the site nor public transport stops, demonstrating that vehicle use would be relied on. The activities are not rural activities and are not necessary to support productive activities being carried out on the site.

127. Chapter 6 is specific to greater Christchurch and Objective 6.2.1 enables development within identified areas and seeks to avoid urban development outside of existing urban areas and maintains the character and amenity of rural areas and settlements. Policy 6.3.1 seeks to ensure new urban activities only occur within existing urban areas or identified greenfield priority areas as shown on Map A.

128. The RPS defines Rural Activity:

Rural activities means activities of a size, function, intensity or character typical of those in rural areas and includes:

- *Rural land use activities such as agriculture, aquaculture, horticulture and forestry. Businesses that support rural land use activities.*
- *Large – footprint parks, reserves, conservation parks and recreation facilities. Residential activity on lots of 4 ha or more.*
- *Quarrying and associated activities.*
- *Strategic infrastructure outside of the existing urban area and priority areas for development.*

129. The RPS defines Urban Activities:

Urban activities means activities of a size, function, intensity or character typical of those in urban areas and includes:

- *Residential units (except rural residential activities) at a density of more than one household unit per 4 ha of site area;*

- *Business activities, except those that fall within the definition of rural activities;*
 - *Sports fields and recreation facilities that service the urban population (but excluding activities that require a rural location);*
 - *Any other land use that is to be located within the existing urban area or new Greenfield Priority Area or Future Development Area*
130. The density proposed of one dwelling per 3ha does not meet the definition of Rural Activity and does meet the definition of Urban Activity. The RPS objectives and policies for Greater Christchurch seek to consolidate urban activities in existing urban settlements, where it is most likely to minimise the adverse effects of travel for work, education, business and recreation, minimise the costs of new infrastructure and avoid adverse effects of development on rural productivity and rural amenity.
131. I consider that the proposal is contrary to the relevant objectives and policies of the RPS in relation to Greater Christchurch as it represents an urban activity that is removed from an identified growth area and an existing urban area.
132. Chapter 11 address risk from natural hazards. Objective 11.2 and Policy 11.3 seek to avoid new use and development in areas that increase risk associated with natural hazards, including flooding. High hazard flooding is defined as flood water 1m in depth or more in a 0.2% AEP return event.

11.2 OBJECTIVES

11.2.1 Avoid new subdivision, use and development of land that increases risks associated with natural hazards

New subdivision, use and development of land which increases the risk of natural hazards to people, property and infrastructure is avoided or, where avoidance is not possible, mitigation measures minimise such risks.

11.3 POLICIES

11.3.1 Avoidance of inappropriate development in high hazard areas

To avoid new subdivision, use and development (except as provided for in [Policy 11.3.4](#)) of land in high hazard areas, unless the subdivision, use or development:

is not likely to result in loss of life or serious injuries in the event of a natural hazard occurrence; and

is not likely to suffer significant damage or loss in the event of a natural hazard occurrence; and

is not likely to require new or upgraded hazard mitigation works to mitigate or avoid the natural hazard; and

is not likely to exacerbate the effects of the natural hazard; or

Outside of greater Christchurch, is proposed to be located in an area zoned or identified in a district plan for urban residential, industrial or commercial use, at the date of notification of the CRPS, in which case the effects of the natural hazard must be mitigated; or

Within greater Christchurch, is proposed to be located in an area zoned in a district plan for urban residential, industrial or commercial use, or identified as a "Greenfield Priority Area" on [Map A of Chapter 6](#), both at the date the Land Use Recovery Plan was notified in the Gazette, in which case the effects of the natural hazard must be avoided or appropriately mitigated; or

Within greater Christchurch, relates to the maintenance and/or upgrading of existing critical or significant infrastructure.

“High hazard areas” are:

- 1. flood hazard areas subject to inundation events where the water depth (metres) x velocity (metres per second) is greater than or equal to 1, or where depths are greater than 1 metre, in a 0.2% AEP flood event;*
- 2. land outside of greater Christchurch subject to coastal erosion over the next 100 years; and*
- 3. land within greater Christchurch likely to be subject to coastal erosion including the cumulative effects of sea level rise over the next 100 This includes (but is not limited to) the land located within Hazard Zones 1 and 2 shown on Maps in Appendix 5 of this Regional Policy Statement that have been determined in accordance with Appendix 6; and*
- 4. land subject to sea water inundation (excluding tsunami) over the next 100 years. This includes (but is not limited to) the land located within the sea water inundation zone boundary shown on Maps in Appendix 5 of this Regional Policy Statement.*

When determining high hazard areas, projections on the effects of climate change will be taken into account.

133. In this instance the site is subject to 0.82m flood water depth in a 0.2% AEP event. This does not equate to a high hazard area, however, given the finished floor level of Dwelling 2 and potentially Dwelling 1 will be inundated in such an event, and damage is likely. As previously discussed, the retention of two dwelling is considered a ‘new’ activity. The proposed activity does not meet this objective and policy, in my opinion, but is not contrary to it due to the flood depth being 0.18m less than the defined high risk area.

PLAN INTEGRITY SECTION 104(1)(C)

134. Upholding rural density has been a critical factor in resource consent applications in the Rural Zone and I am not aware of situations where subdivision or land use has been approved that has permitted a density of more than 1 dwelling per 4ha.
135. A similar application was made by Smarts RC195105, to retain a second kitchen under the same roofline in the Rural Zone. That application was declined due to effects on Plan integrity and inconsistency with Objectives and Policies of the relevant Plans.
136. RC205206 was applied for by Fespacific Group Ltd to establish a dwelling on a 3,000m² site in the Rural Zone. The application was declined for plan integrity reasons and for being contrary to the objectives and policies of the relevant plans.
137. I consider this application also challenges Plan integrity and an approval would lead to similar applications with an expectation of approval.
138. I believe there are other circumstances where dwellings in the Rural Zone have been allowed at a density of less than 4ha under Temporary Residential Accommodation – One Additional Unit on any One Lot policy and under the Canterbury Earthquake (Resource Management Act) Permitted Activities Order 2011, and the resource consent history of this site does not set it apart from others in the District.

SECTION 104D GATEWAY TESTS FOR NON-COMPLYING ACTIVITIES

139. Under Section 104 of the Act a non-complying activity may be granted if the environmental effects are minor or if the activity is not contrary to the objectives and policies of the relevant plans. In this case I consider that there will be more than minor adverse effects on rural character and amenity and that the application is contrary to the relevant plans, where a density of 4ha is a critical factor for maintaining rural character and amenity.

140. In my opinion, neither gateway test is passed.

CONCLUSIONS

141. I have assessed that the environmental effects associated with the retention of two dwellings will create adverse environmental effects that are more than minor in relation to fragmentation and urbanisation of rural land and that there will be minor effects associated with flooding on Dwelling 2 if it is retained on the site. I consider that the proposal is contrary to the relevant District and Regional Plans. I also consider that approving the application will lead to integrity effects in relation to the integrity of administrating the District Plan.

142. I consider that the application cannot be approved for the reasons set out above. If a different decision is reached, draft conditions of consent are included at **Appendix F**.

RECOMMENDATIONS

THAT pursuant to Sections 104, 104B and 104D of the Resource Management Act 1991, the land use consent to retain two dwellings on 6ha at 17 Paisley Road, Flaxton, legally described as Lot 1 DP 61798, be declined.



Recommended by:

Emma Frazer

2 August 2022

Date