

WAIMAKARIRI DISTRICT COUNCIL

NOTIFICATION ASSESSMENT REPORT

Sections 95A-E of the Resource Management Act 1991

Report pursuant to section 95A-E of the Resource Management Act 1991 (RMA) recommending whether an application for resource consent should be publicly notified, limited notified or non-notified

DATE:	20 May 2024
RESOURCE CONSENT NUMBER:	RC245070
PLANNER PROCESSING APPLICATION:	Nirosha Seelaratne
APPLICANT:	Johnny Latham
ADDRESS:	107 Bradleys Road
LEGAL DESCRIPTION:	LOT 1 DP 303902
ACTIVITY STATUS: Land use:	Non Complying
ZONING:	Operative District Plan – Rural Zone Proposed District Plan – Rural Lifestyle Zone
PRECINCTS, OVERLAYS, CONTROLS, DESIGNATIONS ETC	<p><u>Operative District Plan</u></p> <p style="text-align: center;">-</p> <p><u>Proposed District Plan</u></p> <ul style="list-style-type: none"> • Geographic Areas (Ecological) • Ecological District: Low Plains • Non-Urban Flood Assessment Overlay (Part of the property)

1. DESCRIPTION OF THE PROPOSED ACTIVITY

1.1 The proposal is to establish a 212.5m² new two story dwelling at 107 Bradleys Road Ohoka being Lot 1 DP 303902 as shown on figure 1 below:



Figure 1 – Proposed dwelling: Source: RC Application information.

- 1.2 A Resource consent is sought to build a dwelling within less than 4ha rural land breaching road boundary and internal boundary setbacks.
- 1.3 Proposed dwelling is two story, with an overall footprint of 212.5m². It will be located 16.55 meters from the road boundary, 1.5 meters from the southern property boundary and 6.004 meters from western property boundary breaching the 20-metre road boundary setback requirement and 20m internal boundary setback requirement. Total structure coverage within the site is 18.8%.
- 1.4 A consent is also sought to cancel the covenant under s240(5) of the Act, registered on the Title restricting the use of the site for Olive pressing activities. (Deed of Covenant no: COV 6913435.3). The Council has been identified as a party of the Covenant.

Existing Environment/ Background Information

(Site description (any important features), locality (aerial photo of subject site), past consents etc).

- 1.3 107 Bradleys Road, Ohoka, legally described as LOT 1 DP 303902 and held under Record of Title reference 290345 has a total site area of 1524m² and is located within the Rural Zone under the 2005 Operative District Plan and within Rural Lifestyle zone (RLZ) under the Proposed District Plan.
- 1.4 The property is approximately 2km west to the Mill road/Bradleys road intersection and 1km east from the Tram Road/ Bradleys intersection.
- 1.5 There is a Deed of Covenant registered on the Record of Title restricting the use of the property only for Olive pressing purposes and prohibiting residential units on the site. (Deed of Covenant no: COV 6913435.3).



Figure 2 – snip of the current Operative District Plan showing the site is located within the Rural Zone.

- 1.6 The site has road frontage to Bradleys Road, which is a collector, Road. The character of the area is predominantly rural.

- 1.7 Part of the property within south east of the site is within non-urban Flood Assessment overlay.
- 1.8 BC051573 was granted on 20 Dec 2005 for a Olive Pressing shed. It is the only building located on site currently.
- 1.9 It was noted during the site visit undertaken on the 23 April 2024 that the existing shed may be used for temporary/part time residential purposes by the owner.
- 1.10 The applicant confirms there is no intention to use this building for residential purposes if the new dwelling is built. Notice to remove the kitchen facilities from the shed was issued on the 30 April 2024. (TRIM 240430067754)
- 1.11 There is an existing 5.7m wide formed access to the site. The site is fenced and Griselinia were planted outside of the fence as shown on the image below.



Rule Assessment

Operative Waimakariri District Plan (2005)

- 1.12 The application site is zoned Rural within the Operative District Plan. The following Operative District Plan definition and rules are relevant:

Rules:

Rule	Rule Description	Compliance
Chapter 23- Land and Water Margins Rule 23.1.1.8	Earthworks, including the extraction of minerals, in the Rural Zones, other than in the bed of any river, shall not involve the disturbance of more than 1000m ² of soil and/or	Does not Comply. The application falls to a restricted discretionary activity under rule 23.3.2.

Earthworks	rock per any 1ha.	
Chapter 31 – Health, safety and Wellbeing Rule 31.1.1.1 Dwellinghouses	In the Rural Zone any dwellinghouse shall be on a site which has a minimum area of 4ha.	Does not Comply. The site is a 1524m ² undersized rural allotment. The application falls to a Noncomplying activity under rule 31.5.1
Chapter 31 – Health, safety and Wellbeing Rule 31.1.1.10 Structure Coverage	The structure coverage of the net area of any site shall not exceed: c. 20% in the Rural Zone	Complies The total structure coverage proposed is 10.6%, which meets the 20% max requirement
Chapter 31 – Health, safety and Wellbeing Rule 31.1.1.15 Setbacks	Any structure shall comply with the minimum setback requirements in Table 31.1 and measurements shall be taken from the nearest point of any part of any structure (or dwellinghouse). Road boundary – 20m Internal boundary – 20m	Does Not Comply. The proposed dwelling will be located the 16.55m to the Road boundary 1.5m to the southern internal boundary and 7.003 to the western property boundary. The application falls to a discretionary activity under rule 31.4.1
Chapter 31 – Health, safety, and Wellbeing Rule 31.1.2.5 Exemptions for setbacks	The following structures are exempt from complying with Rules 31.1.1.15 to 31.1.1.17 (setback for structures): any fence 1.8m or less in height in any zone other than a Residential 1, 2, 3 or 7 Zone or Residential 4A Zone as shown on District Plan Map 171;	Does Not Comply. The height of the existing fence along the road boundary is 2m. Therefore, 10m setback from road boundary is required. A retrospective consent for a Discretionary activity under rule 31.4.1

- 1.13 Overall, the application falls to a **non-complying activity** status when assessed under the Operative District Plan.

Proposed Waimakariri District Plan (2021)

- 1.14 The application site is zoned Rural Lifestyle Zone within the Proposed District Plan.
- 1.15 No rules such as minimum allotment size requirement for establishing a residential unit, servicing and access within the Proposed District Plan are applicable to this

activity or site has been given immediate legal effect, therefore, no rules relating to residential development under the Proposed District Plan have been considered in this report.

Summary of Activity Status under operative & proposed District Plans

- 1.16 The Proposed District Plan was notified on 18th September 2021 and is currently at the hearings underway stage.
- 1.17 Overall, I consider that the proposal is a **Non-complying activity** under the Operative District Plan and has no activity status under the Proposed District Plan as the majority of relevant rules are undergoing consultation and have no legal effect.

National Environmental Standards (if any NES applies)

- 1.18 LLUR search shows no evidence of HAIL activities having been undertaken on site and there is no historic use of chemicals or pesticides and no sheep dips as shown on Figure3 below. Therefore, no resource consent requirement under NES-CS

Listed Land Use Register (LLUR)

The Listed Land Use Register (LLUR) is a publicly available database of sites where hazardous activities and industries have been located throughout Canterbury. Environment Canterbury has identified these sites and maintained the database for some years. Research projects into historical land use are conducted on a district-by-district basis, starting in 2014 and due to finish in 2023.

Start your LLUR search here

Type into the search bar below to find properties by address or legal description. Alternatively you can search using the interactive map.

Search by address or legal description: 107 Bradleys Road Chokai, Waimakariri District

Having trouble finding your address? [Help](#)

Reset search

Thank you for your enquiry [Need help understanding these results?](#)

Summary

The Listed Land Use Register does not currently have any information about a Hazardous Activities and Industries List site on your selected land parcel. If you would like a property statement, please click or tap the Request a Property Statement button below.

I would like to...

Request a Property Statement [What is a Property Statement?](#)

You have the following **Land Parcels** selected. These are being used to search for intersecting records in the Listed Land Use Register.

Legal Description	Title	Valuation No	
107 Bradleys Road			
Lot 1 DP 303902	260345	2174031202	X

Figure 3 – snip of Ecan’s listed land use register showing the application site.

<https://llur.ecan.govt.nz/home>

Part 2 – Notification (Section 95 of the RMA)

2. Notification

(Sections 95A-E set out the process for determining whether an application should be processed on a notified, limited notified or non-notified basis. The following assessment considers whether public or limited notification is required, or the application can be processed on a non-notified basis.)

2.1 Public Notification

Step 1: Mandatory notification – section 95A(3)	
Has the applicant requested that the application be publicly notified?	No
Is public notification required under s95C (following a request for further information or commissioning of report)?	No
Is the application made jointly with an application to exchange reserve land?	No
Step 2: If not required by Step 1, notification is precluded if any of these apply – section 95A(5)	
Does a rule or NES preclude public notification for all aspects of the application?	No
Is the application a controlled activity?	No
Is the application a boundary activity (other than a controlled activity)?	No
Step 3: Notification required in certain circumstances if not precluded by Step 2 – section 95A(8)	
Does a rule or NES require public notification?	No
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor?	Yes, more than minor.
Step 4: Relevant to all applications that do not already require notification – section 95A(9)	
Do special circumstances exist that warrant the application being publicly notified?	No

Step 1: s95A (3)

- 1.19 The applicant has not requested a public notification of the application. Further information was requested on following matters on the 24th of April 2024. (TRIM 240424065791).
- a. Amended Plans
 - b. Copies of interests registered on the Title.
 - c. Details of any proposed Landscaping
 - d. Details of earthworks
 - e. Details of Olive pressing on site
 - f. Use of the existing shed.
- 1.20 All requested information was provided on the 20th of May 2024 (TRIM 240520080484 and TRIM 240520080048).
- 1.21 Additional information was also requested to confirm the District Plan compliance for the existing signage and whether retail activity is proposed as part of the application given the building consent application plans show a workshop and an office. Confirmation was received that the signage will comply with District Plan requirements and there is no retail activity on site rather the workshop is for general garaging and storage and the office is for general administration work relating to the applicant's plumbing business. (TRIM 240520080484).
- 1.22 More information was also requested and received regarding the height of the fence which has been implemented recently. (TRIM 240531088542).
- 1.23 Therefore, Public notification is not required under s95A (3).

Step 2: s95A (5)

- 1.3 The proposed activity is not precluded from public notification in reference to the table above being the application falls to a non-complying activity under the Operative District Plan.
- 1.4 I have not considered the permitted baseline for this assessment given any form of residential unit is not permitted on this site under both Operative and Proposed District Plans. Consented baseline also prevents residential units being established on this site.
- 1.5 The activity is not a boundary activity.
- 1.6 Therefore, Public notification is not precluded under step 2.

Step 3: s95A (8)

- 1.7 The activity is not subject to a rule or national environmental standard that requires public notification.
- 1.8 I have therefore considered whether the effects of the activity are more than minor to assess whether public notification is required under step 3 s95A(8)(b):
- a) Rural amenity and character
 - b) Traffic and Transport
 - c) Earthworks
 - d) Services

a) Rural amenity and character

- I have considered the following matters to assess the effects of the activity on rural amenity and character:
 - i. Existing consented environment
 - ii. Character and amenity of the surrounding and wider environment
 - iii. Characteristics of the proposed activity
 - iv. Any mitigation measures.
- i. Existing consented environment
- There is a distinctive character to the immediate north, northwest and south of the property, which was established by the Resource consents R960366 R960367, R970376, R970377 and R970378. These consents were granted in 1997 and 1999 to create a total of 80 undersized rural lots to erect dwellings with olive plantation.
- Total area of rural land subdivided under the above mentioned Resource Consents was approximately 151 ha and average allotments sizes were less than 2ha.
- These subdivisions were created for a specific purpose to allow the olive plantation to contribute to the primary production in the rural zone while use the lots for dual purpose. Although the allotment sizes are smaller than anticipated in the rural zone, I noticed the character of the area has not been altered significantly to identify any distinctive difference in the existing rural wider environment given the outlook has been preserved via single story dwellings, shelterbelts, variety of mature trees and olive plantations, rural fencing, rural roads with no footpaths etc.
- Council records also identify RC055518 was granted in November 2005 for a 2 lot subdivision to create Lot 1 DP 303902, the application site(1524m²) for the purpose of establishing an olive pressing activity and the balance Lot 1 DP 57095 to remain as 5648m² land. A covenant was registered against the Title of Lot1 DP 303902 prohibiting residential units on this property.
- In my view, the purpose of creating the application site was to dedicate a piece of land required for olive pressing associated with existing olive plantation operation and to maintain the character while permitting necessary services for consented activities.
- While acknowledging the olive pressing activity no longer continuing on site, the use of this piece of land is limited and may not be able to utilise for rural production activities, in my view, residential use of the land shall need to be carefully considered, specifically whether any proposed residential activity will be compatible with the existing character of the zone and whether there are any effects which are more than minor on the environment.
- Although the proposed use may be beneficial to the applicant, economic use of the land in particular, I noted that observations from *Imrie Family Trust vs Whangarei District Council*¹ are relevant in this instance that:

'the Resource Management Act does not allow decisions to secure the commercial viability of [particular enterprises]; and that although we need to

¹ *Imrie Family Trust vs Whangarei District Council* A057/94 [285]

consider the economic effects on the environment, it is only to the extent that they affect the community at large, not the effects on the expectations on individual investors’.

ii. Character and amenity of the existing surrounding and wider environment

- I noted that owners and occupiers of 115 Bradleys Road, 197 Bradleys Road, 133 Moena Place and 1 Modena Place have given affected party written approvals. I have disregarded the effects on these parties for this assessment, nevertheless, as required under 95D(a)(ii).
- The character of the area is predominantly rural. Rural residential, farming and associated activities form part of the existing character.
- Approximately 1km to west, southwest and northwest of the property, residential 4a and 4b zone area can be identified. About 2.5km to the east residential 3 residential 4a and 4b properties located at Bradleys, Mill Road area as shown on figure 4 below. apart from the above mentioned residential areas, in my view, the rural environment remains intact.

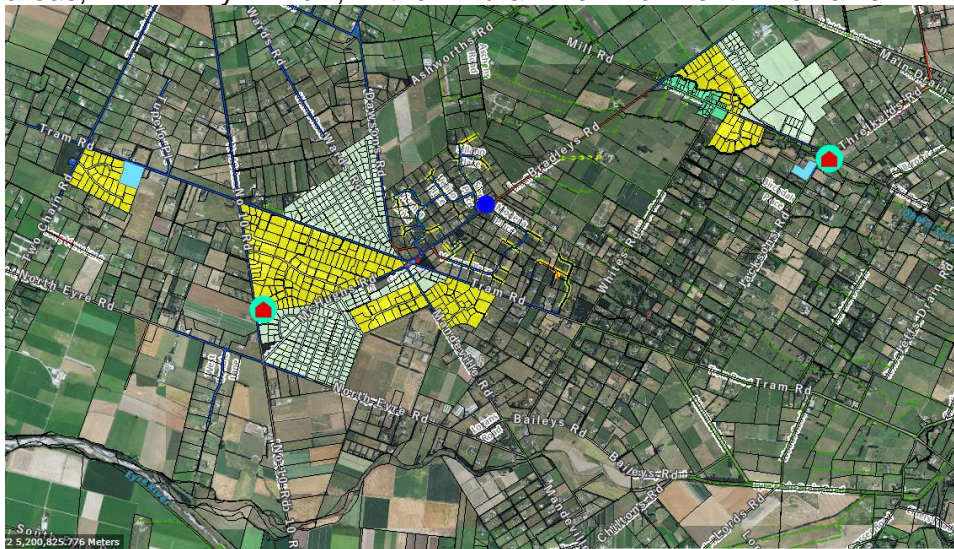


Figure 4 Surrounding environment: source Waimap May 24

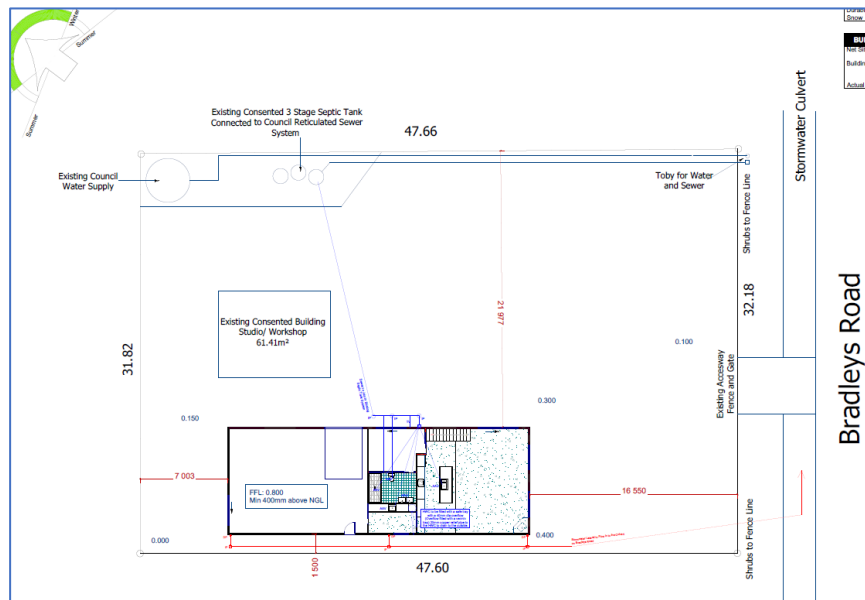
- There are some odd undersized rural allotments can be found in the rural zone. However, they do not automatically qualify to intensify the residential use unless existing use rights or a consented baseline permits to do so.
- Similarly, character of every single site represents the character of the underlying zone and contribute to people’s appreciation of the zone’s collective pleasantness and attributes. Any individual site without similar character can contribute to breach the aesthetic coherence of the zone in my view.
- Proposed activity is akin to an urban residential activity in my view and fundamentally undermine the very characteristics of an open rural environment.
- I disagree with the application assessment that *the proposed residential use of the site is likely to result in lower activity levels than that which could reasonably be assumed in association with a commercial activity such as the approved olive pressing use. Activity levels occurring in association with the*

proposed residential use will also be consistent with that established in the immediately surrounding area.

- As discussed previously the consented olive pressing activity is a direct association of the consented olive planting activities within the area. Although residential activities are present in the immediate surrounding area, the amenity level of the surrounding environment is significantly different from the proposed. Specifically, considering the visual bulk, structure coverage compared to the size of the allotment, setbacks and height of the dwelling, in my view, a significant departure from the established activities in the surrounding area and will not satisfy the amenity expectations of the residents in the zone.

iii. Characteristics of the proposed activity

- Proposed dwelling has a building footprint of 265.41m², that is a 17.42% structure coverage. It is a 6.2m high two story dwelling. Road boundary setback is 16.55m breaching 20m road boundary setback. Western boundary setback is only 1.5m and northern boundary setback will only be 7.003m breaching 20m internal boundary setbacks. The site plan and elevations are shown on Figure 5 below:



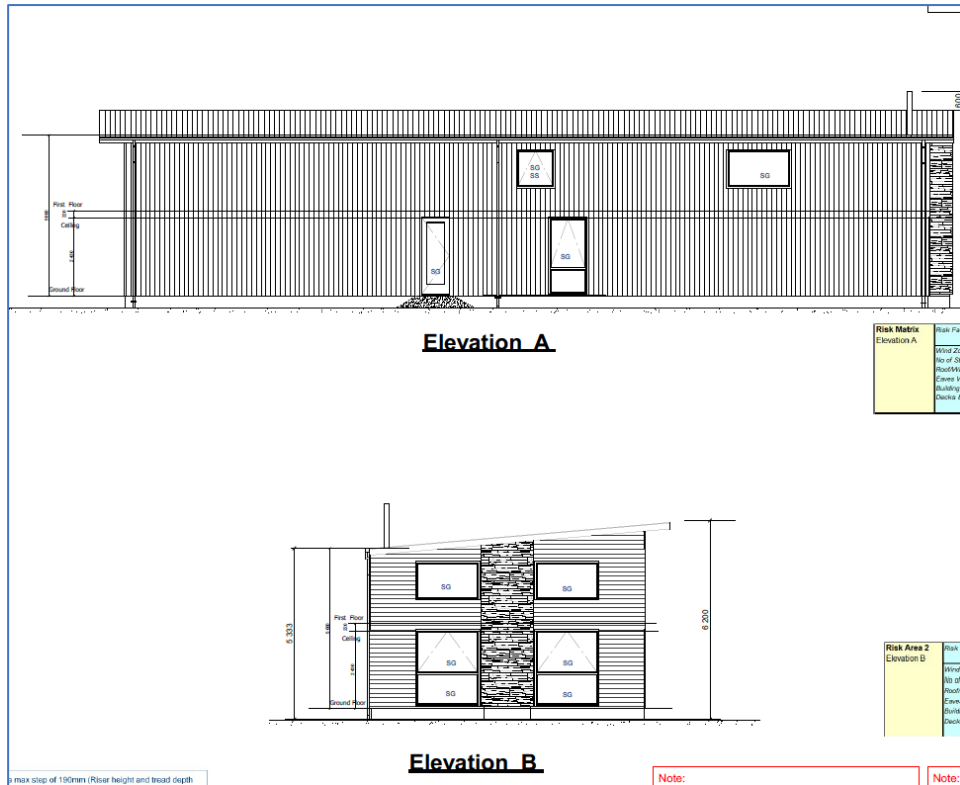


Figure 5: Proposed dwelling. Source RC application information.

Structure coverage.

- I consider the proposed structure coverage 18.8% will represent a visually dominant dwelling on an undersized allotment although it is within 20% permitted structure coverage for the zone. The 20% structure coverage in the District Plan anticipates occurring within a minimum of 4ha land. Therefore, in my view, it isn't a modest structure for the smaller rural allotment, but similar to a large residential unit appropriate for large rural lots or residential allotments in residential zones.

Height

- I consider the height of the structure will also significantly contribute to the visual dominance of the proposed dwelling although there are no height restrictions for structures within the zone.
- The existing fence along the road boundary is 2m high. The dwelling will project 4.2m above the fence. No landscaping is proposed as part of this application. Therefore, given the dwelling is within an undersized allotment and breaches setback requirements, this dominance will be significant from street end and from all other directions.
- Cumulate effects generated by the size and height of the dwelling will be further dominant due to the insufficient and non-complying setbacks proposed.

Boundary setbacks

- The proposed dwelling breaches road boundary setback and two internal boundary setbacks. Road boundary setback and internal boundary setbacks are one strategy in both Operative and Proposed District plan to maintain the predominant open rural character. Given the size of the property it will be impossible to build a residential unit on a permitted location on this site. Large

dominant nature of the dwelling, breaching three setbacks, will contribute to represent an urban residential character rather than a rural outlook in my view.

- I disagree with the application's statement that: *while it is proposed to locate a dwelling within the site where permitted boundary setbacks from front, rear and one side boundary will not be provided, this is consistent with activity and setbacks on surrounding lots, all of which are substantially lesser in area than the Rural Zone minimum of 4 hectares and extend for some distance surrounding the application site.*
- The setbacks provided in the surrounding lots are significantly larger than the proposed and mostly complying with road boundary and internal boundary setbacks. Therefore, I disagree that the proposed setbacks are consistent with the existing environment.
- I have also noticed from the old street views that the application site represented the rural character until 2023 but altered significantly by building a fence and with Griselinia landscaping. In my view, this will contribute further to generate an urban residential outlook.

2008



2009



2012



2023



Source: Google Street View 2008-2023

- I disagree with the application assessment that “*the proposal will maintain the existing character and reflect the existing activities surrounding the application site.*” I consider the existing character is predominantly rural. The dwellinghouses in the surrounding environment also represent part of the rural environment which are mainly single storey and generally maintaining the required setbacks.
- In my view, the proposed dwelling will be visible for road users, will be dominant when viewing from Modena Place and Bradleys Road alike. It will have more than minor effects on the amenity of the neighbours beyond the adjacent neighbours. It is possible it can be viewed from other properties given the height of the proposed dwelling and no mitigation measures are proposed,

Road boundary fence

- Historic aerial images suggest the fence was built after 2021. The applicant confirms it is a 2m high fence. District plan exempts maximum of 1.8m high fences in the rural zone without meeting road boundary setback requirement. In my view, the 2m high fence further contribute to disturb the existing open rural character.

v. Mitigation measures.

- No mitigation measures are proposed as part of the application. Reliance on existing vegetation and shelterbelts along western and northern boundaries is discussed in the application. These established plantings are within neighbors’ boundaries as shown on figure 6 below:

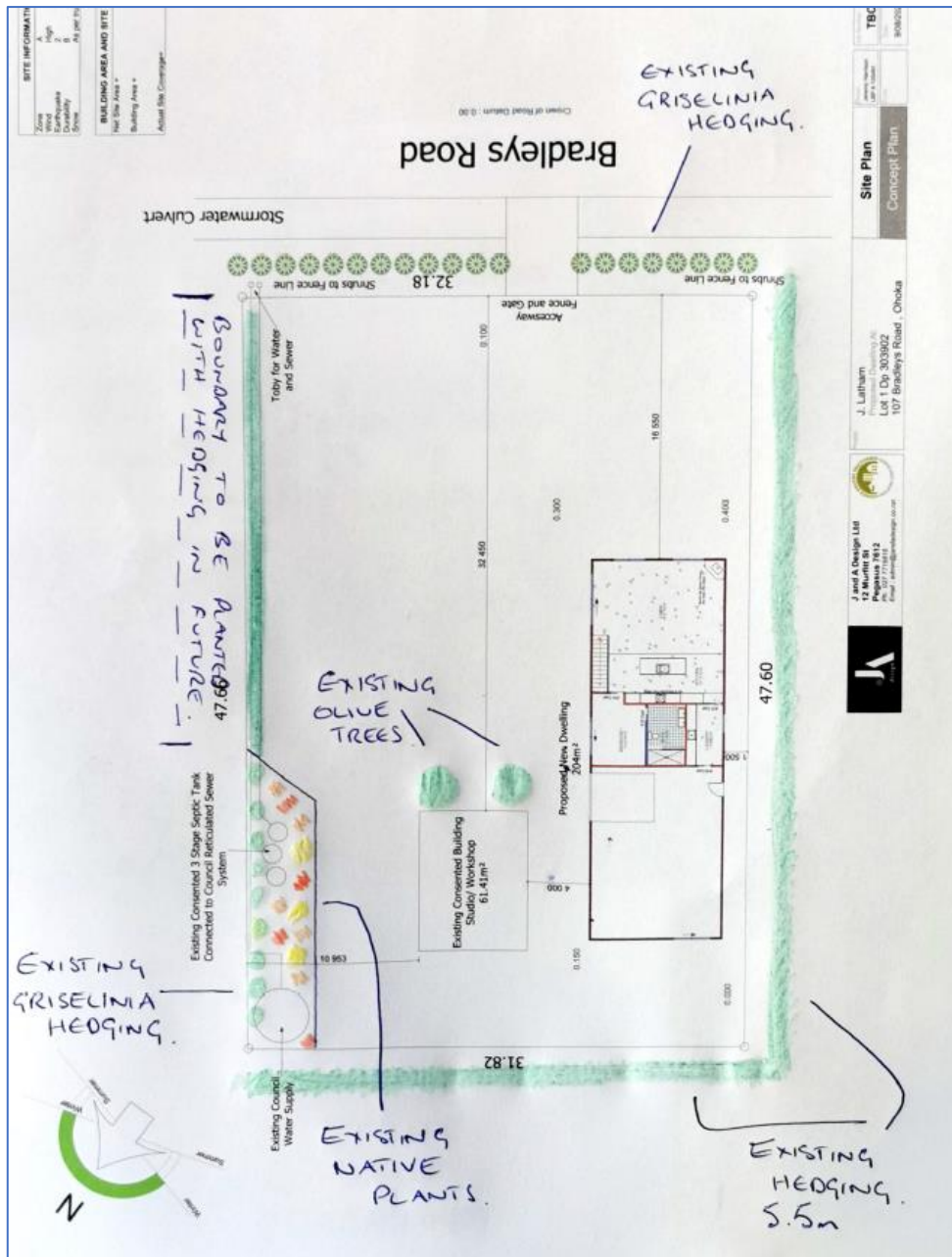


Figure 6 : Existing hedges on neighbouring property boundaries Source: Application information 2024

- Therefore, I disagree with the application assessment that *established plantings surrounding the site also prevent direct views into the site, and this is not to change in the foreseeable future. The contribution of plantings to the character of the area will therefore not be interfered with.*
- The applicant does not have any control over the established plantings within neighbours' property boundaries. On the other hand, there are no specific requirements for the neighbours to keep these plantings.

b) Traffic and Transport

- Bradleys Road is a collector road, the speed limit at the application site location is 80km/h. Traffic volumes generated by the proposal are considered well within the anticipated limits of the Operative District Plan.

- Vehicle Crossing is existing, no additional accesses is proposed as part of this application.
- Council's engineers have assessed the application and stated *Bradley's Road is a sealed straight section of road and 100km/hr speeds are evident. The Modena PI intersection will tend to slow speeds as the pavement markings widened for the Right turn bay.*
- *The site is served by an existing crossing that has good visibility in both directions, and the seal coat extends part way off the sealed carriageway. Sight visibility photos below.*
- Therefore, I consider the effects associated with traffic and transport will be less than minor.

c) Earthworks

- Proposed dwelling breaches District Plan rule 23.1.1.8. Additional information provided by the applicant on 17 May 2024 states that *the approximate quantity of earthworks required for the proposal is 70m³ of excavation and 120m³ of fill over an area of approximately 250 - 300m². The site area is 1500m² and therefore the pro rata permitted area of earthworks is 15% of 1000m², being 150m². The earthworks permitted standard is therefore not complied with and results in a restricted discretionary activity status. (TRIM 240520080048)*
- Earthworks associated with the activity will be for the foundation construction for the house. The application proposes that contours and ground levels within the site will not be altered by the earthworks and dust will be controlled by rapid refilling of the excavated area with shingle.
- Noise of the earthworks will be short term and associated only with a single small excavator and one to two trucks, siltation will be managed by standard sediment run-off control mechanisms.
- The application further claims the earthworks will be low profile and therefore not result in visual detraction and traffic generation will be low and occur over a very short time frame of a few days.
- Further, council's flood hazard maps show that although the site has pockets of potential flood areas located on in a 1 in 200y event, it is not in a flow path as shown on figure 7 Below:

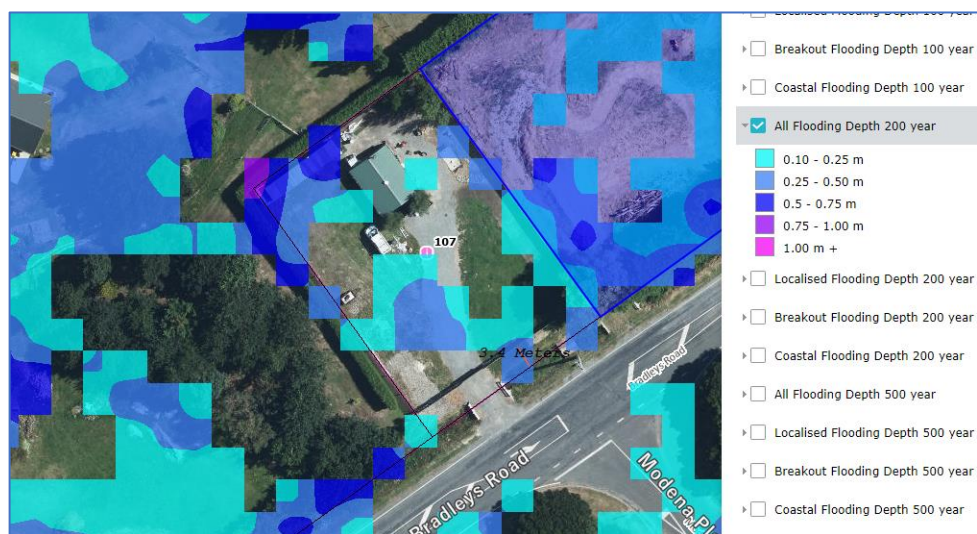


Figure 7 : Source: Waimap June 2024

- I agree with the application assessment and consider the effects associated with the earthworks will be less than minor.

d) Services

- 1.9 Council's engineers have assessed the application and identified that the site is connected to the Council reticulated supply via restricted supply, with tanks and systems already on site. In terms of sewer, the Lot is already connected to Councils Pressure wastewater system.
- 1.10 The application plans that the new dwelling will collect stormwater and discharge to the roadside drainage channel. The 100 mm outlet to the roadside drain will need a non-return flap gate to restrict flows back up the line in a storm event in the drain.
- 1.11 Therefore, in my view, services can be sufficiently provided for the site and no additional demand on Council's reticulation will be created as a result of the proposed activity.

Other effects

- 1.12 I have noted that Ngāi Tūāhuriri Rūnanga have not requested this application for reviewing.

Step 4: s95A (9)

- 1.13 I have considered whether there are any special circumstances relevant to this application required to be considered under step 4 s95A (9). Residential activities are not extraordinary or unusual in the rural zone. There are no other unusual or exceptional circumstances associated with this application. Therefore, I consider there are no special circumstances that would warrant this application being publicly notified.

Section 95 conclusion

- 4.54 Following the steps set out in Sections 95A, I consider the application is required to be processed on publicly notified basis due to the effects associated with the proposed activity on rural amenity and character are more than minor for the following reasons:
- Existing surrounding consented environment represent rural character and rural outlook although allotment sizes are less than 4ha. Proposed dwelling will be visually dominant within the environment.
 - Existing rural character of the surrounding and wider environment represent distinctive rural character. Proposed dwelling will be inconsistent with the existing character and will undermine the open rural character of the existing surrounding environment and wider rural zone.
 - The size, height and location of the proposed dwelling will contribute to generate visually dominant, out of character, isolated urban residential outlook within the rural environment and will be detrimental to the existing rural character and amenity expectations of the residents.
 - Consented environment prevents the site to be used for residential purposes. Although the use of the site may be limited, the effects associated with the proposed activity cannot be undermined.

- Recently built 2m high fence further contributes to create more urban, outlook to an undersized rural site.
- No mitigation measures are proposed as part of the application.
- Overall, I consider the effects on the rural character and amenity will be more than minor.

RECOMMENDATION

THAT pursuant to Sections 95A of the Resource Management Act 1991, to construct a 212.5m² dwelling within an undersized rural allotment, breaching road boundary setback, breaching setback from southern and western property boundaries, and breaching the maximum earthworks requirement at 107 Bradleys Road, Ohoka, being Lot 1 DP 303902, proceed on publicly notified basis for the reasons that the effects of the proposed land use on rural character and amenity will be more than minor.

Recommended by:

Nirosha Seelaratne

Nirosha Seelaratne
SENIOR RESOURCE MANAGEMENT PLANNER

Date 06/06/2024

Peer reviewed by

Tim Johnston

Tim Johnston

Date: 06/06/2024

Ian Carstens

Ian Carstens
RESOURCE CONSENTS TEAM LEADER

Date: 6/06/2024

Reviewed and signed: