

A1258373

**APPLICATION FOR RESOURCE CONSENT: RECOMMENDATION REPORT IN ACCORDANCE WITH SECTION 42A OF THE RESOURCE MANAGEMENT ACT 1991 (RMA)**

<b>Council Reference:</b>	RC2024-31
<b>Purpose of the Report:</b>	This Report provides analysis of the resource management issues in respect to the application. The assessment and recommendations contained in this Report are not binding on the Hearing Commissioner. This Report has been prepared without knowledge of the content of any evidence or submissions that will be made at the Hearing. Consequently, it cannot be assumed that the Hearing Commissioner will reach the same conclusions as the author.
<b>Applicant:</b>	Pou Oranga Whai Ora Charitable Trust (incorporated)
<b>Proposal:</b>	Establish and operate a Residential Care Facility and ancillary offices
<b>Site address:</b>	19A Baird Road, Kukumoa
<b>Legal description and Area:</b>	Lot 2 Deposited Plan 8225, 33,484 m <sup>2</sup>
<b>Opotiki District Plan (ODP) Zone and Notations:</b>	Rural Zone, Class 2w2 land
<b>Statutory Acknowledgement:</b>	Waioweka River and its tributaries within the area of interest (Whakatōhea)
<b>Activity Status:</b>	Discretionary
<b>Date Application Received:</b>	Revised application received 20/6/2024
<b>Site Visit:</b>	6/3/2024
<b>Pre-hearing Meetings:</b>	19/9/2024 and 20/9/2024
<b>Reporting Planner:</b>	Laura Swan, Consultant Planner (Refer Attachment A for Qualifications and Experience)
<b>Recommendation:</b>	Grant subject to conditions

## **LIST OF ATTACHMENTS:**

- A. Statement of Experience and Qualifications for Laura Swan**
- B. Memorandum from BOPRC's Engineering Hydrologist dated 1 October 2024**
- C. Submission summary spreadsheet**
- D. Map showing some submitter's properties relative to the site**
- E. Pre-hearing meeting outcome report**
- F. Draft conditions circulated to submitters**
- G. Letters from some submitters accepting draft conditions**
- H. Court Decisions**

## **1.0 PROPOSAL**

- 1.1 The application seeks resource consent to establish a rehabilitation and wellness center within the existing three-story dwelling on the site. This will include ancillary office and support activities. The activity best meets the definition of Residential Care Facility under the Ōpōtiki District Plan (ODP). The application documents are on the council's website.
- 1.2 The proposed facility will provide accommodation for up to eight residents who will stay at the site for up to 12 weeks. They will receive support (assessment, counselling, education) by staff prior to, or after, attending an off-site drug rehabilitation program. The residents attend the facility voluntarily and can request to leave the program at any time. While on-site though they are supervised by staff at all times. They cannot come and go from the site at will.
- 1.3 The eight residents will primarily be accommodated in bedrooms on the first floor of the building. The proposed floor plan shows this level re-configured to provide separate areas for male and female residents.
- 1.4 The main ground floor of the building will have a central kitchen and lounge area, as well as a reception area, meeting rooms and offices. The facility will typically operate with 3-4 resident support staff on-site and the community team (3-4 staff) will also use the facility as their office base and come and go.
- 1.5 It is now understood that the north-western wing of the building will contain two 'parents rooms', each with en-suite. These rooms would be used if a resident had a very young child.
- 1.6 On-site security will be provided 24/7 by security staff, with at least one security person present at all times. At night a second staff member is also present, and both remain awake throughout the night. The second (top) level of the building will accommodate facilities for the security staff. Therefore, at night there would be a maximum of ten people on the site.
- 1.7 Residents may have visitors, but the time and number of visitors must be pre-arranged and is managed by staff.
- 1.8 Plans showing the proposed building alterations and floor layouts are in Figures 1-2 below. The proposal does not involve the construction of any new buildings. It does not involve the use of any of the unconsented accessory buildings located on the site. The consent application only relates to the main dwelling.

- 1.9 In terms of access, the activity will utilise the existing right of way access to Baird Road. The right of way easement is over the adjoining lot to the west, 19 Baird Road (Lot 1 Deposited Plan 8225). It is sealed and has a formed width between 2.5 and 3m. The applicant does not propose to change or widen the formation of this accessway.
- 1.10 The existing dwelling is connected to an on-site wastewater system. This system will need to be upgraded to service the proposed development and resource consent will be required from the Bay of Plenty Regional Council (BOPRC). A report has been prepared by Waterflow NZ Ltd that details how and where a new system could be provided on the site. It is noted that it must be located on ground that is not subject to flooding in a 20% Annual Exceedance Probability (AEP) flood event. Alternatively, the applicant could extend the existing public wastewater system to service the site. It is understood that this is the applicant's preferred solution.
- 1.11 The site has a connection to council's reticulated water supply which will continue to be utilised.

Figure 1: Ground Floor Plan

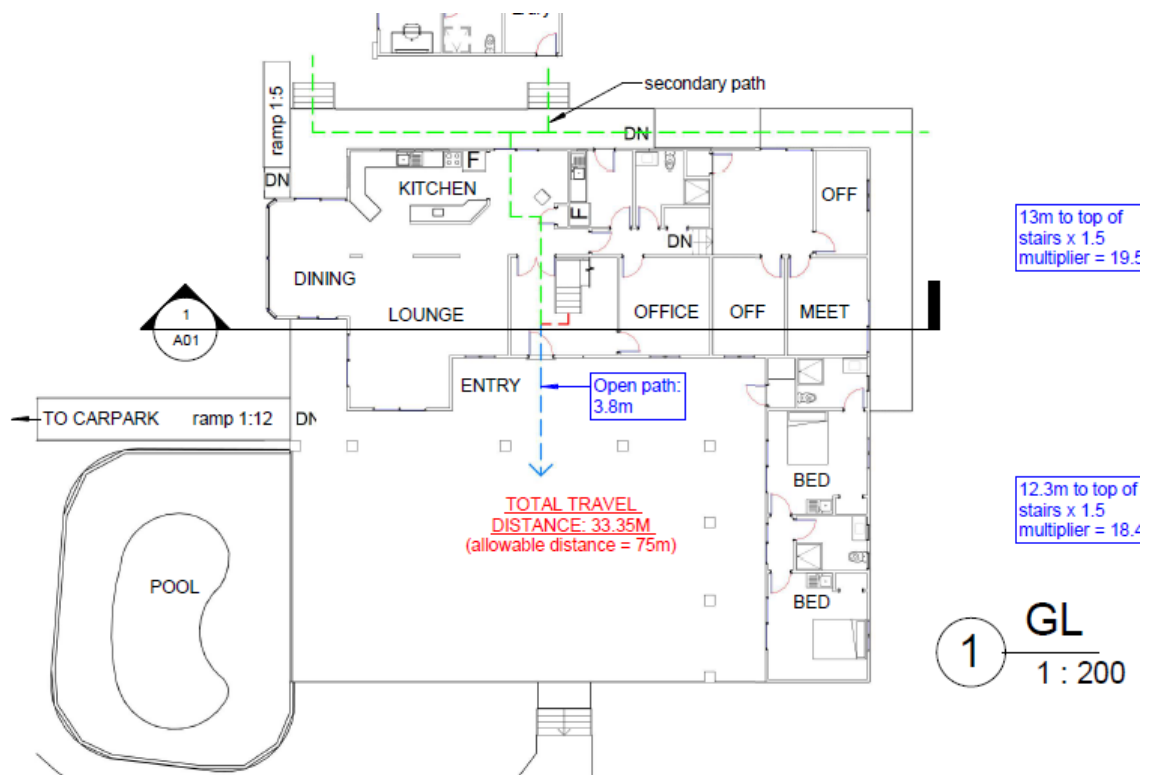
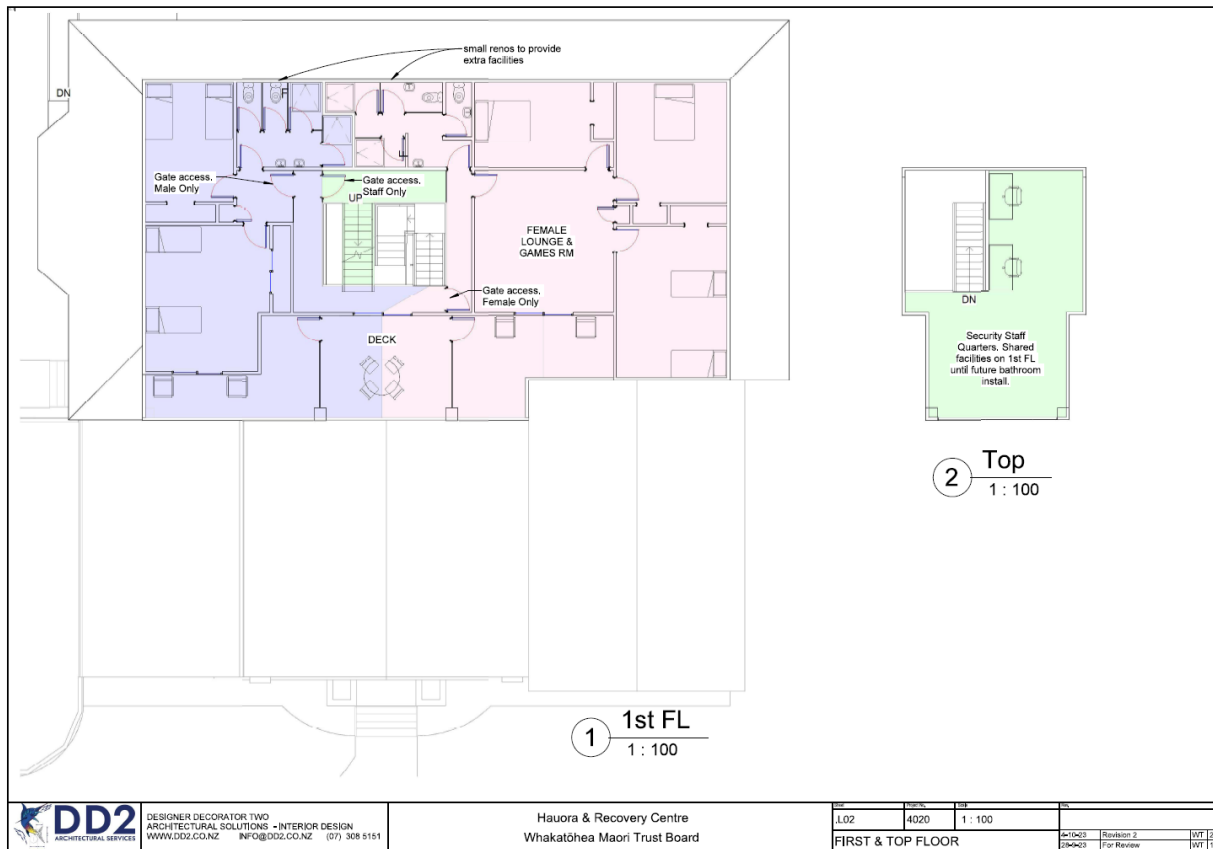


Figure 2: First Floor and Top Floor Plan



1.12 Signage is proposed and Figure 3 is a photo of the sign that has already been installed at least partly on the road reserve near the site’s entrance on Baird Road. It measures approximately 1m by 1m and is approximately 2.3m high.

Figure 3: Signage for proposed activity



## 2.0 SITE DESCRIPTION, FEATURES AND RECEIVING ENVIRONMENT

### The Site

- 2.1 The site is a rural property located on the southern side of Baird Road, and west of State highway 2 (SH2). It has frontage to the state highway, but physical access is via a right of way to Baird Road. Baird Road is a no-exit road that terminates some 480m past the site's entrance.
- 2.2 The site contains a large 7-bedroom dwelling. The council's records indicate this was constructed on the site in circa 1994 following a fire which destroyed the previous dwelling.
- 2.3 Most of the ground floor level of the dwelling has a finished floor level about 800mm above existing ground level. However, the section on the southwestern corner of the building that is proposed to be converted to meeting and offices, is lower. It is approximately 250mm above existing ground level. This space is about 48m<sup>2</sup>. No survey data has been provided to confirm the exact levels. Refer Figures 4-6.
- 2.4 The applicant is currently using the site for office activities.

Figure 4: Photograph of the northern elevation of the dwelling and central courtyard.





Figure 5: Photograph looking down the western elevation of the dwelling towards southwest corner of the building which has the small, covered veranda and is lowest level of the building.

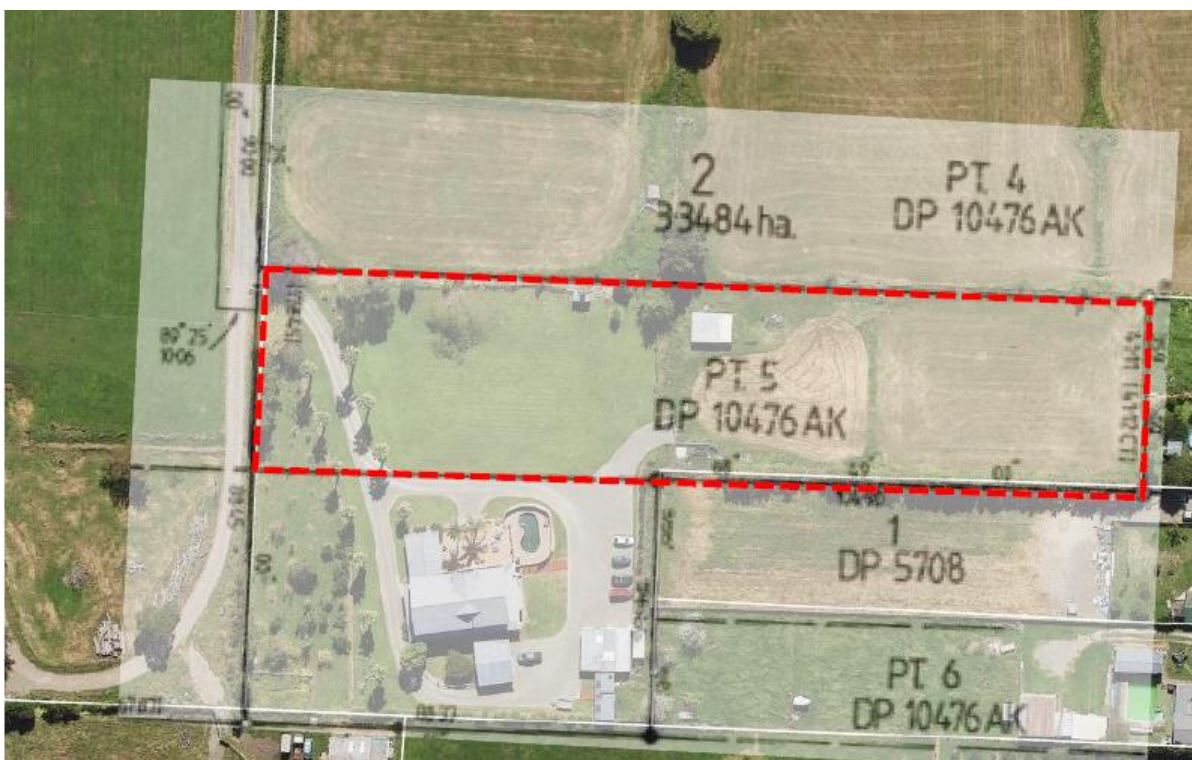


Figure 6: Photograph of ground and floor levels in the southwest corner of the building which is at the lowest level.



- 2.5 There are also other smaller buildings or sheds on the site. Review of council’s records confirms that none of these buildings have building consent and none are legally authorized under the district plan. Two of the buildings are referenced in council’s property file as un-consented garages, one with a lean-to. Further works appear to have been undertaken in the past to these buildings to convert them from garages to other uses, such as bedrooms or office spaces, and to add plumbing. None of this work is consented. Three other unconsented cabins/ small office buildings have also been placed on the site more recently.
- 2.6 The dwelling and other unconsented buildings are all located near the southern extent of the application site, and the rest of the lot is utilized as grazing land or for hay production. There is a private land covenant that prevents construction of buildings on the middle part of the site. Refer Figure 7.

Figure 7: Area subject to Land Covenant Identified in Red Outline: Source AEE Report.



- 2.7 All of the site is relatively flat and very low lying. Ground level in the vicinity of the dwelling is 1.8m according to BOPRC lidar data. As a rural property, there is no stop bank protecting the site or surrounding land from flooding from the Waioweka River. It is within an area which BOPRC’s flood model shows is already subject to flooding, and where the flood levels will be significantly affected by climate change and future sea level rise. So, the extent of flooding that will occur on the site will increase significantly over time. Refer to Attachment B which is a Memorandum from BOPRC’s Engineering Hydrologist dated 1 October 2024.
- 2.8 Figure 8 below depicts what is considered to be the current day 1 in 20-year Average Recurrence Internal (ARI) flood event (plus 0.5m freeboard). This is also known as the 5% Annual Exceedance Probability (AEP) flood event and has a 5% chance of occurring in any one year.<sup>1</sup> It shows between 0.6

<sup>1</sup> AEP: Probability of exceeding a rainfall event within a year. A 1% AEP flood flow has a 1%, or 1-in-100 chance of occurring in any one year, and a 10 per cent chance of occurring in any 10 year period.  
 ARI: Average time between exceedances of a given rainfall total over a specific duration. For example a 100-year ARI flow will occur on average once every 100 years.



and 0.8m of water depth around the existing dwelling. The map shows that at the northern end of the access there would be 0.8-1m of water depth (outside of the drain).

- 2.9 Under current climate conditions, the rooms in the south-west corner of the building would be inundated and the rest of the ground floor level would at least be at high risk of being inundated. Vehicle access to and from the site may be restricted.

Figure 8: Current 20-year flood (5% AEP in the year 2023) with freeboard. Source: BOPRC Memorandum dated 1/10/2024. Property is central to image and identified with a light blue outline.

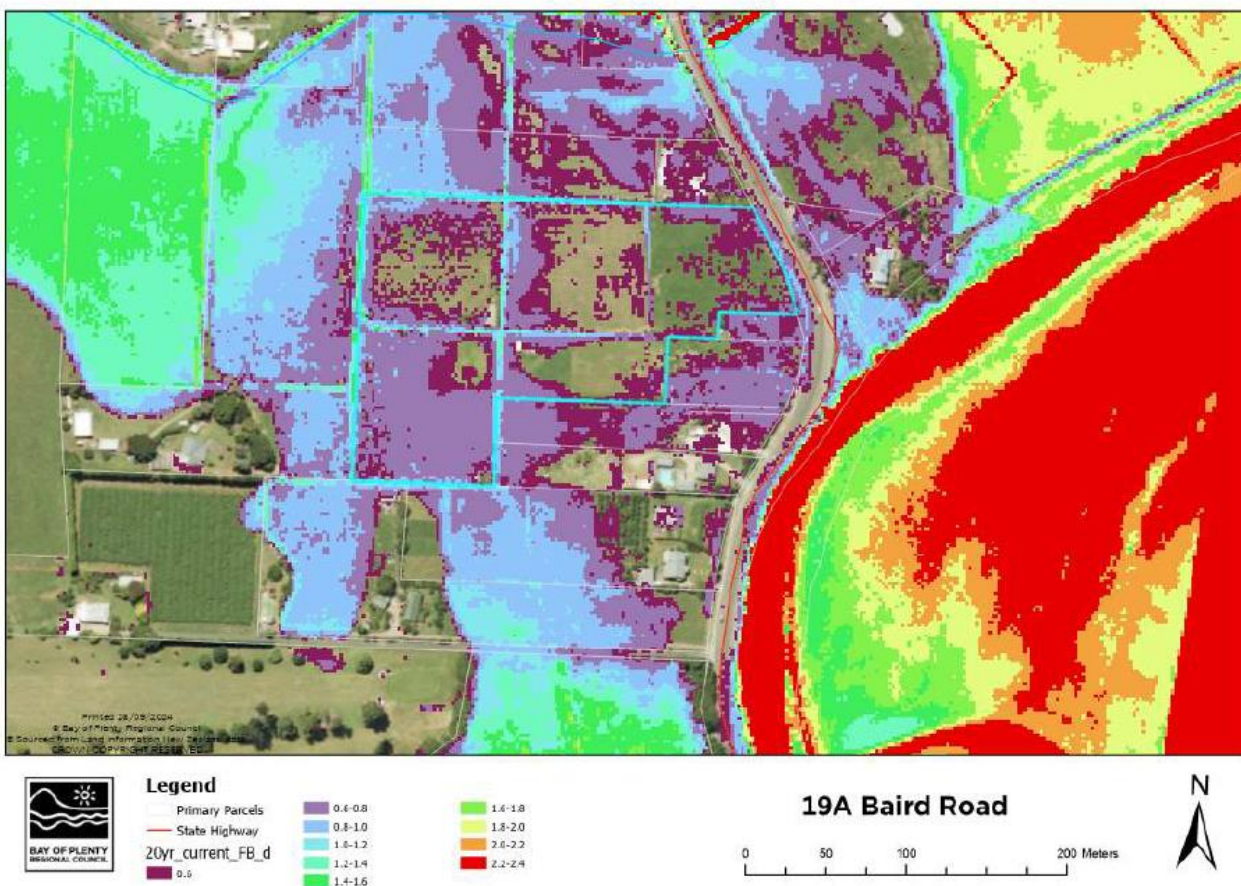


Figure 5: 20-year (5% AEP) Flood Inundation depth map, current climate (2030), freeboard added manually.

- 2.10 BOPRC have provided a range of other flood event scenario maps and levels based on various timeframes. Some of these are discussed further below. The flood scenario that is normally considered under the ODP in a rural area is the larger, less frequent 2% AEP event with climate change allowance to 2135. This equates to a 1 in 50 year ARI event. BOPRC advise that this flood level is 4.3m RL (Moturiki Datum 1953) and it includes estimate imprecision and phenomena not explicitly included in the calculations. This flood level is some 2.5m above the existing ground level of the site.
- 2.11 In relation to previous uses of the site, there are no existing, lapsed or expired resource consent for any activity. It is understood that the site was previously used as both a dwelling, and for visitor accommodation and was known as Kukumoa Lodge. Up to four visitors may be accommodated on a site as a permitted activity and there was a similar rule under the previous district plan.
- 2.12 The AEE report refers to the site having been used for Recognized Seasonal Employee (RSE) or seasonal worker accommodation. The council does not have any specific records to confirm this use. However, there are permitted activity criteria rules in the ODP that govern this activity. Up to 12 people may be accommodated on a site, for part of the year only, to meet demand for labour in the horticultural sector.



2.13 The site and surrounds are shown in Figure 9.

Figure 9: Aerial photograph of the site and surrounds. Property identified in yellow outline.



### Receiving Environment

- 2.14 The receiving environment is the environment upon which the proposed activity might have effects. The receiving environment includes the future state of the environment as it could be modified by permitted activities and by the implementation of resource consents, where it is likely that the resource consents will be implemented.
- 2.15 The term environment is defined in Section 2 of the RMA as:  
*environment includes—*  
*(a) ecosystems and their constituent parts, including people and communities; and*  
*(b) all natural and physical resources; and*  
*(c) amenity values; and*  
*(d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters*
- 2.16 The site is located in a rural environment on the western outskirts of Ōpōtiki township. There are a number of smaller residential or lifestyle lots in the immediate area, particularly adjoining State Highway 2 (SH2). The Waioweka River is located east of SH2.
- 2.17 The adjoining rural lots are utilised for grazing, with orchards and dairy farms being located in the wider area. Ōpōtiki Golf Club is also located further to the south.
- 2.18 Of the adjoining lots, some are theoretically large enough to establish additional dwellings (or accessory buildings) as a permitted activity. However, due to the low-lying nature of the land and applicable flood levels, this is not considered likely or credible. A 40m setback from SH2 would also restrict location of buildings. Visitor accommodation for up to four people could occur within existing buildings.
- 2.19 A range of rural production activities are permitted, as well as ancillary activities such as crop protection structures, frost fans, bird scaring devices.
- 2.20 The state highway is a visual feature in the landscape and traffic using it generates noise. The dwelling on the site is visible at times from the State Highway and from Baird Road.

2.21 As such, the receiving environment comprises the road network, existing (consented) buildings, residential and small-scale visitor activities within existing buildings, the golf club and rural production activities.

**3.0 RELEVANT RULES/ACTIVITY STATUS**

3.1 The property is zoned Rural in the Opotiki District Plan (ODP). It is located on land classed as having versatile soils, being Class 2w2. No other planning overlays or notations apply.

3.2 The following rules trigger the need for resource consent:

<b>Rule</b>	<b>Requirement</b>	<b>Activity Status</b>
8.3.4.1.19 Discretionary activities: Residential Care facility	The proposed activity best fits within this definition which is:  <i>Means an activity providing residential accommodation for eight or more people who need physical, medical, or psychiatric support and who are unable to live independently.</i>	<b>Discretionary activity</b>
8.3.4.1.5 Discretionary activities: Activities and buildings accessory to Discretionary activities	The associated office activities that are proposed fall within this category.	<b>Discretionary activity</b>
8.3.4.1.16 Discretionary activities Signs	The sign is not provided for as a permitted activity so requires consent.	<b>Discretionary activity</b>  Sign is partly located within the Baird Road legal road boundary.

3.3 The activity is a **Discretionary activity**.

3.4 Rule 8.3.4.1 advises that the zone standards in rule 8.6 will be used as a guideline for assessing a discretionary activity. There are also discretionary criteria in section 1.12.3 of the ODP.

**National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)**

3.5 Although the proposal is a change of use of part of the site, the site is not currently being used, has not been used in the past, or is unlikely to have been used for an activity described on the HAIL. The site is not identified in Council records or by BOPRC as a HAIL site. The NESCS does not apply to that part of the land that is remaining in rural production either.

3.6 Therefore, the NESCS does not apply.

**Other NES**

3.7 There are eight other National Environmental Standards that have been prepared under Sections 43 and 44 of the Act and are in force as regulations. These cover storage of tyres, air quality, human drinking water, marine aquaculture, freshwater, production forestry, telecommunications facilities and electricity transmission lines.

3.8 None of these other NES apply.

#### **4.0 CONSULTATION AND WRITTEN CONSENTS**

- 4.1 No written consents have been provided. As such, there are no effects to disregard under s104(3) of the RMA.
- 4.2 The applicant has provided a summary of a pre-application meeting they held with neighbours and other interested parties on 22 March 2024.
- 4.3 It is understood that the applicant has consulted with one of the owners of elevated land at the western end of Baird Road in relation to emergency evacuation. It is also understood that they have consulted with representatives from Maromahue Marae on Waiotaha Valley Road regarding possible evacuation to that site as well. No correspondence from any of these parties has been provided.
- 4.4 The applicant has also engaged with council's engineering department regarding the possible wastewater connection and an in-principal agreement has been reached to enable this. However, there is no evidence of consultation with council regarding the placement of the sign on the road reserve.
- 4.5 A meeting was also held between the applicant, agent, reporting planner, and BOPRC staff to discuss flooding and to better understand the modelling and source of flooding.

#### **5.0 NOTIFICATION, SUBMISSIONS AND PRE-HEARING**

- 5.1 The application was publicly notified on 25 July 2024, with submissions closing on 22 August 2024. Ninety-five (95) submissions were received and are summarized in the table in Attachment C. The original submissions are available on the council website. A map showing the location of some of the submitter's properties' relative to the site is Attachment D.
- 5.2 Originally, eight submissions opposed the proposal and five were neutral. The rest are in support.
- 5.3 The matters raised in the submissions can be summarized as:
1. Significant positive social, cultural, health and wellbeing effects for the local and wider Eastern Bay of Plenty community
  2. Loss of amenity and privacy
  3. Safety and security concerns
  4. Adverse noise
  5. Servicing
  6. Traffic volumes
  7. Visual effects of signage
  8. Effects on rural production
  9. Reduced property values
  10. Re-zoning land to commercial or industrial
- 5.4 Two pre-hearings meetings were held in September 2024. The council did not require submitters to attend but the majority of submitters in opposition or who were neutral attended one of the meetings. Attachment E is the pre-hearing outcome report. Whilst no formal resolution was reached, it was agreed that a set of draft conditions would be circulated for further review and consideration by submitters.
- 5.5 The applicant and council staff subsequently compiled as set of draft conditions for consideration by the submitters and circulated these in October 2024. Refer Attachment F. A few of the conditions in Section 11 of this report below differ from these draft conditions. The differences are explained



elsewhere in this report.

5.6 The following submitters confirmed in writing that the set of draft conditions addressed their concerns and issues raised (Refer Attachment G):

1. Fire and Emergency NZ
2. Russell Grant Abbott- 19B Baird Road
3. Ian Paipa – 17 Baird Road
4. Alan Baird (Baird Farms 2026 Ltd) – 36 Baird Road
5. Kevin Crawshaw- 1696 SH2: accepted but also provided comments on the landscaping condition.

5.7 Two submitters verbally advised the processing planner that the conditions were acceptable but have not provided anything in writing to date. These are:

1. Lizzie Ruha-Smith – 1688 SH2
2. Jeff Rogers – 1672 SH2

5.8 The following submitters submitted in opposition and it is understood that their position has not changed.

1. Vivienne and Sonny Robinson – 3 Baird Road
2. Noeline Miller, Todd Millar and Aaron Millar - 1700 SH2
3. Kahatahi Apanui - 71 Brabant Street
4. Elizabeth Mekomoko - 71 Brabant Street
5. Ruth Marsh - 103 Hukutaia Road

5.9 The Robinson and the Miller submissions indicate that they will speak and consider presenting a joint case. Prior to the release of the s42A report these submitters had not confirmed in writing whether or not they still proposed to speak at the hearing.

5.10 The remaining submitters support the application and many indicated that they would speak at the hearing in support of the application.

## **6.0 STATUTORY CONSIDERATIONS**

### **S104 Consideration of applications**

6.1 Section 104 of the RMA states that:

*(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.

### **Planning Instruments**

6.2 The following planning instruments and documents are relevant to consideration of the application:

National:

- National Policy Statement for Highly Productive Land

Regional:

- Bay of Plenty Regional Policy Statement (RPS)
- Bay of Plenty Regional Natural Resources Plan (RNRP)
- Bay of Plenty On-Site Effluent Treatment Regional Plan (OSET Plan)

District:

- Operative Opotiki District Plan – 5 January 2021 (ODP)

6.3 The relevant provisions of these documents are addressed Section 7 of this report.

### **104BD Determination of applications for discretionary or non-complying activities**

6.4 The subdivision consent is a discretionary activity. Section 104B states that a consent authority:

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.

### **Other Matters and Considerations**

6.5 Section 104(1)(c) provides that, when considering an application for resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

6.6 Whakatōhea iwi have a statutory acknowledgement in relation to the Waioweka River that is discussed in Section 8.0.

## **7.0 ASSESSMENT OF EFFECTS**

7.1 In considering the actual and potential effects on the environment under section 104(1)(a), the Act requires consideration of:

- i. Positive and adverse effects;
- ii. Temporary or permanent effects;
- iii. Past present or future effects;
- iv. Any cumulative effect which arises over time or in combination with other effects
- v. Potential effects of high probability; and
- vi. Potential effects of low probability, but high potential impact.

7.2 As a discretionary activity, any relevant matter can be considered in this assessment. Rule 8.3.4.1 advises that the zone standards in rule 8.6 will be used as a guideline for assessing a discretionary activity, but discretion is not limited to these matters. There are also assessment matters in section 1.12.3 of the ODP.

7.3 From my assessment of the application, the receiving environment, the issues raised by the submitters, and the District Plan provisions, I consider that the effects on the environment relevant to this proposal are:

- a. Positive effects

- b. Safety and security
- c. Effects on character, amenity, noise and lighting
- d. Natural Hazards - Flooding
- e. Services
- f. Access and traffic
- g. Signage
- h. Effects on rural production
- i. Reverse sensitivity

7.4 A brief discussion of other issues that are not relevant considerations, being re-zoning and property values, is also included.

### **Permitted Baseline**

7.5 Section 104(2) of the RMA states:

*"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".*

7.6 This is known as the permitted activity baseline test. Application of the 'permitted baseline' is a discretionary judgement with respect to the assessment of the effects of the subdivision. If applied, the permitted baseline should also only be applied with respect to credible i.e. 'non- fanciful' activities. The permitted baseline does not apply to the applicant's own assessment of effects, it is an assessment only the local authority can apply.

7.7 The reporting planner does not concur with the assessment of permitted baseline that is set out in the AEE report. Whilst the subject site is over 1 hectare in size, provision of a second dwelling (or other accessory buildings) is considered fanciful given the minimum platform level that would apply to any new building is some 2.3-2.5m above current ground level. Even if land adjoining SH2 road is slightly higher, the required minimum yard setback from the painted highway road edge is 40m for a dwelling. There is a covenant over part of the land that prevents buildings. Construction of any other buildings as a permitted activity is fanciful.

7.8 Seasonal worker accommodation for up to 12 people is permitted under the Rural zone rules. The site can only be used for part of the year. In addition, visitor accommodation for up to four persons is also permitted within the existing dwelling. The use of the existing dwelling for these two uses is the only credible permitted baseline for the assessment of effects.

7.9 Effects from the use of building as a residential dwelling, for small scale visitor accommodation or seasonal worker accommodation would generate some traffic (variable for each use), could involve permitted signage on the site up to 0.5m<sup>2</sup>, and would generate some noise. Services would be required. Effects associated with these permitted activities should be, and have been, disregarded and are discussed further below.

### **Positive Effects**

7.10 The proposal will result in significant positive effect for the community by providing a local residential service and safe environment for those receiving support for addiction. There were a large number of submissions in support of the proposal that detail the need and the positive social, community and cultural effects, the facility will provide. This includes the submissions from Ian McKenzie, Co-Director Additions at Health NZ Te Whatu Ora and Tūwharetoa Ki Kawerau Hauora which are part of the Eastern Bay Iwi Provider Alliance. There are clear consequential economic benefits and positive health, safety and wellbeing effects for residents, their whanau, and the wider community.

7.11 Based on the submissions and the comments made at the pre-hearing meetings, no one disputes that the Ōpōtiki and Eastern Bay community requires a service and facility of this nature. The key matter for



consideration is not the value or worth of the service, but whether the proposed site is appropriate for the activity.

### **Effects related to Safety and Security**

- 7.12 These matters are essentially the crux of the concerns raised by the submitters who do not support the application. It is understood that they are concerned that the activity will bring an undesirable and anti-social element into the neighborhood, in part due to the potential associates of some residents. At least one adjoining landowner is concerned about people trespassing across their property to try and supply illicit goods. They are also concerned that residents of the facility may include those facing charges and who are bailed to the address to undergo treatment, or that convicted criminals may be required to complete a residence and treatment as a condition of a sentence.
- 7.13 The typical existing fencing along the southern and eastern boundary is a farm fence with low hedge as shown in figure 10. The shed structure in the photo is located on the adjoining lot, 1700 SH2 which is owned by Mrs Noeline Miller. It is understood that Mrs Miller has experienced people, who resided at the site when it was visitor or RSE accommodation, walking through their land as a short-cut to and from town.

Figure 10: Photo of fencing along southern boundary and shed located at 1700 SH2



- 7.14 Council's legal advisors provided copies of some caselaw that addresses situations where a community or residents are concerned about an activity and potential anti-social behavior that may be associated with it. The cases referenced below relate to a periodic detention centers and juvenile detention facility, situations, not a Residential Care Facility for treatment of addiction. Refer to Attachment H for copies of the cases.
- 7.15 In *Department of Corrections v Dunedin City Council [C/31/97]*, the Court stated on page 21 that "concerns expressed... can be regarded as giving rise to adverse effects on the environment, if they are substantiated."

- 7.16 The decision for *Minister for Children v Auckland Council [2019]* concerned a proposal to extend a juvenile facility, where concerns were raised about the potential for antisocial effects. The Court noted the distinction between real and perceived risks and addressed the matter by considering the evidence in the light of three issues/questions which can be summarized as:
1. Has the Ministry provided sufficient evidence to satisfy the Court regarding the safety and security of the site for the proposed care and protection assessments?
  2. Is the risk of a safety-related incident involving someone absconding from a youth justice facility real or perceived?
  3. If a real risk exists, do the proposed security measures adequately mitigate that risk?
- 7.17 In summary, the submitter's concerns about safety and security may be valid, but evidence is needed to substantiate them. When real risks are identified, adequate mitigation measures should be incorporated into the proposal and conditions if consent is to be granted.
- 7.18 In relation to risk management, the application notes that a trained security guard will be present 24 hours a day, and there will be CCTV security cameras all around the property. Whilst there is not much other detail in the application itself, the applicant provided considerably more explanation at the pre-hearing meeting as to how the facility will operate and residents would be selected for admittance into the facility. It would be very helpful for the applicant to address these matters in detail in their evidence for the hearing so there is a clear record.
- 7.19 However, my understanding is that residents first undergo treatment and work with the community team staff while they are living within their own homes. Potential residents must show a clear desire to stop using drugs and voluntarily enter the residential facility. They must be assessed as being low risk by staff. The above scenario and nature of residents is therefore different in many ways from the case law examples. Once on site, residents would be supervised at all times and periodically required to undergo drug testing. They are not allowed to come at go at will and visitors are strictly vetted and controlled. However, residents can request to leave the program and therefore end their residence at the facility at any time. The applicant also expressed their strong desire to manage the facility to ensure the safety of their staff and residents and to avoid incidents.
- 7.20 The applicant has also noted several times the unfortunate prevalence of drug use in the community. There is existing anti-social behavior occurring in the community now. Landowners have no control over who their residential neighbors are and what activities and associates they may have.
- 7.21 Whilst I emphasize with the concerns of some submitters, based on the information available, I consider that the risk and fears are largely perceived and currently unsubstantiated. The applicant has an operational and management regime intended to reduce risks. The recommended conditions of consent, including requirement for an additional security camera and fencing will contribute to the mitigation of remaining risk and prevent anyone entering the submitter's property from the subject site.
- 7.22 The recommended wording of the fencing and landscaping condition is different from the draft condition originally circulated after the pre-hearing meeting. It now explicitly requires 2m high 'pool style' type fencing (Refer Figure 11) as well as hedge planting, unless otherwise agreed with the respective adjoining landowner(s). Solid wooden fencing was considered as an option, but in my view it would not align with the rural amenity of the area and maintenance of a hedge on the southern side of the fence by the applicant would be difficult to achieve. Provision of evidence from the applicant and submitters about the recommended conditions would assist the decision maker.

Figure 11: Photo of the type of fencing recommended in proposed conditions



7.23 It is further noted that any decision on the application must be based on an assumption that the applicant will operate the facility as described and will comply with any and all conditions imposed on any consent. We must also work on the basis that the council will monitor and enforce any conditions of consent.

**Effects related to Rural Character, Amenity, Noise and Lighting**

7.24 The RMA states that amenity values “means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”. Whilst factors that contribute to amenity can be assessed, there is also a variable personal element.

7.25 Whilst aspects of the proposed activity are similar to standard residential activities, seasonal worker accommodation or visitor accommodation, there is also an administration or more ‘commercial’ element associated with staff and the provision of the support services the facility offers. Staff and residents will be on-site at all times and the facility will operate year-round. Whilst activities will primarily occur within the building, there will be an increase in traffic and general activity on the site.

7.26 The provisions in the ODP related to this issue are:

ODP 8.2.1.2	Policy	Manage subdivision and development to maintain the rural character of the zone and the District’s natural and physical resources.
ODP 8.2.1.3	Policy	Ensure the maintenance and enhancement of visual open space and vegetated character of the rural environment.
ODP 8.2.1.4:	Policy	Maintain the rural character and amenity values associated with the low density rural environment.

7.27 The application site is in a rural area but there are a considerable number of small or lifestyle lots around the site. There are 13 dwellings within 300m of the dwelling on the subject site. Nine properties bound the subject site. It is not a remote or low-density rural environment.



- 7.28 There will be no additional buildings or significant physical changes to the site. Rural production potential and the visual open space that the northern part of the property provides will remain unchanged. Other attributes of the area such as proximity to the river, town, golf course, cycleways will remain unchanged.
- 7.29 The recommended landscape planting will soften the effects of the recommended fencing and provide a natural element, while helping to maintain privacy for both adjoining property owners and residents on the site. The inclusion of this vegetation maintains rural character.
- 7.30 Lighting was a matter raised in the pre-hearing meeting by Mr Paipa and a condition is recommended to ensure that lighting is appropriately located so there is no off-site effect. The recommended condition has been accepted by Mr Paipa.
- 7.31 The activity does involve both the residential aspect and ancillary office activity, with the maximum number of staff potentially on-site during the day being nine. With 8 residents and possibility for visitors, the total daily occupancy is relatively high and there will be associated vehicle movements and no doubt some outdoor activities. The submission from the Millers identifies that they have already experienced adverse effects from noise, including loud music being played, even though their closest dwelling is located some 65m from the application site.
- 7.32 A solid wooden fence along the southern boundary would assist with noise mitigation but is not the preferred option from a visual and character perspective. So, a noise standard is also specified in the recommended conditions. Section 16 of the RMA would also still apply and requires that noise is not unreasonable.
- 7.33 The recommended conditions require that all properties near the site must be provided with the contact details for the facility manager. The applicant has expressed and demonstrated a willingness to work with neighbors and ensure they are not negatively impacted by the applicant's proposal.
- 7.34 Taking all of the above into account, the proposal is not contrary to the objectives and policies in the ODP related to amenity and character, and effects can be adequately managed by conditions of consent.

#### **Effects from Natural Hazards- Flooding**

- 7.35 The site is subject to flooding. BOPRC staff have prepared a technical memo dated 1 October 2024 which is attached (Attachment C) which essentially summarized all advice provided previously. The memo sets out the flood levels under different scenarios and timeframes and confirms that sea level rise and climate change contribute significantly to the flood model predictions and the risks of flooding will increase overtime.
- 7.36 It is normal planning practice to consider the 100-year planning horizon when making resource consent decisions, particularly for subdivision or for development in the Coastal Environment. This site is outside of the Coastal Environment, but flooding on the site is influenced by coastal process. However, it is also acknowledged though that in this case we are dealing with an existing building that is already some 30 years old. That said, the applicant will need to complete significant upgrade works associated with changing the use of the building from a dwelling to a residential care and office use, as required by the building code. Such works include those related to fire safety and egress, accessibility, upgrading kitchen facilities to a commercial kitchen standard, and also installation of either an OSET system or wastewater connection.
- 7.37 BOPRC staff were asked to provide other flood level scenarios that might better reflect the actual life

of the building<sup>2</sup> and activity and enable the flood risk to be better understood. Figure 8 above shows the 5% AEP event under current climate conditions. As noted, in this sized event flood waters would enter at least affect at least the proposed office area in the southwest corner of the building and access would be restricted.

7.38 Figure 12 below (labeled Figure 4 in BOPRC’s memo) is the 2% AEP flood event in the year 2130, with 1.25m sea level rise. It shows 2.5m of water across the site. This scale flood event would readily inundate the ground floor levels of entire building and prevent access to and from the site. Other properties in the area would also be impacted. Comparing Figures 8 and 12 shows the impact of climate change factors.

Figure 12: 2% AEP event in the year 2130. Source BOPRC Technical Memorandum 1/10/2024.

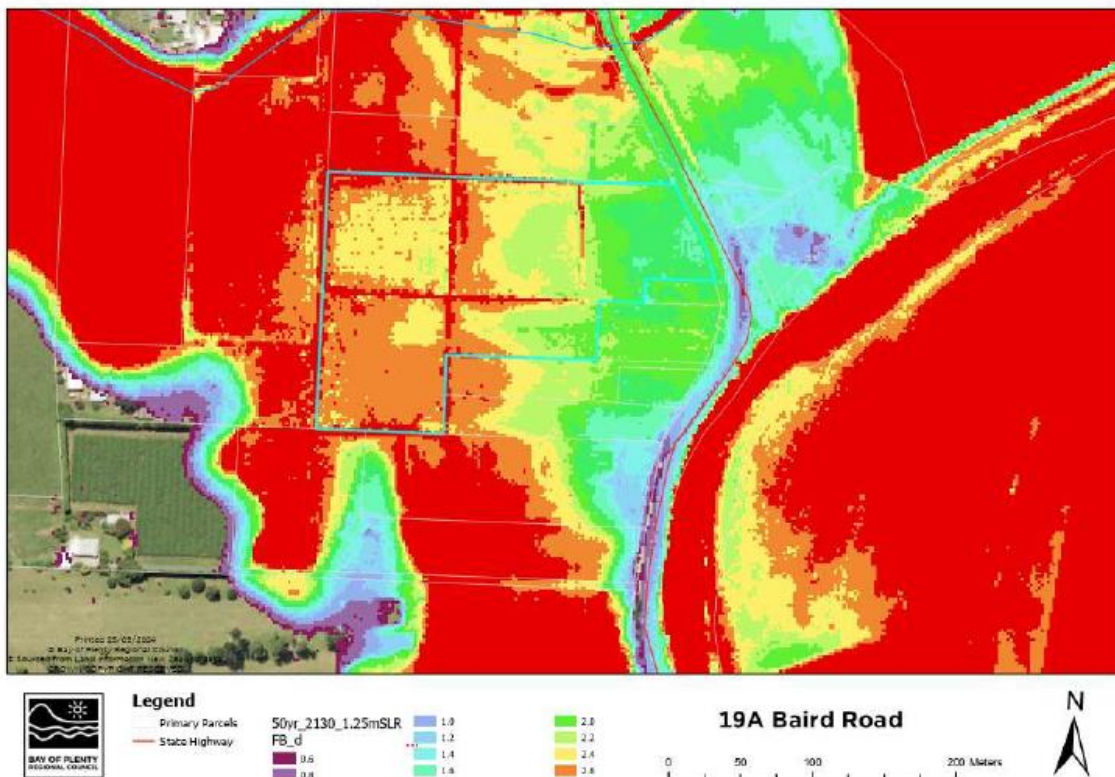


Figure 4: 50-year (2% AEP) Flood Inundation depth map with climate change to 2130 and 1.25m sea level rise, freeboard added.

7.39 The technical data and modelling is clear that the entire site and buildings are at risk from the effects of flooding. This risk will increase overtime. The risks relate damage to the land, building, its contents, personal property of residents, services (OSET) and access.

7.40 Having established the site floods, the RMA, Bay of Plenty Regional Policy Statement (BOPRPS) and ODP set out the framework for determining if the risk is acceptable and whether it can be satisfactorily managed.

7.41 The key objectives and policies in the ODP are:

Objective 18.2.1	Ensuring that the effects of natural hazard occurrence within the District are avoided or mitigated when making resource management decisions.
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<sup>2</sup> The economic life of a building in NZ is 75-80 years. Source: Natural Hazard Provisions Guidance on complying with Sections 71 to 74 of the Building Act 2004 VERSION 1 OCTOBER 2023 [natural-hazard-provisions-guidance.pdf](https://www.natural-hazard-provisions-guidance.pdf) ([building.govt.nz](http://building.govt.nz))

Policy 18.2.1.1	Control activities and the location of buildings to avoid or mitigate the effects of natural hazards.
Policy 18.2.1.3	Apply conditions on subdivision and resource consents to mitigate adverse effects of natural hazards from the use and development of land.

7.42 However, the other higher order documents must also be considered as the ODC does not yet give effect to the provisions in the BOPRPS. Section 6 of the RMA requires that council recognize and provide for the management of significant risks from natural hazards. The Introduction to ODP Chapter 18: Natural Hazards provides a useful summary of the BOPRPS's approach:

*"The RPS takes a risk management approach to natural hazards. Risk is the combination of likelihood and consequence. That is, the risk of a natural hazard is determined by a combination of an event's likelihood and its potential consequence ie. the amount of damage it would cause. A risk approach ensures that land use is managed so that the level of control corresponds to the level of risk. Evaluation of risk indicates when and how much risk reduction is required and when land use controls may or may not be needed. The RPS establishes a framework for identifying whether risk is high, medium or low and seeks that a high risk is reduced and that new activities achieve a low level of risk. Medium risk, while tolerable, is not desirable and opportunities to reduce risk from medium levels where it exists should be taken where practicable."*

7.43 The BOPRPS contains Schedule L which is the process by which the level of risk is determined. The challenge however in utilizing the Schedule L process in relation to a single site or activity when the schedule was primarily developed to assess risks associated with re-zoning and developments over 5ha.

7.44 The AEE report includes a detailed assessment in relation to the application of Appendix L, flood risk and mitigation measures. It also sets out the other relevant objectives and policies from page 19. Having carefully considered the relevant provisions, and now having a better understanding of the proposal and site's operation following the pre-hearing meetings, I consider that effects can be managed and mitigated through the recommended conditions. I therefore concur with the applicant's assessment and conclude that in this case the proposed activity is acceptable despite the existing and future flood risk because:

- i. The proposed activity will operate from an existing building. No new buildings are proposed.
- ii. The proposal involves a change in use of the building but will not increase the likelihood of the building being affected by inundation.
- iii. The site which has history of residential use and as an accommodation/RSE facility. The applicant has clarified the occupancy and staffing arrangements. Only 8 residents will be present at night, plus two staff who are awake. No family members or visitors will sleep on the site. The total occupancy (at night) is the same or lesser scale that could occur as a permitted activity.
- iv. The majority of sleeping facilities for residents are all at the first-floor level.
- v. The applicant is able to provide support services from alternative locations and would be able to continue operating to some extent if this facility is damaged by flooding.
- vi. The applicant is well aware of the risks, having met with BOPRC staff and having received a copy of the technical memo by BOPRC. Te Tāwharau o te Whakatōhea are one of the entities which regularly provide services and resources as part of civil defense responses and regularly work with council in this space.
- vii. An Emergency Response Plan (ERP) has been prepared. The recommended conditions require further amendments to reduce residual risk to the health and safety of staff and residents of the facility, and to ensure the consent holder is pro-actively considering weather information and the need for possible evacuation of the site.
- viii. A review condition is recommended to enable an adaptive management approach to flood risk as it increases over time.

- 7.45 The recommended conditions now require flood marker posts to be installed along the accessway. This is an additional condition when compared to the draft conditions previously sent to some submitters.
- 7.46 It is noted that none of the submitters raised concerns about flooding or the effect of the site being temporarily closed after a flood event. The overwhelming nature of submissions was that the proposed facility would provide an important and much-needed service for the community. The applicant has stated that support facilities (the office functions) could be provided from other sites if this site is flooded and could not operate. Similarly, residents could return to their homes and still receive support.

### **Services**

- 7.47 Wastewater will need to be disposed of either to council's reticulated system or via an on-site effluent treatment system. A few submissions identified the design of on-site disposal as a concern given ground conditions. A report from Waterflow that demonstrates that it is possible to design and install a new on-site system has been provided. This will also require regional consent from BOPRC and this process will ensure that the design is sufficient and will not result in adverse effects on the environment, including adjoining properties and groundwater. On this basis, the proposal is consistent with policy 8.2.3.2 which requires a site to be of sufficient size to avoid or mitigate effects associated with on-site effluent disposal.
- 7.48 The recommended conditions provide flexibility as to how wastewater may be managed and disposed, and either option will require a building consent to be obtained.
- 7.49 Mr Crawshaw's submission identifies that greywater from the applicant's property discharges to his site illegally. It is understood to be a discharge from one or more of the unauthorized building(s). This was raised at the pre-hearing meeting and the applicant indicated that they had previously been unaware of the issue, any works having been done by a previous owner. They undertook at the pre-hearing to rectify the matter. Regardless of the outcome of this resource consent application, this matter must be readily addressed if that has not already occurred. It is a compliance issue for the parties and council.
- 7.50 The site has an existing water connection that will be utilized for potable supply. Fire and Emergency NZ (FENZ) submitted on the proposal. Their submission addresses provision of a suitable water supply and also access for emergency vehicles. The applicant has now agreed with FENZ that both of these matters can be addressed by condition. The water supply is also a matter for building consent as it is a building code requirement as well.
- 7.51 As such, matters related to services can be satisfactorily addressed and no adverse effects will arise.

### **Access and Traffic Effects**

- 7.52 The AEE report includes a description of the existing sealed right of way and parking area on the site. The right of way is over the adjoining lot to the west and the carriageway is not compliant with the Council's Engineering Code of Practice as it is not 4m wide. The applicant does not propose to widen the existing formation. The right of way is straight and good sightlines are available along its length. There is adequate width for passing on the berm if two vehicles should meet. Refer Figure 13.
- 7.53 Vehicle movements and the formation of the right-of-way were discussed with submitters at the pre-hearing meetings. It was agreed that speed signage should be installed, but the landowner over which the right of way passes did not wish for it to be widened. No significant concerns about the volume of traffic were raised. In relation to access for fire appliances, FENZ have accepted that the existing right of way formation is acceptable as it is sealed, flat and clear, even if it is not 4m in sealed width. The council's engineers are not concerned about the width or formation of the existing right of way. As such, no conditions are recommended in relation to the accessway formation.



Figure 13: Northern section of right of way looking north towards Baird Road. Drain along eastern edge of right of way and large hedge on adjoining lot to the east.



- 7.54 However, the vehicle crossing with Baird Road is in a deteriorated state and gravel is migrating onto the road. A condition is recommended to ensure it is re-sealed and complies with standard Drawing R28 in the council’s Engineering Code of Practice.
- 7.55 Baird Road can accommodate the additional traffic and NZTA did not lodge any submission in relation to the state highway intersection or traffic.
- 7.56 Effects related to access and transportation matters are acceptable and the proposal is consistent with the following objectives and policies:

ODP Objective 8.2.6	Manage activities to ensure vehicle movement is undertaken in a safe and efficient manner that does not affect the functioning of the transport network.
ODP Policy 8.2.6.1	To avoid, remedy or mitigate the adverse effects of activities on the safety and efficiency of the transport network.

**Visual Effects, including signage**

- 7.57 As the activity proposes to utilise the existing dwelling only, there will be no significant changes in terms of visual effects. New services will be placed below ground and will have no adverse visual effects.
- 7.58 A new site identification sign is proposed and is already located the road entrance, within the public road boundary. It is approximately 1m<sup>2</sup> in size. Whilst larger than a permitted on-site sign, it does not significantly detract from the surroundings or overall amenity. The sign was discussed with submitters at the pre-hearing meeting and they were no longer concerned about it.

- 7.59 The sign does not adversely affect sight lines. Signs are not un-common in rural areas, particularly site identification of hazard related signs. The viewing audience for the proposed sign is limited to the relatively small number of users of Baird Road and visitors to the site. Any visual effects or effects from signage are acceptable.
- 7.60 However, an advice note is included to record that landowner approval (from council) will be required for the sign if resource consent is obtained, as it is partly located within the road reserve.

**Reverse Sensitivity**

- 7.61 Reverse sensitivity effects may occur when a new, more sensitive activity, establishes in an area and it results in constraints on the lawful operation of existing activities. There are a number of objectives and policies in Chapter 8 related to reverse sensitivity, including:

ODP Objective 8.2.1	A rural environment that contributes to the economic and social wellbeing of the District and region through a range of rural activities and other lawfully established activities, where the effects of subdivision, use and development are managed to maintain the rural character of the zone and to prevent reverse sensitivity effects from compromising rural production activities and the operation of infrastructure.
ODP Policy 8.2.1.1.	Recognise the Rural Zone as a working rural environment and ensure that residential or sensitive activities do not result in reverse sensitivity effects on rural production activities, through separation distances and other requirements.

- 7.62 There are already both rural production and residential activities occurring within the area. Any rural production activities must already take into account the presence of dwellings and associated residential activities. The site has an established use for residential and visitor accommodation and these activities are permitted. Seasonal worker accommodation is also permitted, albeit an activity directly associated with rural land use.
- 7.63 No additional buildings are proposed and use of the unconsented buildings does not form part of the application. As such, no buildings or proposed activities will be occurring any closer to external boundaries.
- 7.64 On this basis, I consider that the proposed activity is unlikely to result in reverse sensitivity effects on adjoining activities.

**Effects on Rural Production and Highly Productive Land**

- 7.65 The District Plan defines “Versatile Land” as that comprising land within Classes 1 to 3 under the NZ Land Use Capability study. The site is mapped as being Class 2 land and is Versatile Land and also Highly Productive Land as defined in the National Policy Statement for Highly Productive Land (NPSHPL).
- 7.66 The following objectives and policies are examples of those which relate to this issue:

NPSHPL Objective	Highly productive land is protected for use in land-based primary production, both now and for future generations.
NPSHPL Policy 8	Highly productive land is protected from inappropriate use and development.
RPS Objective 26	The productive potential of the region’s rural land resource is sustained and the growth and efficient operation of rural production activities are provided for.
ODP Objective 8.2.2.	Enable the use of the rural land resource and in particular versatile land for rural production activities
ODP Policy 8.2.2.2	Versatile land should be used and developed in a manner so that it remains available to present and future generations for rural production activities and is not compromised by activities that do not rely on or

directly support the productive potential of the land.
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7.67 The activity does not require a rural location and does not rely on the qualities of soils in any way. However, the proposal is occurring within that part of the site which is already developed, and within an existing building. The carpark and access areas are also already formed. As such, there is no loss of productive land and the grazing, haymaking or other rural activities can continue on the balance of the lot. That portion of the land remains available for present and future generations for rural production. The proposal is consistent with the provisions above and no adverse effects will arise.

#### **Other issues raised in submissions**

7.68 A number of submissions requested that the council consider re-zoning their land to commercial or industrial. This matter was discussed at the pre-hearing meeting and it was explained that any re-zoning of land would need to occur through a separate plan change process. It is not within the remit of this application or powers of the decision maker to re-zone land.

7.69 Similarly, property values are not a relevant matter or effect on the environment. It is my understanding that case law like *Foot v Wellington City Council (NZEnvC W073/98, 2 September 1998* has established that property values are influenced by a very wide range of matters, including effects on the environment like amenity already considered above. Considering property values in its own right would amount to a “double-weighting” of any effects.

### **8.0 S104C: OTHER MATTERS**

7.70 The statutory acknowledgment for the Waioweka River and its tributaries within the area of interest has also been considered. Section 39 of the Whakatōhea Claims Settlement Act 2024 notes that the statutory acknowledgment applies to the flowing body of freshwater and the bed. This site is separated from the river margins by the state highway and proposal does not adversely affect the waterbody or bed of the river and tributaries.

### **9.0 PART 2 MATTERS**

9.1 Case law<sup>3</sup> has clarified that consideration of Part 2 may not always be necessary, particularly if the District Plan has been competently prepared having regard to Part 2 and contains a coherent set of policies designed to achieve clear environmental outcomes. In such cases assessment of Part 2 will not add anything.

9.2 In this case, the ODP became operative in 2021 and gives effect to most of the higher order planning documents. The Bay of Plenty Regional Policy Statement and natural hazards have been expressly considered, as has the National Policy Statement for Highly Productive Land which came into effect in 2022. All of the other relevant matters in Part 2 are addressed in the objectives and policies which have been considered above. Therefore, detailed consideration of Sections 6-8 will not assist further.

### **10.0 CONCLUSION**

10.1 The proposal will result in significant positive effects for the community. It will provide a local facility for support and treatment of addition which is unfortunately creating harm on many levels. The social, cultural, health, wellbeing and economic benefits of the facility are not disputed.

10.2 The actual and potential effects of the proposal, including the range of matters addressed by submitters have been considered. Several issues were discussed and clarified at the pre-hearing meetings and ultimately resolved through the provision of draft conditions. This includes fire-fighting matters, lighting, provision of a security camera on the accessway and signage. If consent is granted,

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<sup>3</sup> RJ Davidson Family Trust v Marlborough District Council [2018] NZCA 316

the recommended conditions relating to these matters should be included. Conditions should also be imposed to ensure the buildings are serviced and the crossing is upgraded.

10.3 Safety and security issues and flooding are the matters that require the most careful consideration. Based on the information available and for the reasons set out above, I consider these effects can be appropriately managed and addressed through conditions of consent. This includes recognition of that the building is existing and the occupancy we be within that permitted or anticipated by the district plan.

10.4 It is concluded that the proposed activity is consistent with the provisions in the Ōpōtiki District Plan and other regional and national documents.

### **11.0 RECOMMENDED RESOLUTIONS AND CONDITIONS**

11.1 If the Commissioner is minded to grant consent, the following resolutions and conditions should form the basis of any land use consent decision:

1. Pursuant to s37 and s37A of the Resource Management Act 1991, the time limit for hearing and deciding a notified resource consent application that requires a hearing been extended by 110 working days. This enabled two pre-hearing meetings to be held and the applicant to try and reach agreement with submitters on acceptable conditions. When this could not be achieved a hearing was scheduled. The applicant's agent has agreed to this request on behalf of the applicant.
2. Pursuant to sections 9(3), 34A, 104 and 104B of the Resource Management Act 1991, the undersigned officer, acting under authority delegated from Ōpōtiki District Council, hereby grants consent for the establishment and operation of a Residential Care Facility and ancillary office activities on the site located at 19A Baird Road, Ōpōtiki (legally described as Lot 2 Deposited Plan 8225) which is classified as a discretionary activity, subject to the following conditions which are imposed under section 108 of the Resource Management Act 1991:

#### **Conditions:**

1. Except as modified by a condition of this consent, the Residential Care Facility activity shall be carried out in general accordance with the plans and information lodged with application ref. RC2024-31, including the:
  - i. Plans by DD2 Architectural for the Hauora and Recovery Centre rev 2 dated 4 October 2023.
  - ii. Emergency Response Plan (ERP) for Site Inundation, 19A Baird Road, Ōpōtiki
  - iii. Appendix 1: Pou Oranga Whaiora Emergency Response Plan: Evacuation Plan for Te Whare Oranga O Kōpūārau Addiction Residence

#### **Pre-occupation and pre-operation conditions**

2. Prior to use and occupation of the facility by residents, the lot shall be connected to council's reticulated wastewater system.

*Advice Note: Agreement for the connection to the wastewater reticulation and the full design for the connection must be obtained from the Ōpōtiki District Council's engineering team. This approval process is separate from the resource consent process. A building consent will be required for any wastewater connection works.*

3. As an alternative to condition 2, an on-site effluent treatment system (OSET) that complies with a resource consent granted by the Bay of Plenty Regional Council (BOPRC) shall be installed on the site to service the facility, prior to use and occupation by residents.



*Advice Note: Building consent will be required for the installation of the OSET system. A copy of the resource consent obtained from BOPRC should be provided with the building consent application documentation.*

4. The buildings must be provided with an adequate supply of water and access to water supplies for firefighting purposes that is in accordance with New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008, except that the vehicle accessway may have a sealed carriageway of 3m only.

*Advice Note: Compliance with this condition will need to be demonstrated as part of the building consent application documentation.*

5. The vehicle crossing serving the lot shall be upgraded and re-sealed in accordance with Standard Drawing R28 of the Ōpōtiki District Council's "Code of Practice – Subdivision and Development" version 1: 2000.
6. Security cameras shall be installed at the entrance of the site and directed to provide coverage of the shared accessway.
7. No less than 20 working days prior to the commencement of the activity, the Consent Holder shall provide a Landscaping Plan to the Ōpōtiki District Council for certification by the Building and Planning Manager. The purpose of the Landscaping Plan is to detail both fencing and hedge plantings that will be established along the entire southern boundary of the site to provide security and a visual screen to a height of 2 metres.
8. Unless an alternative is agreed in writing with the adjoining landowner(s), the Landscape Plan required by condition 7 shall provide for:
  - a. A 2m high 'pool style' fence;
  - b. Details of a hedge to be planted and maintained by the consent holder at a height of 2m and minimum width of 1.5m;
  - c. Species and planter bag size at time of planting. The plants chosen shall be suitable for the location and achieve the required height after 2 years;
  - d. Provision of 2m high temporary screening comprising green shade cloth that is to be installed and maintained during the hedge establishment phase to provide effective visual screening from the commencement of the activity;
  - e. Site preparation details and timing and method of planting;
  - f. Maintenance requirements for the plant establishment period, and replacement of dead or diseased plants; and
  - g. Maintenance requirements for the pruning of the hedge to achieve and maintain the required height and width.
9. The permanent and temporary screen fence components of the certified Landscape Plan shall be established prior to the operation of the activity. The planted component of the certified Landscape Plan shall be implemented within the first growing season (April – September) following implementation of this consent.
10. Landscaping and fencing shall be maintained on the site in accordance with the certified Landscape Plan for the duration of the consented activity.
11. Prior to use and occupation of the facility by residents, the Emergency Response Plan (ERP) for Site Inundation, 19A Baird Road, Ōpōtiki referenced in condition 1 shall be updated and provided to the Council's Building and Planning Manager for certification. The ERP shall include the following additional information as a minimum:

- i. the name and contact details for the site manager or other person(s) responsible for ensuring implementation of the ERP.
- ii. details of the sources of information that the responsible person(s) will utilise to obtain information about natural hazard events, and to monitor weather reports, river or localised flood water levels.
- iii. The trigger levels for implementation of specific actions, including communication with council staff and/or the Civil Defence Controller and when to voluntarily and pre-emptively evacuate the site.
- iv. Additional details and more specific stated timeframes for staff training and at least annual review of the ERP.
- v. A copy each revised EREP shall be provided to the council for record keeping by emailing info@odc.govt.nz

*Advice Note: Voluntary and pre-emptive evacuation of the site may be necessary in a natural hazard event where a Civil Defence Emergency has not been declared and emergency staff and police do not have extra-ordinary powers under the Civil Defence and Emergency Management Act 2002.*

12. The Emergency Response Plan (ERP) or subsequent revisions of the ERP shall be implemented for the duration of the consent.
13. Water level marker posts shall be installed and maintained at least four points along the eastern edge of the accessway. They shall be installed to demarcate both the edge of the open drain and the height of any flood waters.
14. Prior to occupation of the facility by residents, the name and contact details for the Site Manager shall be provided to all landowners and occupiers of properties located on Baird Road and within 300m of the site, and to the Building and Planning Manager, Ōpōtiki District Council.

### **Use and occupation conditions**

15. The Residential Care Facility activities authorised by this consent shall only be undertaken with the main "dwelling" building located on the site.

*Advice Note: The other buildings on the site are not lawfully established and the use of them is not authorised by this consent.*

16. No more than eight people may reside on the site at any one time while receiving treatment and rehabilitation services at the facility.
17. A maximum of ten people (residents and staff) may be present overnight on the site.
18. A minimum of two staff members must always be present on the site.
19. Ancillary office activities for a maximum of eight on site staff members may occur as part of the operation of the facility.
20. The operation of the facility shall not include any on-site day-patient services, such as workshops, training, education or counselling for people not residing on the site.
21. The facility shall maintain and implement a visitor procedure to ensure that anyone wishing to visit residents must pre-arrange a date and time for their visit with staff.
22. All exterior security lighting shall be designed, installed, and maintained so that the light emitted does not overspill site boundaries, or cause glare or nuisance to residents of adjacent properties.

23. All activities on the site shall be undertaken to meet the following noise limits at any point within the notional boundary of any dwelling on another site within the Rural zone.

**Daytime:** 7am to 10pm Monday to Sunday including Public Holidays: 50 LA<sub>eq</sub>

**Night-time:** At all other times – 40 LA<sub>eq</sub> and 70 LA<sub>max</sub>

24. Noise shall be measured in accordance with the provisions of NZS 6801:2008 Measurement of Sound and assessed in accordance with the provisions of NZS 6802:2008 Assessment of Environmental Noise.

25. The Ōpōtiki District Council may, 5 years after the activity commences and annually thereafter on the anniversary of the consent, serve notice on the consent holder under s128(1) of the Resource Management Act 1991 of its intention to review conditions 11 and 12 of this resource consent for the purpose of addressing any adverse effects that have arisen during the operation of the activity as a result of changes to natural hazard risk, and which are appropriate to deal with at a later date. All costs associated with any review shall be met by the consent holder.

26. That a monitoring fee of \$190 (including GST) shall be paid to the Opotiki District Council for the monitoring and supervision of this resource consent. Notwithstanding the above, where there is good and reasonable cause for unprogrammed monitoring and additional site inspections, the costs of that will be charged to the consent holder. Such costs are recovered on an actual and reasonable basis as defined in the Fees and Charges Schedule as approved by the Council in terms of Section 36 of the Resource Management Act 1991.

#### **Other Advice Notes**

1. *As the land itself is subject to a hazard, the Council must consider the provisions of Sections 71-75 of the Building Act as part of the building consent process.*
2. *Please note that resource consent is not consent to undertake buildings works. A building consent must be issued prior to any building work being undertaken.*
3. *Any signage for the facility is located in the public road reserve. Landowner approval from the Ōpōtiki District Council is required if the sign is to remain in that location.*
4. *In accordance with section 127(1) of the RMA, the consent holder may apply to the consent authority for a change or cancellation of any condition of this consent.*



Laura Swan  
Consultant Planner

17 January 2025