

WAIMAKARIRI DISTRICT COUNCIL

REPORT

FILE NO: RC215625 / 220310034901

VALUATION NO: 2159125100

DATE: 7 March 2022

REPORT TO: Planning Manager – Matthew Bacon

FROM: Planning Officer – Emma Frazer

SUBJECT: Land Use – to retain two dwellings, with footprints of 110m² and 233m², on 6ha in the Rural Zone, where the second dwelling was established post-earthquakes under the Temporary Residential Accommodation - Single Additional Unit on Any One Lot policy and that temporary resource consent (RC135105) has expired.

ACTIVITY: Waimakariri District Plan – Non-Complying Activity

1. APPLICANT

Bourke Family Trust; Jason Bourke, Daryle Fantham and Michelle Bourke

2. PROPERTY LOCATION

17 Paisley Road, Flaxton

3. LEGAL DESCRIPTION

Lot 1 DP 61798

4. ZONING

Waimakariri Operative District Plan – Rural Zone

Waimakariri Proposed District Plan – Rural Lifestyle Zone (RLZ)

5. DESCRIPTION OF PROPOSED USE

5.1 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

6. SITE DESCRIPTION AND BACKGROUND

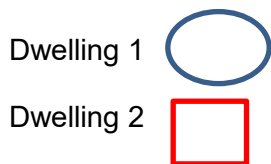
6.1 The application site is 17 Paisley Road, Flaxton. Paisley Road runs parallel to Lineside Road, on the south-western side of the railway line.

6.2 The site contains 6ha of relatively flat land which is divided into paddocks and a forestry block. There are two dwellings located on the site;

Dwelling 1 (see plan below) – the original dwelling, which is set back approximately 11m from Paisley Road and 32m from the north-western boundary. This dwelling was the original dwelling on the site. The application for resource consent for the second

dwelling (RC135396) under the temporary accommodation policy stated this dwelling would be removed or the kitchen removed once the second dwelling was established on site. This dwelling 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.

Dwelling 2 (see plan below) – this dwelling was relocated to the site post-earthquakes under RC135396. An application for this second dwelling 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. The resource consent noted that the Temporary Residential Accommodation policy required the consent to be non-notified.



- 6.3 The original application for the second dwelling noted that the kitchen would be removed from Dwelling 1 once Dwelling 2 was established on site and liveable. Condition 2 of RC135396 required one dwelling to be removed by 16 April 2016.
- 6.4 RC165217 granted an extension, allowing 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 Dwellings.
- 6.5 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 of RC135396 / RC165217.
- 6.6 In the current application, RC215625, the applicant has proposed that Dwelling 1 be retained as a secondary dwelling. They acknowledge that it does not meet the definition of dwellinghouse¹ however submit that the 110m² Dwelling 1 located more than 100m

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

from the principal Dwelling 2 is equivalent to a secondary dwelling. The secondary dwelling is proposed to be restricted in use to family members or staff at the applicants business in Rangiora (3km to the north of the site). 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.

7. DISTRICT PLAN REQUIREMENTS

Operative District Plan 2005

7.1 The relevant rules are those outlined below:

Chapter 1 Definitions

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.

The dwellings on the site meet the definition of dwellinghouse independently, equating to two dwellinghouses on the site. Neither dwelling has a floor area of no more than 75m². The separation distance between dwellings is significantly greater than 30m. Both dwellings have kitchen facilities.

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.

The proposed activity is **non-complying** under this rule.

Chapter 23 Land and Water Margins

23.1.1.17

Within any Residential Zone, Business 1, 2, or 4 Zone, the Rural Zone including cluster housing within Maori Reserve 873 or Mapleham Rural 4B Zone, the supply of water to any site shall be by a reticulated potable water supply.

There is no reticulated water supply in the vicinity of the site. Both dwellings have well water supplies.

23.3.7

Except as provided for by Rule 23.5, any land use that does not comply with Rule 23.1.1.17 (supply of water) is a discretionary activity (restricted).

In considering any application for a resource consent under Rule 23.3.7, the Council shall, in deciding whether to grant or refuse consent, and in deciding whether to impose conditions, restrict the exercise of its discretion to the following matters:

- i. the potability and capacity of water supply;*
- ii. the environmental standards of the proposed and existing water supply;*
- iii. the means of supply and location of any water source;*
- iv. contingency provisions and emergency response procedures in the event of a failure in the service;*
- v. financial contributions as set out in [Chapter 20: Financial Contributions and Chapter 34: Financial Contributions – Rules](#) and development contributions as set out in *Waimakariri District Council's Development Contributions Policy*;*
- vi. those matters over which control is exercised for Controlled Activities in Chapter 32: Subdivision – Rules;*
- vii. effects on wahi taonga and mahinga kai;*
- viii. effects on effectiveness and efficiency of existing public systems;*
- ix. the need for ongoing maintenance, service contracts and standards; and*
- x. the effect land use will have on the water quantity of any water body.*

Retaining the dwellings with no reticulated water supply is a **restricted discretionary activity** under this standard.

Chapter 30 Utilities and Traffic Management

30.6.1.1

All land uses in any Residential Zone or Business Zone, and any dwellinghouse in any Rural Zone, shall be located on a site that has access to a road which complies with the design attributes of Table 30.1, Table 30.2 for the Residential 7 Zone, other than land uses in the Residential 6, 6A and Business 1 Zones at Pegasus which shall be located on a site that has access to a road which complies with the design attributes of [Table 32.2](#).

Local Rural Road = 20m legal width, 3m lane width x 3

Paisley Road appears to be less than 20m in legal width and less than 6m in formed width.

30.9.1

Except as provided for by Rule 30.7, any land use that does not comply with one or more of the conditions under Rule 30.6.1.1 to 30.6.1.32 or 30.7.1 is a discretionary activity except where it is a non-complying activity under Rule 30.10 or it is exempted by Rule 30.6.2.

In considering any resource consent under Rule 30.9.1, the Council shall, in deciding whether to grant consent, and in deciding whether to impose conditions, have regard to (but not be limited by) the following matters:

- i. financial contributions as set out in [Chapter 20: Financial Contributions](#) and [Chapter 34: Financial Contributions – Rules](#); and*
- ii. development contributions as set out in Waimakariri District Council's Development Contributions Policy.*

The proposed activity is **discretionary** under this standard.

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.

Not met – there are two dwellings on the site, which is 6ha in land area.

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;*
- b. Rules [32.1.1.1](#) (areas and dimensions), [32.1.1.3](#) (provision for a building platform and sewage disposal area), [32.1.1.30](#) and [32.1.1.31](#) (common vehicle crossing for multiple lots), [32.1.1.58](#) and [32.1.1.59](#) (energy supply to the allotment) and [32.1.1.64](#) (stormwater connection to public drain) can be complied with as though any delineated area was an allotment;*
- c. Rules [30.6.1.2](#) (access to seven or more sites) and [31.1.1.15](#) (setbacks for structures) and [31.10.1.1](#) (glare) can be complied with as though any delineated area was a site;*
- d. any delineated area, other than one that encompasses an existing habitable dwellinghouse, can be connected to a reticulated potable water supply; and*
- e. no esplanade reserve or esplanade strip would be required to be created or set aside in accordance with [Chapter 33: Esplanades: Locations and Circumstances – Rules](#) if any delineated area was created by subdivision.*

Not met - There is no ability for each dwelling to be contained within its own delineated area of 4ha and there is no reticulated water supply to the site.

31.1.1.10

The structure coverage of the net area of any site shall not exceed:

- a. 50% in Residential 1 Zones;*

- b. 35% in Residential 2, 3, 5 and 6 Zones;
- c. 20% in the Rural Zone, the Mapleham Rural 4B, Residential 4A and 4B Zones, except for the Residential 4A Zone, Bradleys Road, Ohoka identified on District Plan Map 169;

Met

31.1.1.15

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).

Table 31.1: Minimum Structure Setback Requirements

Location	A setback is required from	Setback depth (minimum)
Rural Zone	Any road boundary	20m for any dwellinghouse 10m for any structure other than a dwellinghouse
	Any internal site boundary	20m for any dwellinghouse 3m for any structure other than a dwellinghouse
	Any existing dwellinghouse on an adjoining site	10m for any structure (excluding a dwellinghouse)

Met – the original Dwelling 1 is 11m from the road boundary, however this was established prior to the Operative District Plan and existing use rights can be applied.

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.

The proposed land use activity is **non-complying** under this standard as the density standards for dwellings, and the delineated area standards for dwellings, cannot be met.

- 7.2 Overall the proposed activity is a **non-complying activity** under the operative Waimakariri District Plan 2005.

Proposed District Plan 2021

- 7.3 The Proposed District Plan was publicly notified in September 2021, submissions have closed and are currently being summarised, and are not publicly available. The site is zoned Rural Lifestyle. There are no rules relating to the site that have immediate legal effect.

8. NEIGHBOURS CONSENTS/NOTIFICATION

8.1 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
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

- 8.1.1 In accordance with the provisions of Section 95A, the application shall be publicly notified, for the reasons set out in Section 9.

9. ASSESSMENT

- 9.1 In considering the potential effects of the proposal, I have turned my mind to the following potential or actual adverse environmental effects, assessed below:

Amenity and Character

- 9.2 The actual or potential effects of the proposed activity are existing only as a result of special provisions in response to the Canterbury Earthquakes. The provisions required a non-notified consent and the second dwelling was approved on the basis that Dwelling 1 would be disestablished or removed completely after August 2016.
- 9.3 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.
- 9.4 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. Countering this is the urban nature of the activities, located within the Rural Zone.
- 9.5 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 on the rural area.
- 9.6 The applicant has submitted that the visual effects of the proposal will be avoided and

mitigated by the screening that established mature vegetation provides to the site, and has offered a condition of consent to retain that vegetation.

- 9.7 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.
- 9.8 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. 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. This application seeks to make the intensification permanent.
- 9.9 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'. This magnification of activities from within the site may result in adverse effects that are more than minor.
- 9.10 In addition, retaining the two dwellings as permanent activities (as opposed to temporary accommodation) is urbanising the rural landscape, especially given the large separation between the two dwellings which emphasises the fragmentation of the land resource, in my opinion.
- 9.11 Use of Dwelling 1 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 a public transport network is not an efficient use of the transport network and will emphasise the fragmentation of the rural area.
- 9.12 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. This confirms the density sought by the Operative District Plan continues to be a relevant critical standard for this rural area.
- 9.13 There are no unique circumstances that set this proposal apart from many rural lots with areas less than 8ha.

Section 95 Conclusion

- 9.14 The proposal represents a new activity to retain two permanent dwellings on 6ha. The proposed activity will create actual or potential adverse environmental effects associated with character and amenity, fragmentation of rural land, urbanisation of the rural landscape and increased intensity of use of a site that is not anticipated, and which cannot be avoided, remedied or mitigated to a level less than minor.

10. **RECOMMENDATION**

10.1 That the application be publicly notified, pursuant to Sections 95A and 95D of the Resource Management Act 1991.



Recommended by:

Emma Frazer
CONSULTANT PLANNER

9/03/2022

Date

Approved by:

Wendy Harris
Wendy Harris
DELEGATED OFFICER

21/03/2022

Date