

14 November 2022

LU/0147/22 Supplementary Planners Statement

INTRODUCTION

1. My full name is Louise Grace Cowan.
2. I am employed as a Principal Planning and Policy Consultant at 4Sight Consulting Limited (Part of SLR) based in Hamilton.
3. I hold a Bachelor of Resource and Environmental Planning from Massey University and have been employed as a planner within both the public and private sectors for 22 years. I have experience in the preparation and processing of applications for resource consent and have attended Environment Court Mediation and Environment Court proceedings acting on behalf of Ruapehu District Council and Waikato District Council respectively.
4. I have been engaged by Waipā District Council (“WDC”) to provide supplementary planning evidence in respect of a resource consent application (the Application/the Proposal) by Kiwifruit Investments Limited (the Applicant) for retrospective authorisation of existing orchard shelters and resource consent to enable construction of additional vertical and horizontal overhead orchard shelters (Shelter Structures), all located at 582 Parallel Road, Cambridge.
5. I declare that I have no conflict of interest regarding this work.
6. I have read the historical files and am familiar with the background of the Application, including limited notification of the Proposal and additional evidence supplied which resulted in the postponed hearing.
7. While I acknowledge that this hearing is not bound by the “Code of Conduct for Expert Witnesses” contained in the Environment Court Consolidated Practice Note 2014, I have nevertheless prepared my evidence in compliance with that Code, and I agree to comply with it throughout the hearing process.

8. The evidence that I give in these proceedings is within my area of expertise, except when I rely on the evidence of another witness or other evidence, in which case I have explained that reliance.

BACKGROUND

9. Following review of correspondence provided by Counsel for the Applicant, Counsel for the Submitter and Council's legal advisor, Alan Withy, Independent Commissioner, set down administrative directions within the Minute, dated 13 October 2022 that identified:

- a. The land use consent application lodged by Kiwifruit Investments Limited (the Applicant) to continue developing a kiwifruit block at 582 Parallel Road is scheduled to be heard by Commissioner Withy on Thursday 20 October 2022.
- b. The owners of neighbouring land at 598 Parallel Road, N and V Jennings (the Jennings), submitted in opposition to the Application and requested that they be heard on their submission at the hearing. Mr Lang, Counsel for the Jennings, wrote to the Council on 5 October 2022 advocating the need for the Applicant to also apply for resource consent under Rule 4.4.2.58 of the Waipā District Plan. The relevant parts of Rule 4.4.2.58 state:

Rule – Tree planting

No trees within a ... 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:

- a. 30m from any dwelling on an adjoining site...*

Activities that fail to comply with this rule will require a resource consent for a restricted discretionary activity...

WDC subsequently sought and obtained legal advice. That legal advice concurs with that of Mr Lang. WDC accepted that legal advice.

- c. To ensure all parties can 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 current application until such time as an additional application under Rule 4.4.2.58 has been prepared, lodged and progressed to the same procedural point as the current application.

- d. For that reason, pursuant to section 91 of the Resource Management Act 1991 the hearing date of 20 October 2022 for the current application was vacated. A new hearing date will be scheduled once a notification decision on the additional application is known.
10. An amended application was prepared by Barker and Associates and received by Council on 25th October 2022.
11. The amended application is discussed in greater detail below.
12. Additionally, LU/0252/22 being a retrospective land use consent for shelterbelt (cryptomeria) 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, was received by WDC on 19 October 2022. At the time of writing this report the recommendation in relation to LU/0252/22 is with the Independent Commissioner for consideration.
13. This supplementary statement will be considered concurrently with the section 42A report prepared by Marne Lomas for the original hearing scheduled for 20th October 2022. Discussion in the following statement will be limited to those changes proposed in the amended application, the scope of those changes, associated effects and my consideration of same.
14. A full discussion of the site, the submitters property, the entire proposal, associated history (and other consents) and full assessment against the Waipā District Plan and other statutory documents can be found in the original section 42A report. For efficiency this will not be repeated in this document.

SUMMARY OF PROPOSED CHANGES

15. The changes proposed in the amended application relate to the setback of the artificial horizontal and vertical kiwifruit shelters, and the consequential relocation of the Pittosporum shelter belts on the internal western and northern site boundaries adjoining the Jennings' property located at 598 Parallel Road.

16. The amended Application has increased the setback of the shelter structures from the internal boundary with 598 Parallel Road from a range of 6.0m – 8.99m to a range of 7.3-9.7m.
17. The Cryptomeria and Pittosporum shelter belts located on the western, northern and eastern internal boundaries, between 582 and 598 Parallel Road, where they are located 10m from the road frontage and power lines, have been planted in a complying location. See image 1 below.



Figure 1: Amended site plan showing the type of planting along the boundaries, the setbacks, and the setbacks of the artificial kiwifruit shelters.

18. Confirmation of the maximum height of Karo has been provided by the Applicant via an email from Amber Garden Centre located on Peake Road, Cambridge.
19. This Proposal does not include matters in relation to the non-complying shelter belt locations, within 10m of the road frontage, 10m of power lines and 5m of a water body, which are addressed within the separate, but concurrently occurring resource consent application LU/0252/22. It is noted within the section 42A report for LU/0252/22 regarding the non-complying shelter belts that the Applicant has offered a condition to ensure all shelter belts, including compliant Cryptomeria shelter belts will be maintained at a maximum height of 6m on all boundaries of the site.

20. The Applicant also provided amended elevation plans. Refer Figures 2 to 4 below.

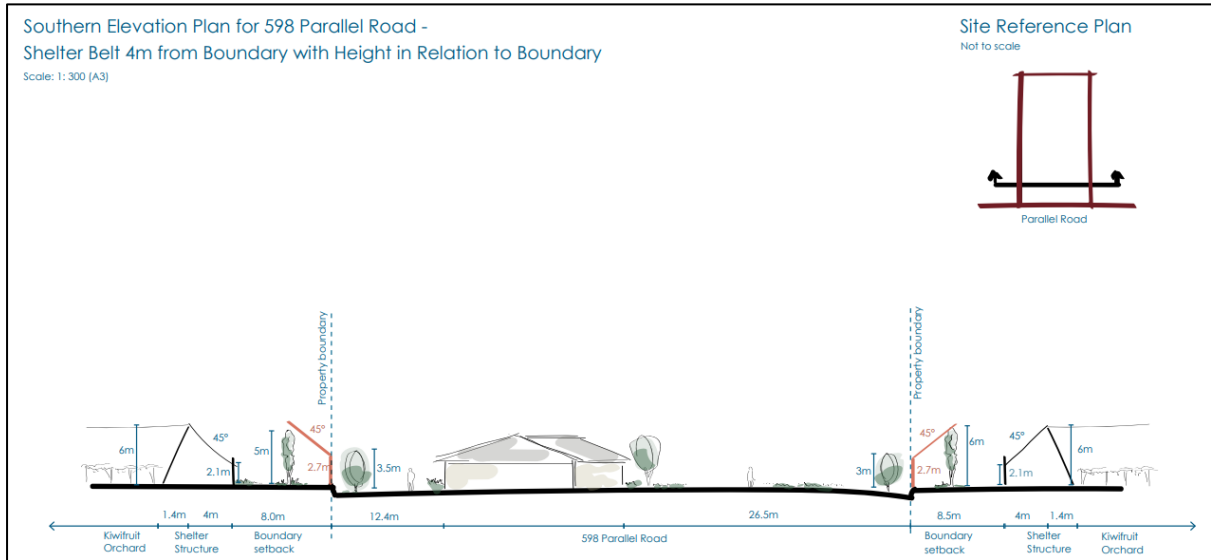


Figure 2: Southern Elevation Plan

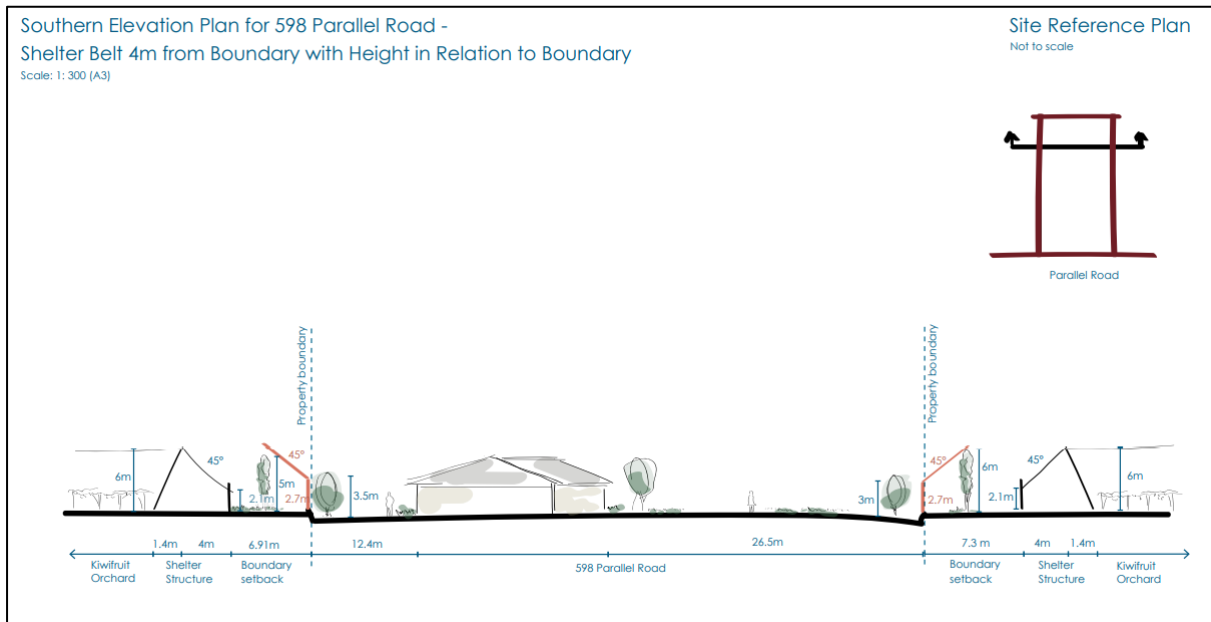


Figure 3: Southern Elevation Plan

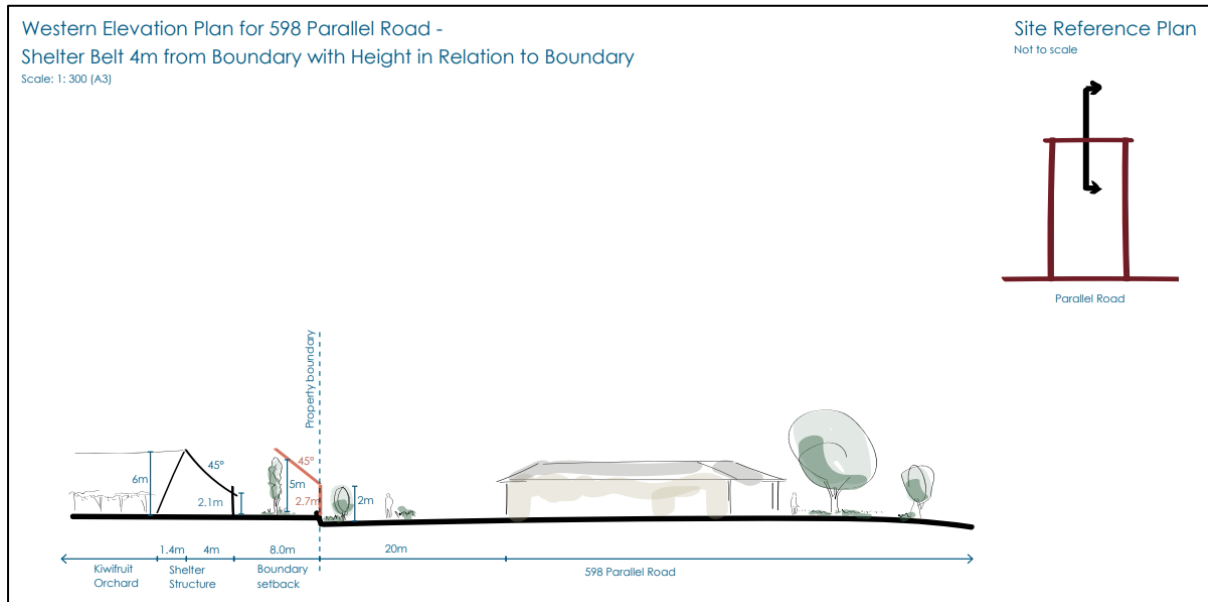


Figure 4: Western Elevation Plan.

SCOPE OF AMENDMENT

21. The amendment was provided to address and resolve the non-compliance with Rule 4.4.2.58 relating to the shelter belts adjoining the Jennings property. The amendment does not introduce any new non-compliances with the Waipā District Plan and does not increase any identified adverse effects on the Jennings property.
22. It is noted that the proposal as a whole consists of non-complying *Cryptomeria* shelterbelts along the road boundary, in proximity of existing power lines and within 5m of a waterbody. However, these non-compliances are being considered independently, but concurrently, with this amendment and application, under new land use consent LU/0252/22.
23. Therefore, I consider the proposed amendment is within the scope of the original application.

REVISED PLANNING ASSESSMENT

Permitted Baseline

24. For the purpose of clarification, I note that pursuant to Section 95D, a Council may disregard an adverse effect of the activity on the environment if the plan or a national environmental standard permits an activity with that effect (i.e. the Council may

consider the ‘permitted baseline’). The permitted baseline is a concept designed to disregard effects on the environment that are permitted by a plan, or have been consented to, with regard to determining both affected parties and the scale of the effects.

25. The Waipā District Plan provides for the following activities within the Rural Zone:
26. Shelter Belts (Rule 4.4.2.58)
- Shelter belts less than 6m in height at maturity.
 - Shelter belts that will be greater than 6m in height at maturity, provided they are no closer than:
 - 30m from any dwelling;
 - 30m from any boundary of the Residential Zone, Large Lot Residential Zone or Marae Development Zone;
 - 10m from any other road or railway;
 - 10m to a vertical line directly below an overhead power or telephone line; or
 - 5m from the edge of any lake or from the banks of any waterbodies.
27. These provisions are considered to be relevant considerations insofar as they relate to the permitted baseline. In this instance, the shelter belts adjoining the site at 598 Parallel Road comply with the requirements of Rule 4.4.2.58.
28. As such, the Applicant could, and in fact already has, planted shelter belts on their site which would generate a similar level of shadowing and screening effects, once the shelter belts reach maturity (5m naturally or 6m maintained height), as proposed by the shelter structures. It is acknowledged however that vegetated shelter belts have a different aesthetic to artificial screens and structures, but will result in a permitted “enclosure” of the Jennings property.

Daylight Control

29. Also of relevance, is the permitted baseline relating to daylight control, set out in Rule 4.4.2.12 of the District Plan. This rule restricts buildings from penetrating a recession plane at right angles to a boundary inclined upwards at an angle of 45 degrees from 2.7m above the ground, for the purposes of avoiding shading on adjoining properties.

30. The proposed shelter structures will not breach this daylight control provision. Of note, the elevation plans provided by the Applicant confirm that the permitted shelter belt planting, will also not breach the specified daylight control.

Horticulture Activity

31. The horticulture activity, being the kiwifruit orchard itself, is a permitted activity within the rural Zone. Non-compliances relate to the shelter structures and their built form only, not the kiwifruit orchard activity. Horticulture is an accepted and established use within the Rural Zone, which is generally characterised by rows of vines/trees with structural supports (wooden posts and wire). Shelterbelts or hedges are common and are utilised to provide protection from wind.

Assessment of Effects

32. The proposal is a Discretionary Activity, as such all relevant effects can be considered.
33. The Waipā District Plan does not recognise or provide for horticultural shelters as distinct from buildings. The applicable building setback for 'other buildings' over 250m² in area is 25m from internal site boundaries and 30m from road boundaries.

I concur with the finding in the original notification/section 42A in regard to effects on the wider environment as follows:

"...the reduction to the setbacks will not be noticeable to the wider environment over time, when the cryptomeria shelterbelt has reached maturity. The visual effects during this period until maturity is considered a temporary effect, as within a few years they would be over 3m in height which would be well above most people's sightline. Properties of a higher elevation further afield could experience some visual change, but it would not change the general rural nature of the landscape as a horticultural activity. Reduced setbacks also have the potential to impact on the wider character and amenity of the Rural Zone, which generally provides for greater separation of built form. In this instance, it is my opinion that the reduced setback is unlikely to significantly impact on the overall character and amenity of the rural environment as artificial screens are readily distinguishable from more permanent and solid built form, and are unlikely to be perceived in the same manner as a building. Further, setbacks are, in most cases, unlikely to be readily discernible to the general public due to the use of shelterbelts, which will largely screen the artificial screens."

34. Considering the permitted baseline assessment above, it is my opinion that the visual effects on the property at 598 Parallel Road from the shelter structures, will only be experienced for a period of between 3 to 5 years, being the period from initial planting of the shelter belts until they reach maturity. Once the permitted shelter belt plantings are sufficiently mature, they will provide screening of the shelter structures and fundamentally provide a permitted level of effect in relation to a reduction in the openness and character of the rural environment.
35. As I have no alternative evidence to the contrary, I accept the technical findings of Ms Soanes that the adverse effects of the shelter structure will be moderate to high on landscape and visual amenity from the Jennings’s property, however, I consider this is only insofar as it relates to the 3 to 5 years until the shelter plantings reach maturity.
36. As these plantings are a permitted activity, the appearance and “monotonous character” of the plant species is not a consideration. However, I do note that the Applicant has amended the species to be planted on the western and northern boundaries of the site to Karo.
37. I have included an image, in Figure 5, below of a Karo hedge from the website for Black Bridge Nurseries in Papakura.



Figure 5: Pittosporum Karo hedge from Black Bridge Nurseries website.

38. Conversely, the Karo will take longer to grow and will not grow as high as the cryptomeria, because of this, the Jennings will experience longer term visual effects of the shelter structures, than if the site had been surrounded with the faster growing Cryptomeria plantings.
39. Based on the evidence of Ms Soanes, I accept that the proposed shelter structures pose a moderate to high visual effect on the Jennings' property due to their location within the required setback on all three of the internal boundaries adjoining the site at 598 Parallel Road. This adverse effect will, however, only occur in the short-medium term (3 to 5 years), after which any visual effect will be less than minor given the permitted screening provided by the mature shelter belts.
40. It is also appropriate, under section 104(1) of the Resource Management Act 1991 (the Act) to have regard to the positive effects of the proposal. As noted in both the original section 42A report and Ms Williams evidence there are economic benefits from the proposal in the form of full time equivalent jobs, as well as the benefits associated with the use of the shelter structure to promote Kiwifruit growth up to 25% as well as reducing wind speed and air turbulence to avoid leaf rub damage within the canopy area.
41. However, I also concur with the evidence of Ms Davidson that the benefits afforded in relation to spray drift, are not something that should be considered, given this activity should be undertaken in a way that no significant adverse effects of off-target drift shall occur beyond the property boundary. This is consistent with the application of Rule 6.2.4.9 of the Waikato Regional Plan.

NATIONAL POLICY STATEMENT

42. 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.
43. For clarification I note that a transitional definition of highly productive land applies until Councils complete the process of mapping highly productive land at a regional level. This means land that is zoned General Rural or Rural Production 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.

44. 582 Parallel Road is identified as containing High Class Soils within Waipā District Council’s mapping system. It is my understanding the site contains almost all Class 1 or Class 2 soils.
45. The proposed shelter structures used to support Kiwifruit production at this particular site will be constructed on highly productive land.
46. I concur with Ms Williams assessment that the following definitions are relevant to this application:
- *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).*
47. This application is for accessory supporting structures to enable and support kiwifruit production utilising highly productive land. I also concur 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.*
48. 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*”.

49. I concur that the 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. For the above reasons, it is also my opinion, the proposal for the shelter structures is consistent with those relevant matters in the NPS – HPL.

WAIKATO REGIONAL POLICY STATEMENT (WRPS)

50. The following Issues, objectives and policies of the WRPS are of relevance to the application:

Issue SRMR-14 – Managing the built environment

Development of the built environment including infrastructure has the potential to positively or negatively impact on our ability to sustainably manage natural and physical resources and provide for our wellbeing.

While addressing this issue generally, specific focus should be directed to the following matters:

- 6. the effect of development on access to mineral resources (particularly aggregates), high class soils, and future energy development sites;*
- 10. the contribution of regionally significant industry and primary production to economic, social and cultural wellbeing, and the need for those industries to access natural and physical resources, having regard to catchment specific situations;*

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.

51. The proposal, in terms of use of the site for the kiwifruit orchard, is consistent with the above objectives and policies of the WRPS.

WAIPA DISTRICT PLAN

52. As identified in the original section 42A report, rural character is defined¹ by a number of elements, including;
- (a) areas of vegetation (in a natural state or managed, indigenous and/or exotic), such as pasture used for grazing stock, crops, forest and scrub, riparian stream margins, lakes and wetlands;*
 - (b) Open landscapes containing natural features and scenic vistas including flat to rolling terrain....that are largely free from development*
 - (c) Low density widely spaced built form, with dwellings and farm buildings dispersed in the wider landscape...*
53. Overall, the objectives, policies and rules of the Rural Zone (set out in full in the section 42A report) seek to find a balance between economically driven farming practice and amenity, landscape, biological, cultural and social values. It is noted that there is a need to protect the rural land resource, including high class soils (as with this site) from activities that are not directly reliant on these resources. But also acknowledging that farming and other rural based activities, including intensive farming can have adverse effects on rural amenity through the size and location of buildings and create potential adverse effects including noise, visual amenity, rural character or landscape effects, and odour that need to be carefully managed through controls on location, size and management practices.

¹ Within the Waipā District Plan, section 4.1.12

54. The Waipā District Plan also notes that the level of productivity in the rural environment can be compromised by the location of buildings (including dwellings), and other activities that are not related to rural production.
55. Specific objectives and policies in relation to rural character identify that land use activities should be at a density, scale, intensity and location to maintain rural character and that rural character and associated amenity values shall be maintained by ensuring rural land uses predominate in the Rural Zone, and buildings are of an appropriate scale and location.
56. The objectives and policies in relation to rural amenity – setbacks, confirms that buildings and activities should be set back from rear and side boundaries to maintain rural character and amenity and avoid reverse sensitivity effects.
57. Based on the technical evidence presented by Ms Soanes, it is my opinion that the proposed shelter structures will cause an adverse effect that is inconsistent with objectives and policies of the Waipā District Plan which relate to rural character and amenity for a period of 3 to 5 years.
58. Conversely, the Application is consistent with objectives and policies relating recognising and protecting the use of the rural environment for productive purposes.
59. As such, the proposal is considered to be consistent, in part, with objectives and policies of the Waipā District Plan.

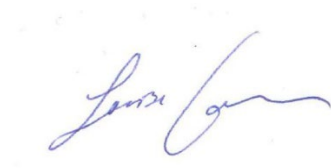
PART 2 OF THE ACT

60. It is my understanding that where there is no ambiguity in lower order planning documents, there is no need to refer back to Part 2 of the Act. However, one of the three caveats to this is where a lower order document does not 'cover the field'. Given the timing of the NPS-HPL and argument could be made that the lower order documents have been updated to give effect, in full, to the NPS-HPL.
61. On my reading of the objectives and policies of the WRPS and the Waipā District Plan, I consider that they are consistent with the direction provided by the NPS-HPL. However, in the event that it is useful to the Independent Hearing Commissioner, I note that I concur with the Part 2 assessment provided by Ms Lomas within section 16 of her original section 42A report that identifies the Application is consistent with the purpose and principles of the Act and the land use is an appropriate use of the subject site.

SUMMARY AND RECOMMENDATION

62. The proposal is consistent with the NPS-HPL.
63. The proposal is consistent with the relevant objectives and policies of the WRPS.
64. In the short-medium term (3 – 5 years) the proposed location of the shelter structures between 7.3m and 9m from the boundary of 598 Parallel Road are inconsistent with the objectives and policies of the Waipā District Plan insofar as they relate to rural character and amenity. I am reliant on expert advice in determining that the adverse effects on the Jennings's property, in the short-medium term, continue to be more than minor.
65. Following that period, the shelter structures will be screened by the permitted shelter belt, and, with consideration of the permitted baseline, any adverse effects associated with the shelter structures, insofar as they relate to the Jennings, will be less than minor.
66. I concur with the assessment within the original section 42A report insofar as I agree that adverse effects on the wider environment will be less than minor.
67. Conversely, the proposal will result in positive effects associated with economic benefits in the form of full time equivalent jobs, as well as the benefits associated with the use of the shelter structure to promote Kiwifruit growth up to 25% as well as reducing wind speed and air turbulence to avoid leaf rub damage within the canopy area.
68. Having regard to the relevant planning documents, including the national direction provided by the NPS-HPL not previously considered by the 42A reporting planner, the consistent approach to the relevant objectives and policies of lower order documents, outside of the factors of character and amenity and the level and duration of adverse effects likely to be experienced, I consider that all adverse effects can be appropriately mitigated and recommend that consent be granted.
69. I note this is a different position than that reached within the previous section 42A report.

70. Additionally, while it does not alter my overall recommendation, I have completed a review of the Proposal against Part 2 of the Act and consider that the purpose is better served through grant of the Application.



Louise Cowan
Consultant Planner