

RMA HEARINGS PANEL DECISION



DECISION UNDER THE RESOURCE MANAGEMENT ACT 1991 ('RMA') INDEPENDENT COMMISSIONER ALAN WITHY

TWO LIMITED NOTIFIED RESOURCE CONSENT APPLICATIONS KIWIFRUIT INVESTMENTS LIMITED

EXECUTIVE SUMMARY

The Applications for Kiwifruit Shelter Structures and Planting were made in 2022 and considered at a Hearing on 22 February 2023. There was one Submitter (Jennings Family) represented by Counsel Mr P Lang.

Consent is granted to the Applications subject to Conditions as recommended by the s42A Reporting Officer and accepted by the Applicant.

1.0 INTRODUCTION

- 1.1 On 27 June 2022, Barkers & Associates on behalf of Kiwifruit Investments Limited ('the Applicant') lodged an application, LU/0147/22, for retrospective land use consent to construct vertical and horizontal (overhead) artificial kiwifruit shelter structures at 582 Parallel Road, Cambridge.
- 1.2 Under the Operative Waipā District Plan 2016 ('the District Plan') the application is a discretionary activity due to non-compliance with the performance standards for activities in the Rural Zone. Those non-compliances relate to building setback requirements from boundaries and site coverage provisions.
- 1.3 The application was notified on 16 August 2022. During the submission period, one submission in opposition was received by Waipā District Council ('WDC') on 12 September

2022. A request for further information was made to the Applicant on 14 September 2022. The Applicant's response to the request was provided to WDC on 22 September 2022.

- 1.4 The application was referred to an Independent Commissioner ('the Commissioner') as planning staff do not have delegated authority to make a decision on notified applications where submissions have been lodged in opposition. A Hearing date was set for 20 October 2022.
- 1.5 Correspondence was provided on 5 October 2022 by Counsel for the Applicant regarding the interpretation of the definition of "shelterbelt" in the District Plan. WDC subsequently sought and obtained legal advice. That legal advice concurred with that of Counsel for the Applicant, and WDC accepted that legal advice.
- 1.6 Subsequently, the Commissioner set down administrative directions within a Minute, dated 13 October 2022.
- 1.7 It was noted that, to ensure all parties could participate in a robust and fair resource consent process which reduces, to the extent practicable, the risk of subsequent legal challenge, WDC considered it reasonable and appropriate to postpone the hearing of the first application until such time as an additional application under Rule 4.4.2.58 of the District Plan in relation to the shelterbelt planting had been prepared, lodged and progressed to the same procedural point as the first application.
- 1.8 For that reason, pursuant to section 91 of the Resource Management Act 1991 ('the Act') the hearing date of 20 October 2022 was vacated. A new hearing date was to be scheduled once a notification decision on the additional application was known.
- 1.9 The additional application, LU/0252/22, being a retrospective land use consent for shelterbelt (cryptomeria) planting as well as land use consent for additional (cryptomeria and Karo) planting of some, and future growth of all of the shelterbelts which are located along parts of the site boundary of 582 Parallel Road, Cambridge, was received by WDC on 19 October 2022.
- 1.10 An amended application in relation to the artificial structures was prepared by Barker and Associates and received by WDC on 25 October 2022.
- 1.11 Following the receipt of application LU/0252/22 there were subsequent changes to application LU/0147/22 and corresponding amendments to the application for LU/0252/22.
- 1.12 A minute in relation to the various opinions in relation to the various amendments and the addendum in relation to the maximum growth of Karo was released by the Commissioner

on 21 November 2022, noting that due to the conflicting expert opinions regarding the likely heights to which certain shelterbelt species may grow, it was necessary for the reporting planner to consider and report on that further information with an assessment from a suitable expert, noting that WDC had an in-house arborist who may assist.

- 1.13 The information was sent to Ms Chris Brockelbank, WDC's Arborist Planner, for consideration. Ms Brockelbank confirmed that Karo is likely to grow to more than 6m. This information was circulated to all parties. On the basis of this assessment the Applicant sought leave to make a further amendment to their application LU/0252/22 through the provision of a further Addendum.
- 1.14 A further Addendum was received from the Applicant's Agent on 6 December 2022 (the 'Applicant's December Addendum'). This information was again sent to Ms Brockelbank who confirmed that, as a general rule, when trees are planted in close proximity they are more likely to grow taller than individual specimens, as they grow up for light which is restricted due to close planting.
- 1.15 This information was again circulated to the Applicant's Agent, who in light of the statement of WDC's Arborist Planner, requested that the planting on the western boundary of 598 Parallel Road, where Karo would be used, be incorporated into application LU/0252/22 and agreed to the imposition of a condition to maintain this shelterbelt to a height of no more than 6m.
- 1.16 A Supplementary Addendum to the s42A Report was prepared by the Reporting Planner was issued on 23 December 2022.
- 1.17 Subsequent to the issue of this document, Counsel for the Submitters corresponded with WDC essentially advising that the shelterbelt was not located 30m from the Submitters' dwelling when taking the measurement from the nearest corner of the dwelling being, in the Submitters' view, the building [sleepout] adjacent to the deck.
- 1.18 WDC sought a legal opinion in relation to this matter, which was provided by Tompkins Wake on 13 January 2023. This legal opinion, on the basis of the information and documentation available at that time, agreed with the conclusion reached by the s42A Report author, and noted that the sleepout on the Submitters' property does not form part of the 'dwelling' on the property for the purposes of Rule 4.4.2.58(a) of the District Plan.
- 1.18 A further minute was issued by the Commissioner on 19 January 2023 noting s42A reports on both applications had been provided by the Reporting Officer and reviewed by the Commissioner. The Commissioner chose not to adopt the notification recommendation on

application LU/0252/22 until hearing from Counsel for the Applicant and Submitter and directed that a hearing date be fixed to address this as well as the hearing of the already limited notified application LU/0147/22.

1.19 The hearing was set for 22 February 2023.

1.20 The hearing commenced at 9.15am on 22 February 2023. Due to restrictions associated with COVID-19, Ms Cowan the Reporting Officer attended the hearing online. The hearing was adjourned at 5.15pm the same day to allow for written closing submissions from Counsel for the Applicant. A closing statement was provided on Monday 27 February 2023. The hearing was officially closed by the Commissioner on Tuesday 28 February 2023.

1.21 This report sets out the Commissioner's decisions, acting under delegated authority from the WDC and pursuant to the provisions of Sections 104, 104B, 104C and 108 of the Resource Management Act 1991.

2.0 DETAILS OF THE APPLICATION

APPLICANT:	Kiwifruit Investments Ltd
APPLICATION NUMBERS:	LU/0147/22 and LU/0252/22
PROPERTY ADDRESS:	582 Parallel Road, Cambridge
LEGAL DESCRIPTION:	LOT 3 DPS 89413 (RT SA70D/525)
SITE AREA:	35.3283ha
ACTIVITY STATUS:	Discretionary and Restricted Discretionary
ZONING – DISTRICT PLAN:	Rural Zone Hamilton Airport – Conical Surface Overlay Significant Natural Area – WP344
PROPOSAL:	Land use consent to construct vertical and horizontal (overhead) artificial kiwifruit shelter structures. Land use consent for retrospective and prospective planting of Cryptomeria and Karo shelterbelts.
APPLICANT'S AGENT:	Barker & Associates Ltd (Cambridge)

3.0 THE SITE

- 3.1 The subject site is located at 582 Parallel Road, Cambridge, legally described as Lot 3 DPS 89413 held in Record of Title SA70D/525 (hereafter referred to as “the site”).
- 3.2 The site consists of 35ha of mostly flat rural pasture land, located on the northern side of Parallel Road. The site is 550m east of the Goodwin Road/Parallel Road intersection and continues north and east. Existing farm buildings and dwellings have been demolished and the site is currently vacant of buildings, except for the newly constructed horizontal and vertical artificial kiwifruit shelters (the ‘artificial shelters’), a 250m² processing building and a water retention pond.
- 3.3 The site was purchased with the intention to use it as a kiwifruit orchard, some of the artificial shelters have already been constructed, starting on the eastern side of the site and moving west. Currently the shelters have been constructed up to the eastern boundary of 598 Parallel Road, and further west towards the northern portion of the site.
- 3.4 Tributaries of the Mangawhero Stream border the eastern boundary and the eastern portion of the northern boundary of the site. This area is covered by an associated Significant Natural Area (‘SNA’) shown (approximate location) as blue in Figure 1.
- 3.5 Two tributaries also run through the site in a north-south direction, one is located near the western boundary (shown purple within Figure 1), sourced from a culvert under Parallel Road, and identified in previous Council reports as a modified ephemeral stream that joins a larger tributary to the northwest.
- 3.6 The modified ephemeral stream does not have permanently flowing water and is grassed over. The other tributary is located to the east of the centre of the site (shown as yellow within Figure 1).

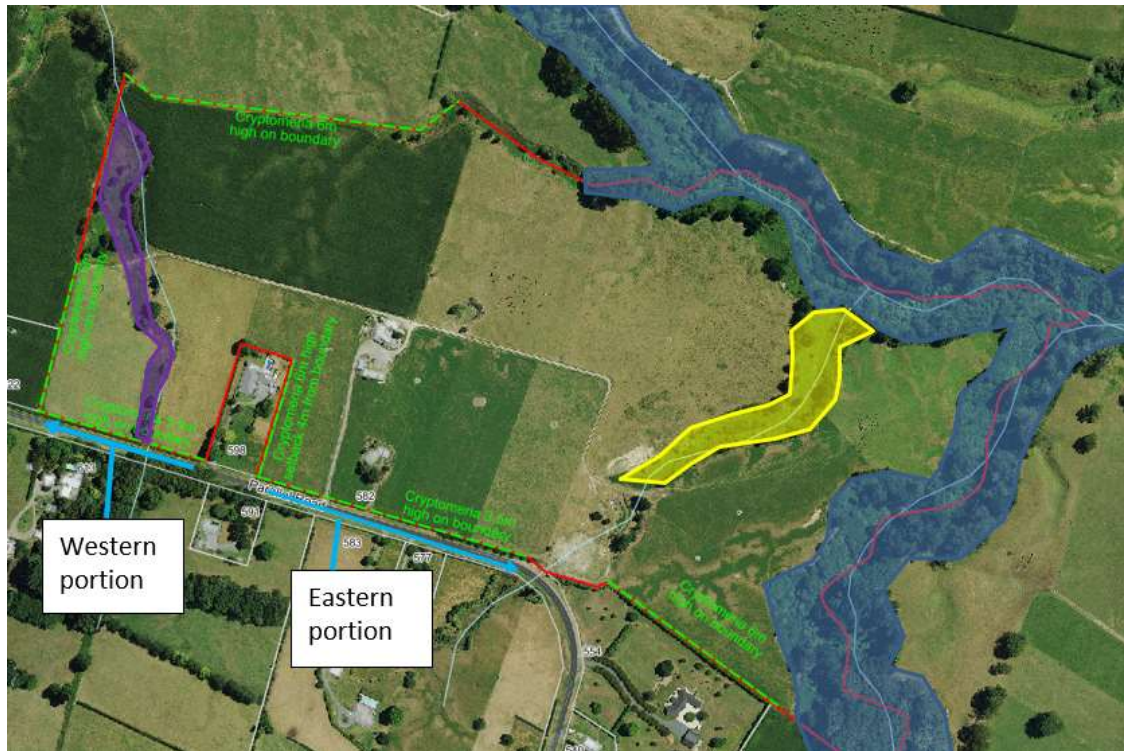


Figure 1: Aerial photograph of site taken from the application documents ("farm drain" shown purple, tributary shown yellow, boundary gully, tributary and SNA shown in blue), power lines fronting site shown pale blue.

- 3.7 Information supplied as part of previously granted resource consent LU/0053/22, for earthworks exceeding the maximum permitted volume in the Rural zone within the application site, identified that the gulleys are wetlands. This was also corroborated with an Ecological Impact Assessment by Titoki Landcare prepared for a Waikato Regional Council Consent (AUTH144393.02.01) which was provided as Appendix 7 of the section 42A report prepared by Marne Lomas for application LU/0147/22.
- 3.8 The site contains mature barberry hedging along the frontage of Parallel Road on the western side of the site. Shelterbelts have been planted along the frontage of Parallel Road to the east of the site, and in a line set back 4m from the eastern boundary of 598 Parallel Road.
- 3.9 Overhead powerlines owned and maintained by Waipa Networks traverse the length of the frontage of Parallel Road. A section containing 4 power poles along the eastern portion of site (refer Figure 1) runs two voltages, 11kv on top and 400v on the bottom, with the remaining poles running only 11kv within the eastern portion, and along the entire western portion.
- 3.10 The property is within the Rural Zone of the District Plan, is partially located within Hamilton Airport Conical surface overlay (red dotted line in Figure 3), and as noted above contains

some portions of the Significant Natural Area ('SNA') identified as WP344 on the northern and eastern boundary of the site.

- 3.11 The District Plan special features map indicates the site contains unstable soils on the eastern side of the property (refer Figure 4).



Figure 2: Aerial photograph of site (site shown in red)

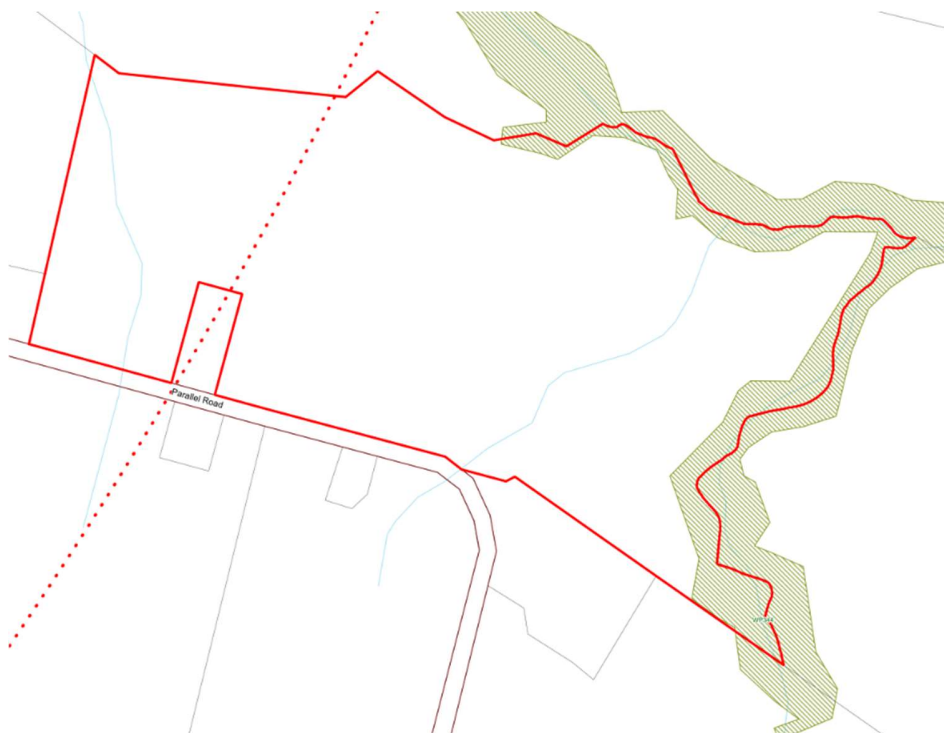


Figure 3: District Plan Zone & Policy Overlays ('Significant Natural Area' in green)

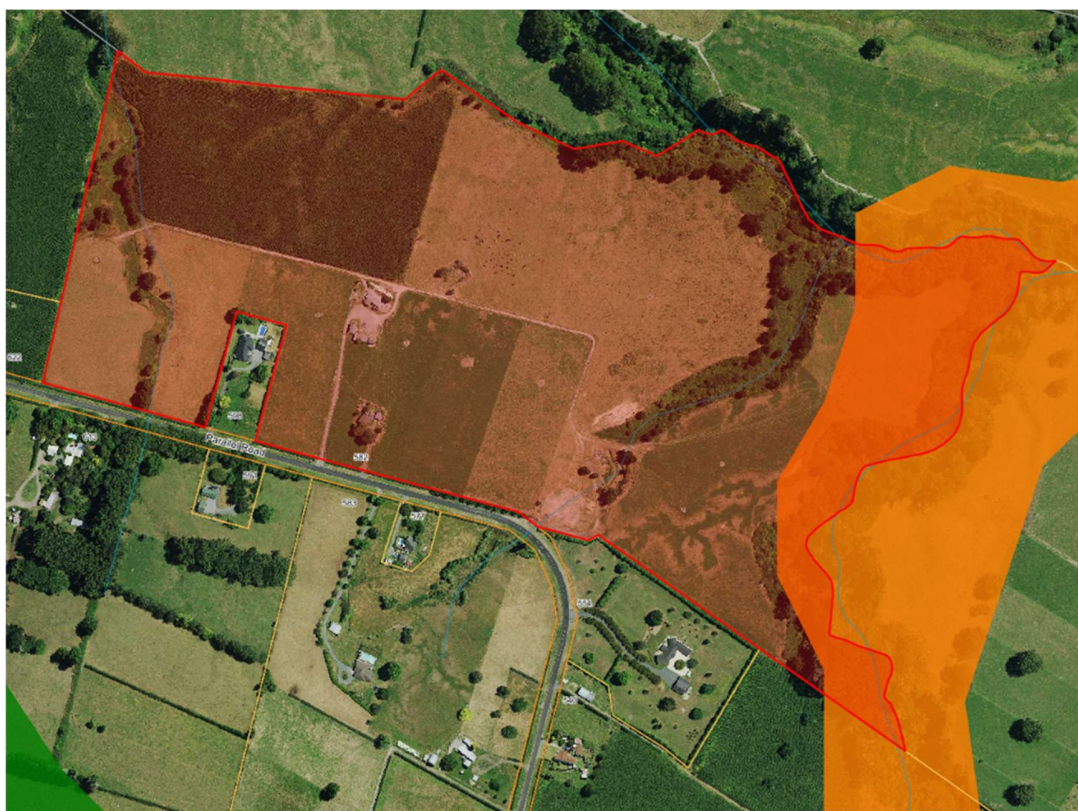


Figure 4: District Plan Special Features ('Unstable Land' in orange)

- 3.12 Surrounding properties comprise rural, or rural residential activities particularly along Parallel Road. The application site surrounds a rural residential property, 598 Parallel Road, on three sides (refer Figure 2). Other sites adjoining are rural land uses like dairy farms or grazing. Further afield, the site of Kaipaki Berries, as discussed a number of times throughout the Hearing, is located approximately 3 minutes' (2.9km) travel by road to the northwest of the proposed site.

4.0 THE PROPOSAL

LU/0147/22

- 4.1 A detailed description of the proposal for the retrospective and prospective construction of vertical and horizontal (overhead) artificial kiwifruit shelter structures is outlined in Section 6 of the original Section 42A Report for Limited Notified Resource Consent Application prepared by Marne Lomas and dated 27 September 2022 in relation to application LU/0147/22.
- 4.2 The proposal was subsequently amended and this is outlined in the Background and Summary of Proposed Changes sections of the Amended Supplementary Planner's Statement dated 22 December 2022, being paragraphs 9 to 37.
- 4.3 For ease of reference, matters in relation to the artificial shelters are identified as follows:
- Artificial shelter to be constructed 14m from the northern boundary of 598 Parallel Road, Cambridge, and 34m from the dwelling therein;
 - Artificial shelter to be constructed between 8.0m and 9.7m from the western boundary of 598 Parallel Road, Cambridge and a minimum of 19m from the dwelling therein;
 - Artificial shelter to be constructed between 7.3m and 8.5m from the eastern boundary of 598 Parallel Road, and a minimum of 33.8m from the dwelling therein;
 - Artificial shelter to be constructed a minimum of 5.97m from the eastern boundary with 622 Parallel Road;
 - Artificial shelter to be constructed between 6.0m and 18.0m from the eastern boundary with 626 Parallel Road;
 - Artificial shelter to be constructed between 6.21m and 10.6m from the southern boundary of 82 Speake Road;
 - Artificial shelter to be constructed 6.0m from the northern boundary with 554 Parallel Road;
 - Artificial shelter to be constructed 6.0m from the road boundary adjoining Parallel Road;

- Artificial shelter to be constructed a minimum of 8m from the SNA;
- Artificial shelter to be constructed over the waterbody on the western portion of the site; and
- A total site coverage not exceeding 64%.

LU/0252/22

- 4.4 A detailed description of the proposal for the retrospective land use consent for shelterbelt (Cryptomeria/Karo) planting as well as land use consent for additional planting of some, and future growth of all of the shelterbelts which are located along parts of the site boundary of 582 Parallel Road, Cambridge is included within section 1.4 of the combined notification and decision report prepared by Ms Louise Cowan dated 21st December 2022.
- 4.5 For ease of reference, matters in relation to the shelterbelts requiring consent are identified as follows:
- Cryptomeria planting on the inside of the road boundary of Parallel Road, to be maintained to a height of no greater than 3.5m; and
 - Cryptomeria planting at 4m from the eastern internal boundary with 598 Parallel Road for the first 10m from the road boundary with Parallel Road, to be maintained to a height of no greater than 6m; and
 - Karo planting at 4m from the western internal boundary and 14m from the western façade of the dwelling at 598 Parallel Road, to be maintained to a height of no greater than 6m; and
 - Cryptomeria planting on the internal boundary with 622 Parallel Road for of the first 10m from the road boundary with Parallel Road, to be maintained to a height of no greater than 6m; and
 - Cryptomeria planting on the road boundary of Parallel Road within 5m of the existing modified ephemeral waterway within the western portion of the site (identified as purple in Figure 1) and maintained to a height of no greater than 3.5m.
- 4.6 The site also includes **permitted** Cryptomeria and proposed Cryptomeria planting in the following locations:
- Planted at 4m off the eastern boundary of the property located at 598 Parallel Road. This portion of shelterbelt does not require resource consent as at its closest point is located 30.5m, measured in a straight line from the existing dwelling within that property;

- Cryptomeria to be planted 10m from the northern internal boundary of 598 Parallel Road. This portion of shelterbelt will be located 30m from the closest point of the existing dwelling within that property;
- Cryptomeria to be planted on the southern boundary of the site adjoining the property located at 554 Parallel Road. This portion of shelterbelt does not require resource consent as at its closest point is located 40m, measured in a straight line from the existing dwelling within that property; and
- Cryptomeria to be planted on the western and north-western boundary of the property, including the boundary with 622 Parallel Road. This portion of shelterbelt does not require resource consent as it is not within the setbacks of any dwelling, infrastructure or other features specified in Rule 4.4.2.58.

4.7 The Applicant has advised that all shelterbelts planted in permitted positions will be maintained to a maximum height of 6m. The Applicant has offered this as an agreed condition of consent.

5.0 STATUTORY FRAMEWORK

LU/0147/22

5.1 The application for the artificial shelters was assessed and considered under the provisions of the Resource Management Act 1991 ('the Act') in both the application and the Council Reporting Planner Section 42A Report and Supplementary Addendum. These assessments concluded the application was to be assessed as a Discretionary activity under the provisions of the District Plan and thus, was considered in accordance with Sections 104, 104B and Part 2 of the Act.

LU/0252/22

5.2 The application for the shelter belts was assessed and considered under the provisions of the Act in both the application and the Council Reporting Planner Section 42A Report. These assessments concluded the application was to be assessed as a Restricted Discretionary activity under the provisions of the District Plan and thus, was considered in accordance with Sections 104, 104C and Part 2 of the Act.

Waipa District Plan

- 5.3 The District Plan contains a number of objectives and policies that directly relate to both land use consent applications. Those objectives and policies are contained in Section 4 – Rural Zone and Section 26 – Lakes and Water Bodies.

LU/0147/22

- 5.4 The Commissioner has adopted the assessment of the Council's Reporting Planner and the Applicant's planning consultant in respect of the District Plan assessment, which is not in contention. The assessment of the artificial structure activity against the District Plan provisions confirms the activity status as a **Discretionary Activity** due to failure to comply with the following District Plan provisions:

Rule #	Rule Name	Status of Activity	Comment
4.4.2.1(b)	Minimum building setback from road boundaries – 30m.	Discretionary	The proposed activity will result in the artificial shelters being constructed 6m from the Parallel Road boundary.
4.4.2.2(e)	Minimum building setback from internal boundaries – 25m.	Restricted Discretionary	The proposed activity will result in the artificial shelters being constructed at distances ranging between 5.97m and 18m from internal boundaries.
4.4.2.7	Minimum building setback from SNA – 10m.	Restricted Discretionary	The proposal will result in the artificial shelters being constructed 8.0m from the SNA.

4.4.2.9	Maximum height of buildings – 12m	Permitted	The artificial shelters will not exceed 12m.
4.4.2.10	Maximum building coverage – 3%	Restricted Discretionary	The proposed shelters will cover 63.6%.
4.4.2.12	Daylight control.	Permitted	The artificial shelters will not encroach the daylight control requirements.
4.4.2.58	Tree Planting	Permitted	There are a series of permitted shelter belts associated with the proposal.
26.4.2.1	Setbacks from water bodies – 23m.	Restricted Discretionary	The artificial shelters will be directly above the gully on the western portion of the site, which meets the definition of a waterbody under the RMA.

LU/0252/22

- 5.5 The Commissioner has adopted the assessment of the Council’s reporting officer and the Applicant’s planning consultant in respect of the District Plan assessment, which is not in contention. The assessment of the shelter belt activity against the District Plan provisions confirms the activity status as a **Restricted Discretionary** Activity due to failure to comply with the following District Plan provisions:

Rule #	Rule Name	Status of Activity	Comment
4.4.2.58	<p>Tree Planting</p> <p>4.4.2.58 Tree Planting</p> <p>No trees within a woodlot forest, commercial forest or shelterbelt which are or are likely to grow to more than 6m in height shall be planted closer than any of the distances specified below:</p> <p>(a) 30m from any dwelling on an adjoining site; or</p> <p>(b) 30m from any site boundary of the Residential Zone or Large Lot Residential Zone or Marae Development Zone; or</p> <p>(c) 20m from any strategic arterial road and 10m from any other road or railway; or</p> <p>(d) 10m to a vertical line directly below an overhead power or telephone line; or</p> <p>(e) 5m from the edge of any lake or from the banks of any water bodies except trees which are planted for river protection works, soil conservation or for conservation planting.</p>	Restricted Discretionary	<p>Both Cryptomeria and Karo have the potential to grow over 6m, and will be planted and maintained within 30m of a dwelling on an adjoining site, 10m of the road, 10m of overhead powerlines, and 5m from a waterbody.</p> <p>The Applicant has confirmed that the shelterbelt planting will occur within 5m of the modified ephemeral stream located within the western portion of the property (shown purple in Figure 1).</p>

National Policy Statements

- 5.6 With regard to relevant National Policy Statements, the National Policy Statement for Highly Productive Land (NPS-HPL) came into effect on 17th October 2022, after the original section 42A report was finalised and circulated (on 28th September 2022). As such, Ms Lomas did not make comment on the NPS-HPL.
- 5.7 The Commissioner concurs with the Reporting Planner's Supplementary Addendum in that a transitional definition of highly productive land applies in the Waipā District until Waikato Regional Council and WDC complete the process of mapping highly productive land at a regional level. This means land that is zoned General Rural or Rural Production in WDC's District Plan and classed as Land Use Capability (LUC) 1, 2 or 3 is considered as highly productive land for the purpose of the NPS-HPL and requires consideration under the NPS-HPL.
- 5.8 582 Parallel Road is identified as containing High Class Soils within WDC's mapping system. The Commissioner agrees that the site contains almost all Class 1 or Class 2 soils.
- 5.9 The proposed artificial shelters and shelter belts will be used to support Kiwifruit production on highly productive land.
- 5.10 In this instance the Commissioner concurs with the Applicant's Planner and the Reporting Officer that land-based primary production means:
- production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land; and
 - supporting activities, in relation to highly productive land, means those activities reasonably necessary to support land-based primary production on that land (such as on-site processing and packing, equipment storage, and animal housing).
- 5.11 This application is for accessory supporting structures to enable and support kiwifruit production utilising highly productive land. The Commissioner also concurs with the Applicant's Planner and the Reporting Officer that the following objective and policies of the NPS-HPL are relevant to this application:

Objective 2.1: Highly productive land is protected for use in land-based primary production, both now and for future generations;

Policy 1: Highly productive land is recognised as a resource with finite characteristics and long term values for land-based primary production;

Policy 2: The identification and management of highly productive land is undertaken in an integrated way, that considers the interactions with freshwater management and urban development;

Policy 4: The use of highly productive land for land-based primary production is prioritised and supported; and

Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.

- 5.12 The Commissioner accepts that at a broad level the NPS–HPL objective makes it clear that highly productive land should be protected for land-based primary production. However, the NPS-HPL also recognises that there can be other appropriate uses of highly productive land. Clause 3.9(2) provides a list of activities that are not land based primary production but are not ‘inappropriate’ and can occur on highly productive land in some circumstances. Clause 3.9(2)(a) specifically provides that an exception is made for those activities that provide “... for supporting activities on the land...”, which by definition, as referenced above, can apply to the proposed artificial shelters, being “reasonably necessary to support land-based primary production on that land”.
- 5.13 The Commissioner agrees that the artificial shelters do not impede the use of soil nutrients nor do they impede the energy conversion from natural sunlight or the use of rainwater for plant growth and production. The Commissioner has concluded that the proposal for the artificial shelters and shelter belts is consistent with those relevant matters in the NPS – HPL.

National Environmental Standards

- 5.14 There are no National Environmental Standards requiring further consideration with regard to the applications.

Waikato Regional Policy Statement: Te Tauāki Kaupapahere Te-Rohe O Waikato

- 5.15 The following provisions of Te Tauāki Kaupapahere Te-Rohe O Waikato are of relevance to the applications:

Objective LF-04 – Values of soil

The soil resource is managed to safeguard its life supporting capacity, for the existing and foreseeable range of uses.

Objective LF-05 – High Class Soils

The value of high class soils for primary production is recognised and high class soils are protected from inappropriate subdivision, use or development.

Policy LF-P8 – Maintain or enhance the life supporting capacity of the soil resource

Manage the soil resource to:

- 1. minimise sedimentation and erosion;*
- 2. maintain or enhance biological, chemical and physical soil properties; and*
- 3. retain soil versatility to protect the existing and foreseeable range of uses of the soil resource.*

Policy - LF-P11 – High Class Soils

Avoid a decline in the availability of high class soils for primary production due to inappropriate subdivision, use or development.

- 5.16 The proposed activities in this case are not considered to be in conflict with the provisions of Te Tauāki Kaupapahere Te-Rohe O Waikato.

Waikato Regional Plan

- 5.17 With regard to the Waikato Regional Plan, the proposed activities not considered to be in conflict with the provisions of the Regional Plan.

Other Legislation

- 5.18 No other legislation was applicable in the assessment of these applications.

6.0 NOTIFICATION ASSESSMENT

LU/0147/22

- 6.1 In accordance with Sections 95A to 95F of the Act, the proposal for artificial shelter structures has been assessed with regards to notification by the Council (Council document reference 10843435). As a result, the application was limited notified to Mr and Mrs Jennings owners and occupiers of 598 Parallel Road, Cambridge on 16 August 2022.

LU/0252/22

- 6.2 In accordance with Sections 95A to 95F of the Act, the proposal for shelter belts has been assessed with regards to notification by the Commissioner. As a result, the application was limited notified to Mr and Mrs Jennings, owners and occupiers of 598 Parallel Road on 22 February 2023.

7.0 SUBMISSIONS

LU/0147/22

- 7.1 A total of one submission was received during the statutory submission period, which was in opposition.
- 7.2 A copy of the submission is included in Appendix 4 of Council Planner's Section 42A Report (Council document reference 10895674). In summary, concerns raised by the Submitter included:
- The Application does not include elevation plans of the building (artificial structure as specified in Application) to accurately assess the height, appearance and bulk of the building.
 - The Application has failed to address Rule 26.4.2.1 of the WDP in relation to setback from water bodies where buildings are proposed to be constructed over and within 23 metres of water bodies. 8.3. The Application has not considered Waikato Regional Council consent requirements and does not confirm if other resource consents are required from Waikato Regional Council. This is a requirement under Schedule 4(2)(1)(e) of the Act.
 - An ecology assessment has not been included in the Application to support the conclusion the Application will not disrupt biodiversity and the Application fails to consider actual and potential adverse effects on Significant Natural Areas.
 - The Application does not adequately address the National Environmental Standards for Freshwater 2020 (NES-FW) in relation to natural wetlands.
 - The Application fails to provide an assessment against the National Policy Statement for Freshwater Management.
 - The Application relies on a 6-metre high Cryptomeria shelterbelt planted near all three boundaries of 598 Parallel Road to mitigate adverse effects of the kiwifruit shelter building. The Application applies the permitted baseline to the proposed shelterbelt, which is not appropriate in this instance as the shelterbelt is likely to have

adverse shading and amenity effects. The Application has not considered alternative mitigation measures to address adverse effects of the kiwifruit shelter building.

- The adverse visual and amenity effects of the structures prior to the shelterbelts reaching maturity have not been adequately considered in the Application and the Application has not considered the potential adverse visual and amenity effects during this period.
- The meaning of 'effect' under the Act also includes any cumulative effect. The Application fails to consider the adverse cumulative effects of existing and consented buildings on site, other kiwifruit buildings in the receiving environment and the effects of the structures on amenity of the travelling public and local residents.
- The site coverage calculations within the Application have not taken into account existing buildings on the Subject Site
- The Submitters sought the application be declined and wished to be heard in support of their submission.

LU/0252/22

7.3 A total of one submission in opposition was received on 22 February 2023, which is recorded as Council document reference number 10975589. In summary, concerns raised by the Submitter included:

- The application does not include a shading analysis.
- The assessment criteria for tree planting within Section 21 of the WDP has not been considered in the application of Councils Section 95 report.
- Cumulative effects on the Submitter of the proposed Karo shelter belt in combination with the effects of permitted Cryptomeria shelter belts have not been considered.
- Uncertainty in relation to growth rates with the proposed species and there is potential of Karo shelter belt to create gaps over time where shelter structures will be visible from the Submitters property.
- The Submitter sought the application be declined.

8.0 THE HEARING

8.1 The hearing of both applications was held on Wednesday the 22nd of February 2023 and attended by the following persons:

Role	Name
Hearing Commissioner	Alan Withy
Hearing Panel Assistance	Quentin Budd –Consents Team Leader, WDC Theresa Le Bas – Counsel for WDC.
Applicant	Kiwifruit Investments Limited
Appearing for Applicant	Joan Forret – Legal Counsel for the Applicant Parmvir Singh Bains – Applicant Ms Mason for New Zealand Kiwifruit Growers Incorporated – represented by Tim Fletcher John Holwerda – Saber Construction Simone Williams – Planner
Appearing for Council	Louise Cowan – Reporting Planner Chris Brockelbank – Arborist Planner – evidence taken as read.
Submitters in Opposition	Phil Lang – Legal Counsel for the Submitter Nicholas and Vanessa Jennings – represented by Nicholas Jennings Joanna Soanes – Landscape Architect Sarah Davidson - Planner
Submitters in Support	Nil

9.0 SITE VISITS

- 9.1 The Commissioner undertook a site visit on 22 February 2023. In attendance with the Commissioner was Mr Quentin Budd, WDC's Planner Support.
- 9.2 The Commissioner returned to conduct a second site visit (unaccompanied and entirely on the Applicant's property) on 27 February 2023 to confirm observations and measurements.

10.0 SUMMARY OF THE EVIDENCE HEARD - Section 113(1)(ad)

- 10.1 The Commissioner asked WDC's Consents Team Leader to provide an overview of the application being heard and then directed the Applicant's Team to present the applications and evidence.

Applicant's Evidence

- 10.2 Taken as read. Written submissions and statements of evidence supplied by Ms Forret, Parmvir Singh Bains, Tim Fletcher on behalf of Ms Mason for New Zealand Kiwifruit Growers Incorporated, John Holwerda and Simone Williams.

Submitters Evidence

- 10.3 Taken as read. Written submissions and statements of evidence supplied by Mr Lang, Nicholas Jennings, Joanna Soanes and Sarah Davidson.

Reporting Officer Evidence

- 10.5 The Council's Section 42A Report, prepared by Reporting Planner, Ms Louise Cowan, was taken as read by the Commissioner.

- 10.6 In the verbal summary, the Reporting Planner Ms Cowan noted:

- That she had not heard any evidence throughout the duration of the Hearing to substantively alter her recommendation from her section 42A report and Supplementary Addendum.
- With regard to a credible permitted baseline, the Applicant has made it clear the use of the site is intended for a kiwifruit orchard. It is a non-fanciful assumption that were these applications not to proceed then a credible baseline assumption would be that the Applicant could chose to plant permitted shelter belts and erect permitted artificial shelters around an alternative variety of kiwifruit.
- With regard to the wider rural environment, Ms Cowan noted that there is no alternative for the planting of large scale horticultural crops other than the Rural Zone. The Rural Zone is the correct zone for this activity and no parties appear to dispute this.
- Ms Cowan reiterated that effects inconsistent with the rural character objectives and policies of the District Plan would only be experienced over a period of 3 to 5 years.
- Ms Cowan noted that consideration of the NPS-HPL is appropriate.

- Ms Cowan noted that there would be positive effects associated with economic benefits from the proposal, and the Commissioner should consider this as part of the section 104 assessment.
 - Ms Cowan advised that it is her opinion, based on the evidence of Ms Soanes, that the adverse effects of the artificial shelter structures will be appropriately mitigated within the 3 to 5 year period of time, when the shelter structures would be screened by the permitted and consented shelter belts.
 - Ms Cowan reiterated from her section 42A report and Supplementary Addendum that the purpose of the Act is better served through grant of the consent, subject to conditions.
- 10.7 The Commissioner asked for comment from Ms Cowan in relation to the appropriateness of the 25m setback discussed by the Submitters and the Submitters' Expert. Ms Cowan noted, with reference to the cross section S1 plan provided by the Submitters (Ms Soanes' evidence), the shelter structures will be screened by the shelter belts regardless of whether they are located up close to the shelter belt or whether they are located further away. There was some discussion in relation to this matter. Ms Cowan noted, to her mind, that separation of the structures from the permitted shelter belts does not actually achieve much, however, Ms Soanes may have a different opinion. The Commissioner asked for further clarification and asked if Ms Cowan would apply this thinking to all of the setbacks. Ms Cowan noted that if there is a permitted activity like a shelterbelt occurring in between the viewpoint and the shelter structures, then the effect of the structures will be mitigated within a period of 3 to 5 years. If there isn't a mitigating factor provided from a permitted shelter belt, then a setback of 25m for the structures would be appropriate.
- 10.8 The Commissioner requested that Ms Cowan put the matter in relation to shelter belts and structures into a condition.
- 10.9 Ms Soanes provided brief comments of clarification, noting that the cross sections only relate to visibility not visual amenity and landscape effects. Ms Soanes noted that they only show one viewpoint and do not demonstrate the cumulative effects. Ms Soanes reiterated that just because you can't see something doesn't mean there isn't an effect. Consideration must be given to the Submitters' experience of openness from their property. The 25m setback allows for an appropriate landscape response.

Applicant's Right of Reply

- 10.10 Counsel for the Applicant noted that the Reporting Officer had not changed her opinion with regard to her recommendation. A kiwifruit orchard with shelters around it is a non-fanciful expression of the permitted baseline.
- 10.11 Counsel also noted that Ms Soanes indicated that in her view the structures did not need to be fully screened, and that you would be able to see through the shelter belt to the structures beyond. Full screening is not the issue. It appears that the single issue for the Submitters is the single species of Karo proposed in the shelterbelts. The Applicant cannot build half an orchard while they wait for the shelterbelts to grow. It is also a non-fanciful proposal to construct a screen up to 3.5 to 4m to screen the shelter structures. The existing orchard across the road from this site, has screens around the outside and screens throughout.
- 10.12 Counsel for the Applicant noted that there had been a lot of discussion about what the Submitters expected when they moved to their property at 598 Parallel Road. The Applicant accepts that this is a shock to the Submitters, and that this proposal is a change. However, there has been no discussion as to what the Applicant expected, as the interpretation of the District Plan with regard to shelter belts was different when he purchased the property. He purchased the property expecting to make the best use of the highly productive soils. This is consistent with the objectives and policies of the District Plan and now the NPS-HPL.
- 10.13 Nothing has been suggested throughout the Hearing to suggest that Karo will exceed 6m when planted as a shelterbelt. Counsel submitted on this basis that the shelterbelt to the west of 598 Parallel Road is in fact a permitted activity.
- 10.14 Counsel noted that Ms Soanes had appeared to confirm that the black netting is to be preferred over the white. Counsel stated that this is clear from the photographs provided in evidence.
- 10.15 Counsel noted that Part 2 of the Act has little relevance to this proposal as she is not aware of any unsettled provisions within the District Plan or Regional Policy Statement.
- 10.16 Counsel noted that it is clear from listening to the Submitters and the expert witnesses that there is no agreement on any place where the shelterbelts or artificial shelter structures could be. The evidence moves between whether it is the shelter belts themselves that is the issue or whether it is the shelter structures. The decision on these applications must be made in light of what can happen on the site, and what is proposed on the site, the

overarching policy framework and the RMA requirements in relation to both positive and adverse effects.

- 10.17 Counsel also noted that the Kaipaki Berries land use consent was granted on a non-notified basis, and had a 60% site coverage. The proposal consists of buildings which are not permeable, no productive use of the soils, and noted that you cannot physically look through the tunnel house structures.
- 10.18 Counsel considered it was inappropriate for Ms Cowan to be generating another condition, in light of her evidence that the application as proposed is appropriate, that a level of planting is permitted, and that setting the buildings back any further makes no difference in terms of the final view. Counsel reiterated it is inappropriate to be creating a new condition that Ms Cowan doesn't support and is unlikely to resolve the concerns of the Submitters, and would create an extreme uncertainty about the nature of the structure that could be put in place until after the shelter belt is mature. Essentially highly productive land would be set aside unused waiting for shelter belts to grow, at great economic cost to the Applicant. An attempt to get to an agreed position is misguided. There are implications associated with any interim measures.
- 10.19 Counsel for the Applicant advised the Commissioner that she would come back as to whether the Applicant intended to provide anything in writing and whether this could be provided within a week. Counsel raised concerns with regard to timeframes, given the time it would take to draft an additional condition from Ms Cowan, comment from Ms Soanes and further consideration of these by the Applicant.
- 10.20 The Commissioner queried if he was to accept the recommendation and conditions as put forward by Ms Cowan, whether this would be acceptable to the Applicant. Counsel for the Applicant agreed that yes these would be acceptable, with the suggested changes from Ms Williams, as the original conditions do not take into account the relocation of the Cryptomeria and other specific shelter distances, along with the keeping of the hedges at a particular height on maturity.
- 10.21 Counsel for the Applicant was asked by the Commissioner to provide a written closing submission by end of day Monday 27 February 2023.
- 10.22 The Commissioner advised he had taken careful note of what the Submitters and the Submitters' expert witnesses have provided. The Commissioner advised he would carefully consider these matters over the coming days.
- 10.23 As there was nothing further procedurally, the Hearing was adjourned.

10.24 A written Closing Submission of Counsel for the Applicant was supplied to WDC on Monday 27 February 2023 and noted:

- There was no disagreement with regard to the permitted location of the Cryptomeria shelter belt adjacent to the eastern boundary of 598 Parallel Road. Additionally, it was noted that there was no disagreement that the roadside Cryptomeria to be planted and maintained to a height of no greater than 3.5m was acceptable and appropriate.
- A specific emphasis on the definition of dwelling vs sleepout and that the shelter belt on the northern boundary of 598 Parallel Road is permitted as it will be planted 30m from the dwelling therein.
- That the Submitters and their experts raised concerns with regard to the Karo shelter belt on the basis of its location, visual form, suitability to provide visual mitigation, potential to completely block the view and single species composition.
- Clarification that the Applicant could plant a complying shelter belt 30m from the Submitters' home, that would completely block remaining views to the west, and this would be permitted.
- An alternative option for the planting on the western boundary to include mitigation proposals from the Submitters as follows:
 - (i) Retain the existing row of planted Casuarinas to be maintained at a height no greater than 4.5m;
 - (ii) Plant two rows of mixed natives between the Jennings' western boundary and the Casuarinas;
 - (iii) Include Karo and other suitable native species within the interior planting;
 - (iv) Allow the native planting to grow naturally without any trimming; and
 - (v) Allow native planting to support the Casuarina shelter belt so that it can be kept trimmed on the orchard side.
- An amended condition allowing for the above mitigation to replace proposed condition 8.
- The District Plan has Chapter 25 that provides specific protection for certain landscapes. Those protections do not apply generally in the rural zone.
- There is no guarantee or expectation of unrestricted rural views from any dwelling within the Rural Zone. Shelter belts and artificial screens are permitted and expected in the Rural Zone and the District Plan provides no protection for such views or landscapes, except in specific defined overlay areas.

- Ms Soanes recommended both a Cryptomeria shelterbelt and interim artificial screens as being suitable for the boundaries around the berry farm at Kaipaki Road. The shelterbelt and the artificial screens both interrupt views across the rural landscape and she considered that was entirely acceptable. It cannot be acceptable for shelterbelts to interrupt rural views in Kaipaki Road (only a couple of kilometres away) and not be acceptable at Parallel Road.
- The District Plan allows 12m high vertical artificial screens in the Rural Zone that can be any colour provided they are functioning to provide wind protection. Examples are the vertical screens around the kiwifruit farm at 583 Parallel Road which is opposite the Applicant's site. Those screens are white and are apparently permitted.
- This proposal, with its black netting and natural shelterbelts will create significantly lower adverse visual effects for the submitters and other residents than would permitted white artificial screens that could be installed at 15m from each of the Jennings' boundaries and along the road frontage. Ms Soanes agreed that the black netting will have much lower visual adverse effect than the white netting.
- The NPS-HPL must be considered as part of the s104 assessment.
- All of the effects of the proposal must be considered in any assessment under s 104 and those effects must be balanced when coming to a decision for a discretionary activity.
- The appropriate permitted baseline is a kiwifruit farm that has artificial screens of 1.8m along the road boundary and various white artificial screens up to heights of 6m or more throughout the orchard.
- The permitted baseline also allows for the Cryptomeria shelterbelts where proposed on the northern and eastern boundaries with 598 Parallel Road, and in our submission, the Karo hedge on the western boundary also. The effects of those shelterbelts should be disregarded because they form part of a non-fanciful permitted baseline.
- The effects of vertical artificial screens should also be disregarded as they are non-fanciful and permitted if located 15m from any boundary under rule 4.4.2.2(d). Such screens could be erected as a temporary measure to shield views of the rest of the development until the shelterbelts reach full height. The adverse visual effects of such screens would be significantly greater than having the proposal in its current form with the black netting sides and kiwifruit plants growing in the orchard beyond.

11.0 THE PRINCIPAL ISSUES THAT WERE IN CONTENTION - Section 113(1)(ac)

The principal issues that were in contention are as follows:

- Height and growing characteristics of Karo.
- Status of the earth bund/stockpile near the western boundary with 598 Parallel Road.
- Definition of Dwelling vs Sleepout in relation to the tree planting setback requirement.
- Application of the Permitted Baseline.
- Landscape and rural character and amenity.

12.0 THE MAIN FINDINGS OF FACT & REASONS FOR DECISION – Section 113(1)(a) & (ae)

12.1 The Commissioner has considered the application, the evidence and submissions presented at the hearing, the planning assessment report prepared by the Reporting Planner, relevant statutory and planning provisions, and the principal issues that were in contention. The main findings of fact determined by the Commissioner, which have led to the following decision and the reasons for that decision are as follows:

- a) The application for the planting, growing and maintaining of a number of shelter belts within the site at 582 Parallel Road is a Restricted Discretionary Activity in accordance with the provisions of the Waipā District Plan.
- b) The application for the construction and maintenance of horizontal and vertical artificial shelter structures within the site at 582 Parallel Road is a Discretionary Activity in accordance with the provisions of the Waipā District Plan.
- c) Pursuant to Sections 95A to 95F of the Resource Management Act 1991 ('the Act'), a notification assessment considered the following effects of the application:
 - i) Rural Character and Amenity;
 - ii) Significant Natural Area and Biodiversity;
 - iii) Effects on Waterbodies;
 - iv) Construction Effects;
 - v) Positive Effects.

- d) The applications, being LU/0147/22 and LU/0252/22, proceeded to limited notification on 16 August 2022 and 22 February 2023 respectively to a total of one submitter each. A total of one submission in relation to each application was received, both of which were in opposition. The Commissioner wishes to acknowledge the Submitters' contribution and presentation at the Hearing. In particular the Commissioner notes the submissions were well thought out, clearly articulated and included sufficient detail.
- e) The Commissioner notes there was some discrepancy between parties at the Hearing as to the growing height of Karo. The Commissioner has accepted the original technical advice of Ms Brockelbank that Karo trees are likely to grow to more than 6m in good soil conditions with sufficient rainfall. The Commissioner accepts that this will be the case in this situation given the highly productive status of the soil and the temperate conditions. As such the Karo shelterbelt on the western internal boundary of 598 Parallel Road continues to require resource consent under the District Plan.
- f) A question was raised within the Submitters' evidence and addressed in the Applicant's rebuttal in relation to the soil for the earth bund/stockpile near the western boundary with 598 Parallel Road. The Commissioner accepts that the presence of this soil is a result of activities legally undertaken in accordance with land use consents LU/0053/22 (Waipā District Council - Undertake earthworks exceeding maximum permitted volume in the Rural Zone) and AUTH144393.02.01 (Waikato Regional Council – Earthworks in association with proposed Kiwifruit Orchard Development). The Commissioner accepts that this stockpile will be removed following compliance with the relevant conditions of the two consents identified above, including reinstatement works. The presence of this stockpile is not the subject of the applications to be decided by the Commissioner.
- g) With regard to the discussion of the status of the external bedroom identified as an existing sleepout as on the plan used as part of building consent BC/0761/09 and then reused in BC/0933/16 identified as Figure 5.

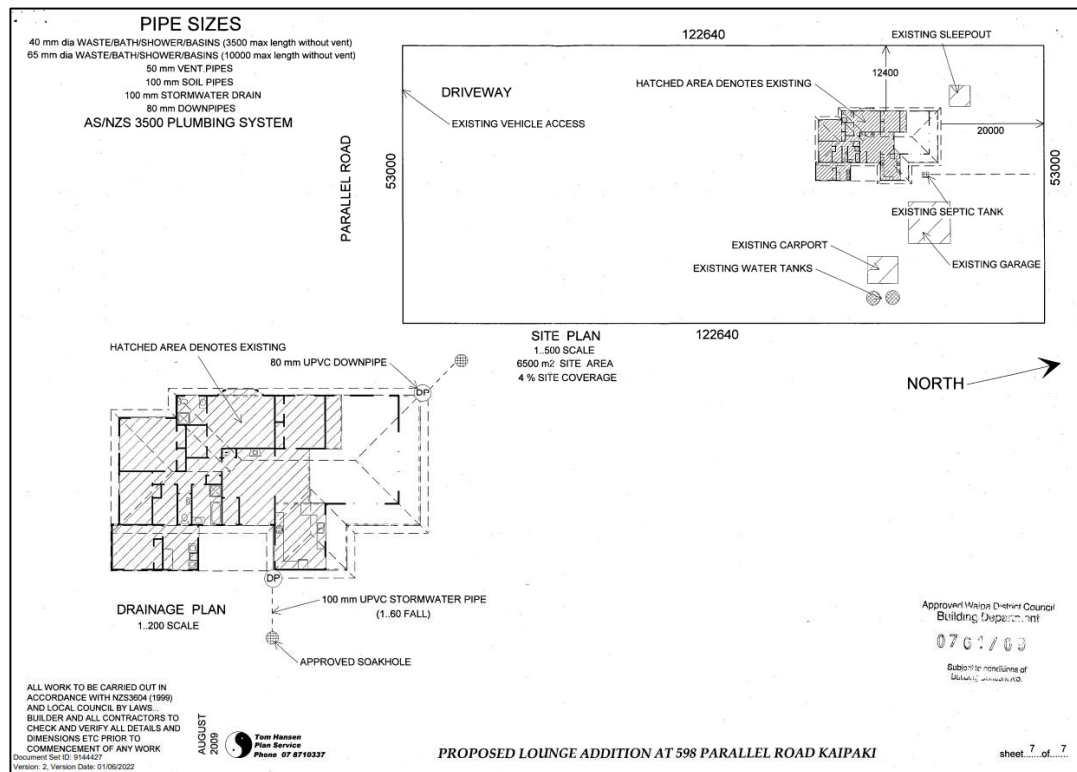


Figure 5: Image of plan from BC/0761 which was reused in BC/0933/16.

The Commissioner accepts the legal interpretation provided by Tompkins Wake dated 13 January 2023 regarding the definition of “dwelling”, “sleepout” and “accessory building” in the District Plan. Additionally, the Commissioner accepts that from a reading of the three definitions together that a dwelling and a sleepout are, for the purposes of the District Plan, mutually exclusive terms:

- (i) A dwelling is a self-contained building which contains a kitchen (and may contain a kitchenette as well);
- (ii) A sleepout is a building incidental to a dwelling which may contain a kitchenette (but is prohibited from containing a kitchen).

For these reasons the Commissioner concurs with the conclusion reached by both Tompkins Wake and the s42A Reporting Planner that the ‘dwelling’ to be considered for the purposes of Rule 4.4.2.58(a) of the District Plan does not, and cannot, include the sleepout on the Submitters’ property. As such the setback measurements to the proposed shelterbelt planting must be taken from the closest edge of the dwelling, not from the sleepout.

- h) The potential effects of the activity raised in the application, Council’s notification assessment, the submissions received, and the technical information provided in support of the applications, were considered pursuant to Section 104 of the Act. In

terms of the evidence presented, and discussion regarding the permitted baseline, the Commissioner accepts the evidence presented by the Applicant's Planner and the Reporting Planner that the accepted permitted baseline would result in very similar levels of enclosure around the Submitters' property.

- i) When considering the permitted baseline, the Commissioner gave regard to the Submitters' concerns regarding shading, and loss of open rural views. The Commissioner noted, with regard to shading, that the artificial structures comply with the daylight control provisions of the District Plan, and that the shelter belts, based on the elevation drawings provided, also comply. This will ensure that shading of the Submitters' property will not exceed the permitted baseline with regard to these activities.
- j) The proposal has been assessed against the objectives and policies within Section 4 – Rural Zone and Section 26 – Lakes and Water Bodies of the Waipā District Plan. Overall the granting of land use consent is considered to be consistent with the objectives and policies of the Waipā District Plan.
- k) The Commissioner has turned his mind to the matters raised by the Applicant and the Submitters and notes in particular:
 - i. He is required to have regard to the National Policy Statement for Highly Productive Land which reinforces the protection of productive land for productive purposes within the Rural Zone; and
 - ii. The positive benefits of kiwifruit development and production involving more productive outputs from the land are important to the local and wider economies; and
 - iii. The existing and proposed planting will provide significant mitigation of adverse effects on the Submitters' property; and
 - iv. The Conditions require the shelterbelt planting to be maintained in perpetuity which is 'over-and-above' the normal situation for shelterbelts; and
 - v. Management The effects of the activity can be appropriately avoided, remedied or mitigated to an acceptable level; and
 - vi. Overall, the granting of the consent provides for the purpose of the Resource Act 1991 being the sustainable management of natural and physical resources.

13.0 CONCLUSIONS

- 13.1 The Commissioner has carefully considered all the submissions and evidence and concludes consent should be granted. This conclusion is reinforced by his two site visits when he observed that there is planting around all sides of the Submitters' property, albeit spasmodic in some places, which gives a level of privacy from activities on the adjoining land.
- 13.2 He also observed the existing structures and planting on the Applicant's land, leading to a conclusion that they are reasonable in relation to the Submitters' property, taking into account that this is a rural area where Kiwifruit with attendant structures and planting might be expected.
- 13.3 Furthermore the Submitters (from a pragmatic point of view) should not expect the level of privacy and amenities as might be expected in a residential neighbourhood. The occupiers of what is a relatively small property in a rural area should expect neighbouring land to be developed and used for purposes as proposed in the applications.
- 13.4 The conditions as proposed by the s42A Reporting Officer and accepted by the Applicant are considered appropriate in all the circumstances, and should give a reasonable level of protection to the submitter's property.

14.0 DECISION

- 14.1 Acting under delegated authority from the Waipā District Council and In consideration of Section 104, and pursuant to Sections 104B and 108 of the Resource Management Act 1991 and the Operative Waipā District Plan, the Commissioner **grants consent** (Council reference LU/0147/22) to Kiwifruit Investments Limited for the development of horizontal and vertical artificial shelter structures at 582 Parallel Road, Cambridge, legally described as LOT 3 DPS 89413, subject to the conditions enclosed in Schedule 1 and for the reasons outlined in this report.
- 14.2 Acting under delegated authority from the Waipā District Council and In consideration of Section 104, and pursuant to Sections 104C and 108 of the Resource Management Act 1991 and the Operative Waipā District Plan, the Commissioner **grants consent** (Council reference LU/0252/22) to Kiwifruit Investments Limited for retrospective and prospective land use consent for shelter belt (Cryptomeria/Karo) planting along parts of the site boundary of 582

Parallel Road, Cambridge, legally described as LOT 3 DPS 89413, subject to the conditions enclosed in Schedule 1 and for the reasons outlined in this report.

Signed:



Alan Withy
INDEPENDENT COMMISSIONER

Dated: 10 March 2023

Schedule 1

Conditions of Consent

Resource Consent No: LU/0147/22 and LU/0252/22

General

- 1 The proposal must proceed in general accordance with the below plans and information submitted application:

a) LU/0147/22:

- i. Site plan illustrating the entire development which is identified as “Bulk and Location Plan” dated 07/03/2023;
- ii. Site plan illustrating the distances relevant to the submitter’s boundaries at 598 Parallel Road which is identified as “Enlarged Site Plan (Affected Neighbour)” and dated 07/03/2023;
- iii. The original application dated 28th June 2022, the addendum to the application 21 October 2022, the addendum to the AEE dated 06 December 2022 and the addendum to the Applicant’s evidence including site plans dated 22/02/2023.

b) LU/0252/22:

- i. Site plan illustrating the distances relevant to the submitter’s boundaries at 598 Parallel Road which is identified as “Enlarged Site Plan (Affected Neighbour)” and dated 07/03/2023; and
- ii. The application dated 19th October 2022

Except where another condition of this consent must be complied with. This information is entered into council records as LU/0147/22 and LU/0252/22. A copy of the approved plans is attached.

- 2 The artificial shelters and supporting structures must not exceed 6 metres in height.
- 3 The artificial shelters must not exceed 64% site coverage.
- 4 The artificial shelters must have the minimum setbacks, as depicted on the site plans identified as “Bulk and Location Plan” dated 07/03/2023; and “Enlarged Site Plan (Affected Neighbour)” dated 07/03/2023.

Shelterbelts

- 5 The vegetated shelterbelt near the northern boundary of 598 Parallel Road must be setback by 10 metres from the boundary and maintained to a height of no greater than 6 metres. The vegetated shelterbelt must be maintained in perpetuity, with any dead or dying plants replaced as soon as practical.
- 6 The vegetated shelterbelt near the eastern boundary of 598 Parallel Road must be setback 4 metres from the boundary and maintained to a height of no greater than 6 metres. The vegetated shelterbelt must be maintained in perpetuity, with any dead or dying plants replaced as soon as practical.
- 7 The Cryptomeria shelterbelt planting located along the Parallel Road boundaries of the site and within 10m of a powerline shall be maintained in perpetuity at a height of no greater than 3.5 metres.
- 8 Other than as required under Condition 2, the Cryptomeria shelterbelt planting located along all internal boundaries of the site shall be maintained in perpetuity at a height of 5.5 to 6 metres.
- 9 The Karo shelterbelt planting located along the western internal boundary with 598 Parallel Road shall be planted a minimum of 4m from the site boundary and shall be maintained at a height of 4.8 to 5 metres. Or alternative below
- 10 The shelterbelt planting located along the western internal boundary with 598 Parallel Road must comprise at least three rows of planting. The two rows of planting closest to the dwelling on 598 Parallel Road must comprise a mix of native species and may include Karo and are to be planted between 598 Parallel Road and the Casuarina shelterbelt. The Casuarinas will be planted a minimum of 4m from the site boundary and shall be maintained at a height of 4.5 to 5 metres. The Casuarina shelterbelt is to be left untrimmed on its eastern side and the planting is to achieve a dense, natural aesthetic.
- 11 The shelterbelt planting along the eastern boundary of 598 Parallel Road shall be planted a minimum of 4m from the boundary.
- 12 Any deadfall plants from the Cryptomeria shelterbelt within 5m of the modified ephemeral waterway shall be replaced and replanted within the first growing season following removal.

Note: This condition is to ensure no adverse effects from deadfall or sedimentation from uprooted plants on the modified ephemeral stream.

Shallow Gully Area

- 13 The consent holder must obtain consent from Waikato Regional Council with respect to the earthworks associated with the Shallow Gully Area prior to any construction works undertaken associated with installing the artificial shelter within 10 metres of the “Shallow gully area” defined on the approved plan.

Monitoring

- 14 The consent holder must notify the Waipa District Council enforcement team in writing within two weeks of the resource consents commencing .

Note: This advice should be emailed to:- consentmonitoring@waipadc.govt.nz.

Schedule 2

Advisory Notes

Resource Consent No: LU/0147/22 and LU/0252/22

- 1 This consent is granted by the Council subject to the Council's officers and/or agents being permitted access to the property at all reasonable times for the purposes of carrying out inspections, surveys, investigations, tests, measurements or taking samples.
- 2 Pursuant to Section 36 of the Resource Management Act 1991 the consent holder may be required to pay actual and reasonable costs incurred by the Waipa District Council when monitoring the conditions of these consents.
- 3 This consent does not absolve any responsibility of the consent holder to comply with the provisions of the Waikato Regional Plan.