

Date:	9 th November 2022	App Number:	LU/0252/22
Reporting Planner:	Louise Cowan 4Sight Consulting	Site Visit on:	7 November 2022

Applicant:	Kiwifruit Investments Ltd
Property Address:	582 Parallel Road RD 3 Cambridge 3495
Legal Description:	Lot 3 DPS 89413 held in Record of Title SA70D/525
Site Area:	35.3283ha
Activity Status:	Restricted Discretionary
Zoning:	Rural Zone
Policy Area(s):	Hamilton Airport – Conical Surface Overlay Significant Natural Area – WP344
Proposal:	Land Use consent to establish Cryptomeria shelterbelts

1 INTRODUCTION

This application is 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. This consent application will be considered alongside LU/0147/22 which is a limited notified consent application for artificial kiwifruit shelters.

1.1 Description of site and surroundings

The site is located at 582 Parallel Road, Cambridge and 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 artificial kiwifruit shelters (referred to in this report as the ‘artificial shelters’), a 250m² processing building and a water retention pond (there are also multiple water bores around the site). 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.

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.

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 north west. 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).

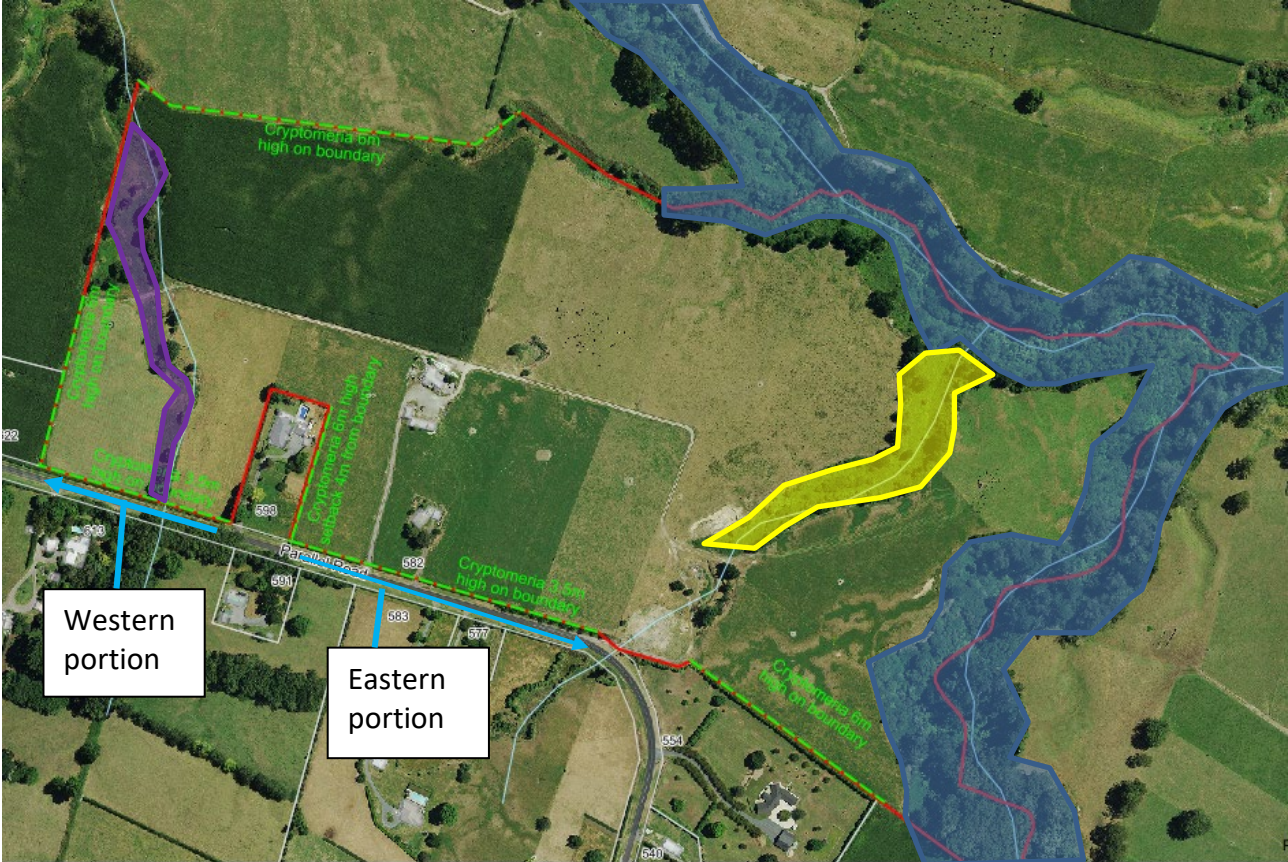


Figure 1: Aerial photograph of site taken from the application documents ("farm drain" shown purple, tributary shown yellow, boundary gully, tributary and SNA shown in blue), power lines fronting site shown pale blue.

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 gully's 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 were provided as Appendix 7 of the section 42A report prepared by Marne Lomas for LU/017/22.

Surrounding sites are rural, or rural residential in nature 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 use like dairy farms or grazing.

The site contains mature barberry hedging along the frontage of Parallel Road on the western side of the site. The shelterbelts have been planted along the frontage of Parallel Road on the eastern side of the site and in a line set back 4m from the eastern boundary of 598 Parallel Road. 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.

The property is sited within the Rural Zone of the Waipa District Plan (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. . The District Plan special features map indicates the site contains unstable soils on the eastern side of the property (refer Figure 4).

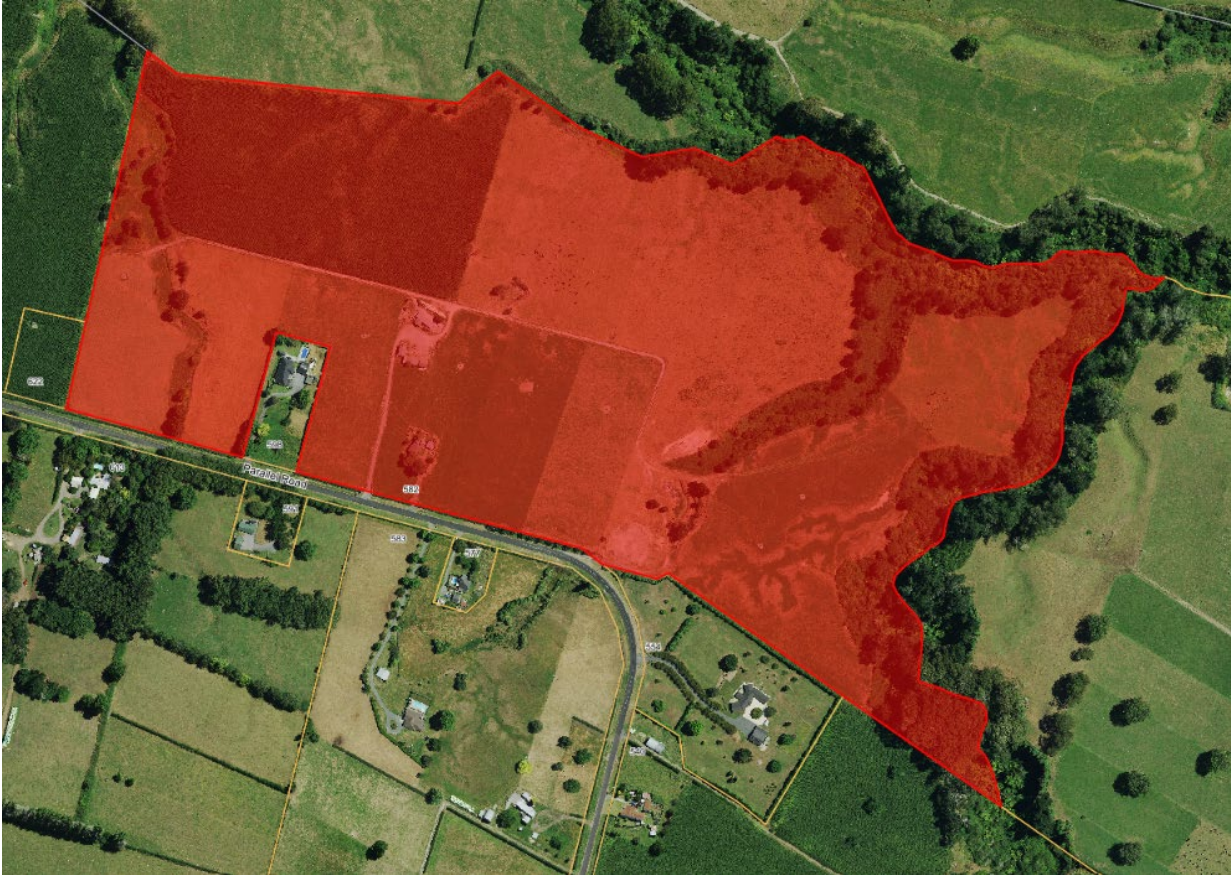


Figure 2: Aerial photograph of site (site shown in red)

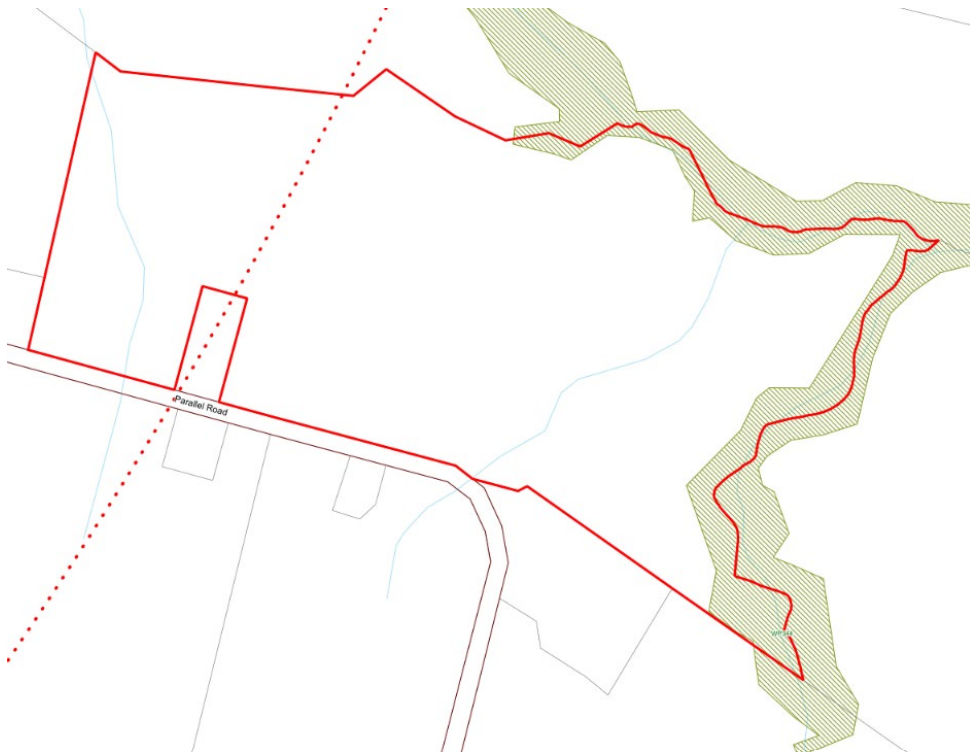


Figure 3: District Plan Zone & Policy Overlays ('Significant Natural Area' in green)

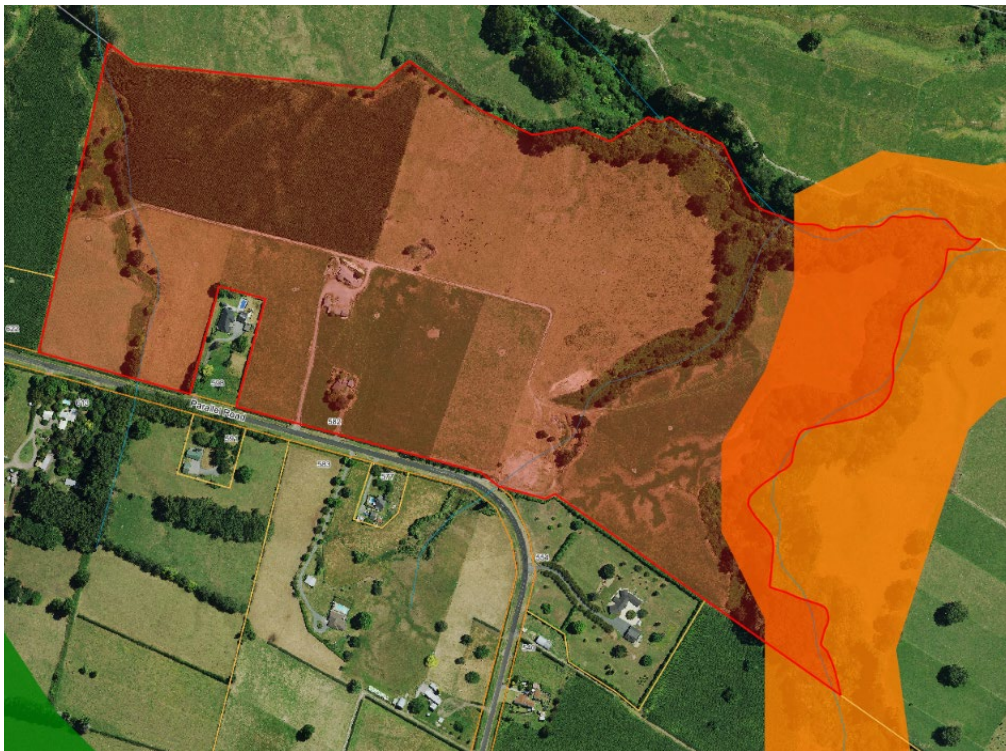


Figure 4: District Plan Special Features ('Unstable Land' in orange)



Figure 5: Site visit photo showing recently planted shelterbelts looking west along the eastern portion of Parallel Road, green line indicates the location of the base of the plants with the 11kv and 400v powerlines directly overhead.



Figure 6: Site visit photo showing recently planted shelterbelts looking east along the eastern portion of Parallel Road, green line indicates the location of the base of the plants with the 11kv powerlines directly overhead.



Figure 7: Site visit photo showing the plants proximity to the lines.



Figure 8: Site visit photo showing the proximity of the plants (green line) to the eastern boundary (approximate blue line) of 598 Parallel Road .



Figure 9: Proposed location of the shelterbelt along the western portion of Parallel Road looking west.



Figure 10: Proposed location of the shelterbelt along the western portion of Parallel Road looking east toward 598 Parallel Road.

1.2 Legal interests in the property

Table 1 below summarises the relevant interests on the existing title/s.

Title Reference	Legal Description	Size	Date Issued	Relevant Interests
SA70D/525	LOT 3 DPS 89413	35.3283ha	06 October 2000	<ul style="list-style-type: none"> ▪ Subject to an electricity supply right over part marked A on DPS 89413 specified in Easement Certificate B639048.1 - 14.12.2000 at 2.52 pm ▪ 12399865.1 Mortgage to Bank of New Zealand - 11.3.2022 at 3:22 pm

Table 1: Existing titles and interests

The above listed interests do not restrict the proposal from proceeding.

1.3 History

This property is subject to several consents and engineering applications, some with Waipa and some with Waikato Regional Council.

As it most relates to this application, LU/0147/22 is still going through the resource consent process. At the time of writing this report, the hearing for LU/0147/22 has been postponed pending the notification decision of this application which will be decided on by an independent commissioner. 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

Council subsequently sought and obtained legal advice. That legal advice concurs with that of Mr Lang. Council accepts that legal advice. Council are now applying Rule 4.4.2.58 at the time of planting, insofar as where the plant has the potential to grow over 6m and is within those setbacks, then consent must be sought.

In light of this, the hearing for LU/0147/22 was postponed and this separate application, in relation to retrospective consent for the planting of the shelterbelts as well as land use consent in relation to ongoing maintenance of the planted shelterbelts, was lodged.

1.4 Proposal

Pursuant to Section 88 of the Resource Management Act 1991 ('the Act'), Kiwifruit Investments Ltd have applied for a retrospective land use consent to plant shelterbelts inside the 10m road boundary setback of Parallel Road and land use consent to maintain these shelterbelts into the future.

Cryptomeria (Cryptomeria japonica "Egmont") is a standard plant species used for shelterbelts, they are an evergreen that grow hardy and thick. If left untrimmed, they have the potential to grow 30m high and 8m wide. They are resistant to frosts and strong wind, making them popular in the horticultural sector.

The proposal is to authorise existing Cryptomeria planting along with land use consent for some future Cryptomeria planting and maintenance of all the Cryptomeria plantings in the following locations:

- On the inside of the road boundary of Parallel Road, and maintained to a height of no greater than 3.5m; and
- 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
- 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
- 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.

The site also includes **compliant** Cryptomeria and proposed Cryptomeria in the other following locations:

- Planted at 4m off the eastern boundary of the property located at 598 Parallel Road. This portion of hedging 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;
- To be planted on the southern boundary of the site adjoining the property located at 554 Parallel Road. This portion of hedging 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
- To be planted on the western and north-western boundary of the property, including the boundary with 622 Parallel Road. This portion of hedging 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.

The Applicant has advised that all shelterbelts planted in compliant positions will be maintained to a maximum height of 6m. The Applicant has offered this as an agreed condition of consent. The maintained heights and location of the shelterbelt planting is depicted in Figure 11 below.



Figure 11: Proposed planting location and maintained heights.

2 REASON FOR THE APPLICATION

A land use consent as described under Section 87A of the Act is required for the reasons set out below.

2.1 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES)

These regulations came into force on 1 January 2012 and apply when a person wants to do an activity described in Regulation 5(2) to 5(6) on a piece of land described in Regulation 5(7) or 5(8). Following a review of the historical aerial photographs contained within Council's records, a HAIL activity does not appear to have been undertaken on the site. In accordance with Regulation 5(7), the site is not a 'piece of land' and consent is not required under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

2.2 Waipa District Plan Rule Assessment

An assessment of the proposal's compliance with the relevant rules of the District Plan has been completed. In summary, Table 2 below outlines the relevant rules relating to the proposed activity.

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;</p> <p>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>The cryptomeria have the potential to grow over 6m, and will be planted and maintained within 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>

Table 2: District Plan rule assessment

As outlined in the table above, the application is deemed to be a Restricted Discretionary Activity being the highest status indicated by the above rules.

3 STAFF COMMENTS

3.1 Development Engineering

Council’s Development Engineer, Yu Hu, has reviewed the application and notes the following points:-

“This Land-use consent is to establish Cryptomeria shelterbelts surrounding Lot 3 DPS 89413. This application runs in conjunction with LU/0147/22. The proposed works will provide a robust windbreak for a Kiwifruit orchard. There are 3 vehicle entrances along Parallel Road that directly access the site, there is 1 residential lot that has a north – east – west facing boundary to the site; this lot has 1 vehicle entrance to Parallel Road. There are no changes to services proposed within this application.

Overhead powerlines

It is noted that some sections of the proposed shelterbelt are in close proximity to overhead powerlines, recommendations regarding structures in proximity to overhead powerlines will be provided by Waipa Networks. The Planning Department has gone to Waipa Networks regarding this. It is not part of the DE's consideration.

Earthworks

NA – there are no earthworks proposed as part of this application. Therefore, no conditions are recommended.

Roading Pg 33

Parallel Road has a posted speed limit of 100km/h, classified as a low-volume secondary collector road; the ADT (Average Daily Traffic) on Parallel Road is 167 vehicles per day with 7% heavy vehicles according to the mobile road. The proposed hedging will not hinder the site sight visibility for road users, it is noted that the sight visibility of the corner on Parallel Road is not affected as the proposed hedges are on the outside of the corner. The temporary entrance at the corner is permitted under VC/0195/22.

The sightlines for entrance 598 Parallel Rd will not be affected. DE is satisfied effects caused by the proposed works are less than minor.

To ensure visibility is maintained the proposed Cryptomeria shelterbelts must be maintained to preserve existing sight distances from entrances and visibility. Therefore, no conditions are recommended.

Water supply

NA – No change in service requirements. Therefore, no conditions are recommended.

Wastewater

NA – No change in service requirements. Therefore, no conditions are recommended.

Stormwater

NA – No change in service requirements. Therefore, no conditions are recommended.

Foundations

NA – there are no further developments proposed within this application. Therefore, no conditions are recommended.

Conditions to be imposed:

No conditions are to be recommended for this land use.”

I concur with Ms Hu's comments.

3.2 Consultation with Waipa Networks

To corroborate the safety distances discussed in the application, consultation was undertaken with Waipa Networks to confirm the following information:

1. That they own and maintain the powerlines outside 582 Parallel Road.

It was confirmed that they own and maintain those lines.

2. That those lines are 11kv on top and 400v on bottom.

The voltage of the lines was confirmed.

3. The height of 400v lines along the road.

The minimum required height for 400v lines along or over a road is 5.5m.

4. As stated on their website, clearance required for 11kv lines is 1.6m (called the Growth Limit Zone) plus an additional 1m (called the Notice Zone) which is a guide of when trees will need to be trimmed before they reach the Growth Limit Zone.

5. Also on their website, clearance required for 400v lines is a 0.5m Growth Limit Zone and 1m Notice Zone.

This was confirmed by Waipa Networks and a snip of the legislation showing these parameters is provided as Figure 12 below.

Electricity (Hazards from Trees) Regulations 2003

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- Regulations 15(7) and 19(4) corrected on 6 August 2021 under section 25(1)(j)(iii) of the Legislation Act 2012.

Search within this secondary legislation

SEARCH

The screenshot shows the 'Electricity (Hazards from Trees) Regulations 2003' page. It includes a search bar, navigation tabs for 'By clauses', 'View whole (150KB)', and 'Versions and amendments'. The main content area displays the 'Schedule Growth limit zones' with 'Table 1' titled 'Distances for spans less than and equal to 150 metres in length'. The table lists voltage levels and their corresponding distances in metres. The values for 11 kV (1.6) and 400-230 v (0.5) are highlighted in green.

Voltage of conductors other than aerial bundled conductors or conductors insulated by other means	Distance in any direction from any point on conductor (metres)
66 kV or greater	4
50 kV to 66 kV	3
33 kV	2.5
11 kV	1.6
400-230 v	0.5

Figure 12: Snip of Growth Limit Zones from Electricity (Hazards from Trees) Regulations 2003.

This confirms the Applicant's statement that the proposed height of the shelterbelts is safe and consistent with guidelines and legislation. It is also noted the Applicant could grow the shelterbelts,

insofar as this relates to the above legislation, to a height of 5m before encountering the 0.5m Growth Limit Zone of the 400v lines.

4 ASSESSMENT FOR THE PURPOSE OF PUBLIC NOTIFICATION

4.1 Adequacy of information

It is my opinion that the information contained within the application is substantially suitable and reliable for the purpose of making a recommendation of and decision on notification. The information within the application is sufficient to understand the characteristics of the proposed activity as it relates to provisions of the District Plan, for identifying the scope and extent of any adverse effects on the environment, and to identify persons who may be affected by the activity's adverse effects.

4.2 Mandatory Public Notification - Section 95A(2) & (3) – Step 1

Council must publicly notify the resource consent where:

- a) it has been requested by the Applicant; or
- b) a further information request has not been complied with or the Applicant refuses to provide the information pursuant to Section 95C; or
- c) the application has been made jointly with an application to exchange recreation reserve land under Section 15AA of the Reserves Act 1977.

In this instance, none of the above situations apply, therefore public notification is not required under Section 95A(2) and 95A(3).

4.3 Public notification precluded – Section 95A(5) – Step 2

The application is for a resource consent for one or more activities and there are no rules in a National Environmental Standard or the District Plan relevant to this proposal that preclude public notification.

The application is for a resource consent for one or more of the following:

- a) Controlled activity;
- b) A restricted discretionary, discretionary, or non-complying activity, but only if the activity is a boundary activity;

As the application is one of the above activities, the application is not precluded from public notification.

4.4 Public notification required in certain circumstances – Section 95A(8) – Step 3

Council must publicly notify the resource consent where:

- a) The application is for a resource consent for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification; or
- b) The consent authority decides, pursuant to Section 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor.

In this instance, public notification is not required by a rule or a national environmental standard. Refer to Section 4.5 and 4.6 of this report for Council's assessment of the effects.

4.5 Effects that may or must be disregarded – Section 95D(a), (b), (d) and (e)

Pursuant to Section 95D, if a rule or national environmental standard permits an activity with that effect the adverse effect of that activity may be disregarded.

4.5.1 Permitted Baseline

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 who is affected and the scale of the effects.

The District Plan provides for a shelterbelt to be planted 10m from any road boundary or powerline and 5m from any waterbody, as the proposal is for shelterbelts underneath a powerline, adjoining the road boundary and within 5m of a waterbody the permitted baseline is of limited relevance to the activity for which consent is sought.

However, any adverse effects of any complying *Cryptomeria* shelterbelt planting will be disregarded in the following assessment. But for the purpose of clarification it is noted that as there is no dwelling located on the site at 622 Parallel Road, there is no applicable boundary setback within Rule 4.4.2.58 in relation to this site, and the planting of a shelterbelt can occur directly on the boundary as a permitted activity.

4.5.2 Receiving Environment

In assessing the potential adverse effects on the environment the receiving "environment" for effects must be considered.

The receiving environment is a mandatory consideration defined by caselaw and is the environment beyond the subject site upon which a proposed activity might have effects. This includes the future state of the environment upon which effects will occur, including:

- The environment as it might be modified by the utilisation of rights to carry out permitted activities; and

- The environment as it might be modified by implementing resource consents that have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.

In this instance, the property is located in a rural area surrounded by a mixture of rural and rural-residential development. Many of the properties contain existing rural based activities such as dairy farming, dry stock and cropping activities. There are numerous existing hedgerows of varying species and heights on a number of properties adjoining the site, along with various roadside amenity planting. These activities form part of the receiving environment.

4.5.3 Land excluded from the assessment

For the purpose of assessing an application to establish whether public notification is required, effects on owners and occupiers of the subject site and adjacent sites, and persons whom have given written approval **must** be disregarded. The adjacent properties to be excluded from the public notification assessment are listed in Table 3 and shown in Figure 13 below.

ID#	Street Address	Legal Description	Owner
1	434 Parallel Road RD 3 Cambridge 3495	Lot 1 DP 29006	Carole Anne Searle, John Walter Searle
2	540 Parallel Road RD 3 Cambridge 3495	Lot 2 DP 441420	Accounted4 Trustees (2017) Limited, Lesley Helen Brighthouse, Michael Robert Brighthouse
3	554 Parallel Road RD 3 Cambridge 3495	Lot 1 DP 441420	Brian Edward Harvey, Linda Maree Harvey
4	583 Parallel Road RD 3 Cambridge 3495	Lot 3 DP 332750	Kaipaki Farms Limited
5	577 Parallel Road RD 3 Cambridge 3495	Lot 1 DP 332750	Paul Barry Mellar, Tracey Marie Mellar
6	613 Parallel Road RD 3 Cambridge 3495	Lot 2 DP 333400	Dorothy Mary Higgins, Raymond Edward Higgins
7	591 Parallel Road RD 3 Cambridge 3495	Lot 1 DP 333400	Evans Doyle Trustees Limited, Kelly Maree Higgins, Thomas Edward Higgins
8	598 Parallel Road RD 3 Cambridge 3495	Lot 1 DPS 89413	Nicholas Brant Jennings, Vanessa Lee Jennings
9	622 Parallel Road RD 3 Cambridge 3495	Lot 3 DP 532090	Accounted4 Trustees (2017) Limited, Lesley Helen Brighthouse, Michael Robert Brighthouse
10	626 Parallel Road RD 3 Cambridge 3495	Lot 1 DP 532090	Accounted4 Trustees (2017) Limited, Lesley Helen Brighthouse, Michael Robert Brighthouse
11	82 Speake Road RD 3 Cambridge 3495	Lot 3 DP 514679	Accounted4 Trustees (2017) Limited, Lesley Helen Brighthouse, Michael Robert Brighthouse

Table 3: Properties excluded for purposes of public notification assessment



Figure 13: Adjacent properties map (Subject site highlighted in red)

No written approvals were provided with the application.

4.6 Assessment of Adverse Environmental Effects – Section 95D

Part 2 of the Act explains the purpose is to “*promote the sustainable management of natural and physical resources*”. In addition, it is noted the meaning of ‘effect’ is defined under the Act as:

*In this Act, unless the context otherwise requires, the term **effect** includes—*

- (a) any positive or adverse effect; and*
- (b) any temporary or permanent effect; and*
- (c) any past, present, or future effect; and*
- (d) any cumulative effect which arises over time or in combination with other effects — regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*
- (e) any potential effect of high probability; and*
- (f) any potential effect of low probability which has a high potential impact.*

With the definition of ‘effect’ in mind, it is considered appropriate to further examine the effects of the proposed activity relating to effects on adjacent properties, infrastructure, and tree falling effects.

A comprehensive assessment of effects is included in Section 6 of the application. In accordance with Section 42A(1A) and (1B) of the Act I wish to generally adopt the Applicant’s assessment and provide the additional commentary below.

4.6.1 Effects on rural character and amenity

The Act defines amenity values as *“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”*.

The rural zone accommodates productive rural activities, including agriculture, horticulture and forestry. It has a character and amenity which is consistent with the working nature of the zone, and is generally characterised by large area of open space with dispersed built form. It is noted however, that rural character and amenity also includes horticulture as an accepted and established use of the zone, which is generally characterised by rows of vines/trees with structural supports (wooden post and wire). Shelterbelts are common and artificial screens are at times utilised to provide additional protection.

The future growth of the proposed shelterbelts is intended to screen the subject site and the proposed artificial shelter development, which is the subject of a separate consent, council reference LU/0147/22, from surrounding rural-residential properties and road users.

It is noted that the shelterbelts will be located immediately adjacent (inside) the road boundary of the site, in close proximity to existing power lines and within 5m of the existing modified ephemeral stream (identified as purple within Figure 1). The shelterbelts will be maintained at a maximum height of 3.5m along the road frontage, which is also adjacent the power lines, and will be a maximum of 6m at all other locations within the site, including complying locations, as offered as a condition of consent by the Applicant.

It is noted that it takes approximately three years from initial planting¹ for *Cryptomeria japonica* “Egmont” to reach a maturity and thickness which is effective as a shelterbelt. As such I consider there will not be an immediate visual effect from the planting of the shelterbelt, given the relatively low height of the plants on initial potting out. The effects will occur gradually over a space of three years, following ongoing growth.

In this instance, it is my opinion that on maturity of the shelterbelt the reduced setback is unlikely to impact on the overall character and amenity of the Rural environment when viewed from public spaces, specifically as 3.5m high shelterbelts are unlikely to be discerned differently by the general public from similar uses such as existing barberry hedgerows which are used extensively within proximity of the site, or amenity/garden planting used to screen rural-residential properties. The visual appearance of the shelterbelt will be a vegetated expanse interspaced with openings for vehicle crossings along with an open unplanted area on the sweeping Parallel Road corner. This will be consistent with the reasonable expectations around vegetation used for defining boundaries, windbreaks or screening within the surrounding rural environment. It is also noted that compliant shelterbelts will also be maintained at a maximum height of 6m, and these will mostly be in a position perpendicular to the road, and only viewed on an intermittent basis by passing traffic.

¹ *Cryptomeria Japonica* “Egmont” which is intended for use at this site has a growth rate of 2m per year in New Zealand in good growing conditions – meaning approximately 3 years to obtain a hedged height of 3.5m.

Overall, the adverse effects on the wider environment with regard to the character and amenity will be less than minor.

4.6.2 Effects on infrastructure and utilities

Traffic and the effects on the roading network are an instrumental part of the District Plan direction to ensure an integrated approach to land use and transport. At a local scale, the integration of new activities needs to ensure that the roading network can continue to function in a safe and efficient manner.

The proposal provides for the establishment of a shelterbelt up to 3.5m high adjoining the road frontage. This has the potential to impact on traffic safety, due to the blocking of sight lines.

My observations on site were that a wide road verge (4m to 6m) provides for safe sight distances in relation to existing vehicle crossings, and neither the existing hedgerows nor the proposed shelterbelt planting, on reaching maturity, will impact traffic safety. Given the height of the shelterbelt on the road front is restricted to 3.5m the effects of shading will be limited in duration and extent on any given day.

The proposed shelterbelts have been reviewed by Council's Development Engineer who is happy that the proposal will not cause any risk to road users or obscure sightlines for Parallel Road users.

Waipa Networks has confirmed that the proposed height of the shelterbelts is within a safe distance and will not be a risk to the network. 400v lines have to be 5.5m or higher along roads, which leaves 2m of room between the shelterbelts and the lines insofar as it relates to the regulatory requirement and compliance with Electricity (Hazards from Trees) Regulations 2003.

Overall, it is concluded that any adverse effects on the roading network as a result of this proposal will be less than minor.

4.6.3 Effects on waterbodies / tree falling

The identified waterbody on Council's planning maps has been confirmed through ecological assessment as a modified ephemeral waterbody (identified as purple within Figure 1), which has been heavily modified and straightened.

The current state and ecological value of the water body is very low, with vegetation consisting of weedy pasture. In the rare event that planting within the shelterbelt may fall, the greatest impact would be the possibility of earth and sediment being ripped up by the roots of the trees. The additional risk of earth and sediment in the waterbody from a tree fall is negligible given that the shelterbelt will be newly planted and stable, while being actively maintained for the purpose of shelter. Conditions can be included to require removal and tidying of any deadfall within 5m of the waterway.

Overall, it is concluded that any adverse effects on the waterbody as a result of this proposal will be less than minor.

4.6.4 Summary of Effects

Overall it is concluded that any adverse effects of the proposal will be less than minor. On this basis the adverse effects are below the more than minor threshold and the proposal does not require public notification.

4.7 Special Circumstances – Section 95A(9) – Step 4

Council must make a determination as to whether special circumstances exist in relation to the application that warrant public notification of the application and publicly notify an application if it considers that special circumstances exist. In effect, special circumstances ‘trumps’ other notification provisions. Special circumstances have been defined as circumstances that are unusual or exceptional, but may be less than extraordinary or unique. Special circumstances provide a mechanism for public notification of an application which may otherwise appear to be routine or uncontentious or minor in its effects.

The purpose of considering special circumstances requires looking at matters that are beyond the plan itself. The fact that a proposal might be contrary to the objectives and policies of a plan is not sufficient to constitute special circumstances. Special circumstances must be more than:

- where a Council has had an indication that people want to make submissions;
- the fact that a large development is proposed; and
- the fact that some persons have concerns about a proposal.

In this instance, the proposal is not considered to have unusual or exceptional circumstances warranting public notification.

4.8 Summary of Public Notification Assessment

Pursuant to Section 95A, the application has been assessed to determine if public notification is required. In this instance, and for the reasons outlined in Sections 4.1 to 4.7 above, it is not considered that the proposal warrants public notification. For this reason the application is required to be assessed pursuant to Section 95B for limited notification.

5 ASSESSMENT FOR THE PURPOSES OF LIMITED NOTIFICATION

Pursuant to Section 95B(1), where a consent authority decides that public notification is not required under Section 95A of the Act, an assessment is required to determine whether limited notification of an application is required.

5.1 Affected Customary Rights or Marine Title Groups – Section 95B(2)- Step 1

The property subject to this application is not within a protected customary rights group area or a customary marine title area as defined by the Marine and Coastal Area (Takutai Moana) Act 2011.

5.2 Statutory Acknowledgment Area – Section 95B(3) – Step 1

Pursuant to Section 95B(3)(a), the Council is required to determine whether the proposed activity is on, or adjacent to, or may affect, land that is the subject of a statutory acknowledgment made in accordance with an Act specified in Schedule 11. The property subject to this consent is not within (or adjacent to, or may affect) Ngāti Hauā/Ruakawa / Ngāti Koroki Kahukura Statutory Acknowledgement Area.

Based on the above assessment, the proposal will not have potential adverse effects that are minor or more than minor on Ngāti Hauā, Ngāti Koroki Kahukura, Raukawa.

5.3 Limited Notification Precluded in Certain Circumstances – Section 95B(6) – Step 2

There are no rules in a National Environmental Standard or in the District Plan relevant to this proposal that preclude limited notification (Section 95B(6)(a)).

The application is not a controlled activity requiring consent under the District Plan (Section 95B(6)(b)).

There are no circumstances relevant to this proposal that preclude limited notification under Section 96B(6) (Step 2).

5.4 Certain other affected persons must be notified – Section 95B(7) – Step 3

Step 3 required Council to determine whether, in accordance with Section 95E whether the following persons are affected:

- In the case of any other boundary activity, an owner of an allotment with an infringed boundary.

The proposal is not a boundary activity (Section 87AAB), so there are no owners of with an infringed boundary that are affected, so there are no parties to notify in this report.

5.5 Assessment of adversely affected persons - Section 95B(8) – Step 3

Assessment is now required under Section 95B(8) to determine whether a person is an affected person in accordance with Section 95E. Under Section 95E, a person is an affected person if the consent authority decides that the activity's adverse effects on a person are minor or more than minor (but are not less than minor).

The following provides an assessment of the adverse effects on the potentially affected persons.

5.5.1 Properties 1-11

The proposed shelterbelts are located at a complying distance from all existing adjoining dwellings (over 30m). There will be some visual effects from the roadside shelterbelt, but these are consistent with what can be expected from the Rural Zone, and as confirmed by Council's Development Engineer, will not obscure sightlines when entering or exiting any sites along Parallel Road, including Properties 3 to 9.

Property 9 is currently vacant of development (at the time of writing this report no building or land use consent has been lodged). As there is no dwelling on 622 Parallel Road, no specific setback, in relation to matters identified within Rule 4.4.2.58 apply and the shelterbelt proposed in this location is a permitted activity. Although the location of the shelterbelt adjoining 622 Parallel Road is included in this consent, and it will be subject to maintenance of a maximum height of 6m as agreed by the Applicant, it will have been legally established at the time of any future development on 622 Parallel Road. As such any effects of the shelterbelt will form part of the existing environment, when considering additional activities on the site at 622 Parallel Road.

Regardless of the above, it is noted that shelterbelts are consistent with the receiving environment, are common in the rural zone, and will be along only one internal boundary of 622 Parallel Road, being the eastern boundary, as such sunlight coming from the north will not be impacted.

As advised by the Applicant all shelterbelts will be maintained at 3.5m high along the road front and 6m in all other locations (including complying locations) this will ensure that any effects in relation to shading will be managed to an level that is less than minor.

Overall, effects to adjoining properties are less than minor.

5.5.2 Summary of Assessment

Based on the above assessment, the proposal will not have adverse effects that are minor or more than minor on the owners and occupiers of the above properties.

5.6 Special Circumstances – Section 95B(10) – Step 4

Pursuant to Section 95B(10), the Council must limit notify an application, to any other persons not already determined to be eligible for limited notification, if it considers that special circumstances exist in relation to the application. The reasons set out in Section 4.7 above are also relevant here and are not repeated. It is my opinion that there are no special circumstances applicable that would warrant the application being notified to any persons.

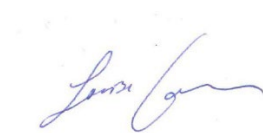
5.7 Summary of Limited Notification Assessment

Pursuant to Section 95B, the application has been assessed to determine if limited notification is required. In this instance, and for the reasons outlined in Sections 5.1 to 5.5 above, it is not considered that the proposal warrants limited notification.

6 SECTION 95 NOTIFICATION RECOMMENDATION AND DECISION UNDER DELEGATED AUTHORITY

Pursuant to section 95 A & B application LU/0252/22 for a Restricted Discretionary Activity shall proceed on a **Non Notified** basis for the reasons discussed above in Section 1 to 5.

Reporting Officer:



Louise Cowan

Consultant Planner

Dated: 8th November 2022

Reviewed for Release By:



Quentin Budd

Consents Team Leader

Dated: 10 November 2022

The following 104 assessment is made if the Independent Commissioner agrees with my recommendation not to notify this application.

7 SECTION 104

A decision was made under Section 95A and 95B of the Act to process the application on a non-notified basis. An assessment of and decision on the application under section 104 of the Act is provided below.

7.1 Section 104(1)A - Actual and Potential effects on the environment

7.1.1 Effects Disregarded

Pursuant to Section 104(2), when forming an opinion for the purposes of Section 104(1)(a) a council may disregard an adverse effect of the activity on the environment if the plan or a NES permits an activity with that effect (i.e. a council may consider the “permitted baseline”).

The “permitted baseline” was discussed in Section 4.5.1 of the approved notification report (being a component of this combined report). This discussion and conclusion is also relevant for the purposes of the assessment under Section 104(1)(a). In summary, it was concluded that the permitted baseline is not a relevant comparison for this application, except in relation to the permitted *Cryptomeria* shelter planting.

Pursuant to Section 104(3)(a), when forming an opinion for the purposes of Section 104(1)(a) a council must not have regard to any effect on a person who has given written approval to the proposal, nor any trade competition or effects of trade competition. No written approvals have been provided with the application.

7.1.2 Actual and Potential Effects

The assessment of adverse effects in the approved notification report is also relevant for the purposes of the assessment required under Section 104(1)(a). In summary it was concluded overall that any adverse effects of the proposal will be less than minor. On this basis, the actual and potential effects of the proposal are acceptable and can be avoided, remedied or mitigated through the imposition of conditions.

7.2 Section 104(1)(b) – Relevant Provisions

7.2.1 National Directions

National Policy Statement – Highly Productive Land

Regional councils and territorial authorities must identify highly productive land, and manage the effects of subdivision, use, and development of highly productive land, in an integrated way, which means:

- (a) considering how land-based primary production, including supporting activities, interact with freshwater management at a catchment level; and*

- (b) providing co-ordinated management and control of the subdivision, use, and development on highly productive land across administrative boundaries within and between regions; and*
- (c) taking a long-term, strategic approach to protecting and managing highly productive land for future generations.*

This application is to support a rural zoned horticultural activity located on highly productive land by providing a wind break and an additional barrier to spray drift. It is consistent with the objective and policies outlined in the NPS-HPL.

The application is not considered to be contrary to any other National Directions that require consideration under the Resource Management Act.

7.2.2 Waikato Regional Policy Statement and Regional Plan

The proposal is consistent with the relevant provisions of the Waikato Regional Policy Statement and the proposed land use will not affect any of the relevant provisions of the Regional Plan.

7.2.3 Waipa District Plan – Objectives, Policies and Assessment Criteria

Objective - Rural activity: shelterbelts, woodlots, and commercial forestry

4.3.3 To ensure commercial and/or woodlot forestry and shelterbelts do not have an adverse effect on the environment, the amenity of adjacent properties, or on infrastructure such as roads, railway lines, electricity transmission and distribution lines, and boundary fence lines.

Policy – Shelterbelts

4.3.3.4 To manage the location and height of shelterbelts to avoid adverse effects of shading on adjacent sites and adverse effects on infrastructure including electricity lines.

Objective 4.3.3 and Policy 4.3.3.4 highlight the need for shelterbelts to maintain amenity and not have effects on neighbouring sites or infrastructure. This proposal will not have effects on infrastructure as the shelterbelts adjoining the road frontage and located in close proximity to the power lines will be limited to 3.5m high. The safe operation of the lines has been confirmed with the electricity provider and mitigation agreed with the road controlling authority. The proposal is consistent with this objective and policy.

In addition to the above it is noted that the Applicant has volunteered that shelterbelts in all other locations within the site, including complying locations will be maintained to a maximum height of 6m. This will ensure that any potential effects on rural amenity or adjacent owners from all shelterbelts within the site will be appropriately mitigated.

The application is required to be considered against criteria contained in 21.1.25.11 of the District Plan. The criteria and my comments are set out below.

(a) The extent to which the shelterbelt might block views to landscape features from viewshafts.

(b) The height the proposed species within the shelterbelt could potentially grow to.

(c) The extent to which the shelterbelt responds to the guidelines in Appendix DG7.

(d) The extent to which the shelterbelt is visible from a public place.

The proposal does not block any views to landscape features as identified within the District Plan. The Applicant has agreed to the imposition of conditions requiring maintenance to restrict the overall height of the shelterbelt planting to 3.5m on the road boundary and 6m throughout the remainder of the site, including complying locations. Subject to compliance with conditions there will be no adverse effects created by the height of the shelterbelt. As noted previously although the shelterbelt will be visible from a public space it will not be inconsistent with the character, amenity and nature of the everyday uses located within the surrounding rural environment.

7.3 Section 104(1)(c) – Other Matters

7.3.1 Tai Tumu, Tai Pari, Tai Ao – Waikato Tainui Iwi Environmental Management Plan

Tai Tumu, Tai Pan, Tai Ao purpose is to enhance collaborative participation between Waikato Tainui and agencies in resource and environmental management. It provides high level guidance on Waikato Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment. The plan highlights the need for enhancement and protection of landscape and natural heritage values. Site management protocols ensure a precautionary approach to managing (known or undiscovered) wahi tapu sites and taonga tuku iho discovery. Adequate control of sediments and erosion prevention are target areas to improve water quality. Methods that Waikato Tainui support are the development of erosion and sediment control plans and input into monitoring of those plans (21.3.1.2 a) and b)).

The property is within the Waikato Tainui Joint Management Agreement Area and therefore the provisions of the Tai Tumu, Tai Pari, Tai Ao are relevant. There is nothing in the application that will conflict with the desired outcomes of Tai Tumu, Tai Pan, Tai Ao , accordingly, I consider the proposal to be consistent with the plan.

7.3.2 Te Rautaki Tamata Ao Turoa o Haua — Haua Environmental Management Plan

Te Rautaki Tamata Ao Turoa o Haua explains the importance of communication between local authorities and Ngati Haua in terms of keeping the Iwi Trust informed about projects, providing a feedback loop and opportunity for relationship building. The plan clearly outlines that engagement is expected for earthworks activities and that the Iwi seek opportunities to participate in consent and site monitoring and restoration projects.

The property is within the Ngati Haua Area of Interest and therefore the provisions of Te Rautaki Tamata Ao Turoa o Haua are relevant. There is nothing in the application that will conflict with the

desired outcomes of Te Rautaki Tamata Ao Turoa o Haua accordingly, I consider the proposal to be consistent with the plan.

7.3.3 Te Rautaki Taiao a Raukawa — Raukawa Environmental Management Plan

Te Rautaki Taiao a Raukawa provides a statement of Raukawa values, experiences, and aspirations pertaining to the use and management of the (their) environment. It is considered as a living and practical document that provides guidance on proactive, effective engagement in shaping current and future policy, planning processes, and resource management decisions.

The property is within the Raukawa Area of Interest and therefore the provisions of Te Rautaki Taiao a Raukawa are relevant. There is nothing in the application that will conflict with the desired outcomes of Te Rautaki Taiao a Raukawa accordingly, I consider the proposal to be consistent with the plan.

7.3.4 Treaty Settlement Acts – Areas of Interest (AOI)

The property subject to this consent is within Ngati Haua/Ruakaw/ Ngati Koroki Kahukura Deed of Recognition Area, and within Ngati Haua, Ngati Koroki Kahukura and Raukawa Areas of Interest.

The application was circulated to Ngāti Hauā, Ngati Koroki Kahukura, Raukawa as well as being referred to the Ngaa Iwi Toopu o Waipa iwi representatives. Ngāti Hauā, Ngati Koroki Kahukura, Raukawa have provided their written confirmation they have no concerns with the application. Therefore for this reason, the proposal is considered to not be contrary to the cultural, spiritual, historical, and traditional association of Ngāti Hauā, Ngati Koroki Kahukura and Raukawa with this identified area.

7.3.5 Council Bylaws

The following Council bylaws have been reviewed and considered with regard to the proposed development:

- Stormwater Bylaw 2019;
- Wastewater Drainage Bylaw 2011; and
- Water Supply Bylaw 2013.

The Stormwater Bylaw 2019 outlines the requirements with regard to open drains existing in the Waipa District which are important components in the stormwater disposal system. The 'Protection of Land Drainage systems' of this Bylaw sets out controls designed to ensure that these open drains are not obstructed or restricted in any way. The stormwater section of the Bylaw applies to stormwater drainage from both domestic and trade premises connected to the Waipa District Council public stormwater drain. As the proposal does not seek to discharge to the open stormwater drain, an approval or authority will not be required under this Council Bylaw.

The Wastewater Drainage Bylaw 2011 outlines requirements with regard to wastewater drainage from both domestic and trade premises to the Council's wastewater system. As the proposal does not seek to connect to Council's wastewater reticulation network, an approval or authority will not be required under this Council Bylaw.

The Water Supply Bylaw 2013 applies to any person being supplied with, or who has made an application to be supplied with, water by the Council, and promotes the efficient use of water and protecting against waste or misuse of water from the water supply system and the management and protection of infrastructure associated with the water supply network. Under this Bylaw a written application is required to Council in order to establish new water connections. No new connection is required.

8 PART 2 MATTERS

Section 104 of the Act is subject to Part 2 as follows:

- Section 5 outlines the Act's purpose, the basic principle of which is sustainable management.
- Section 6 outlines matters of national importance, and none of sub sections (a) to (h) are relevant to this case.
- Section 7 outlines the other matters for consideration. The only matters of relevance are:
 - “(c) *The maintenance and enhancement of amenity values;*
 - “(f) *Maintenance and enhancement of the quality of the environment*”
- Section 8 concerns the principles of the Treaty of Waitangi.

Having had regard to the relevant matters in Section 104, a broad overall judgment needs to be made as to whether the purposes of the Act is better served by the granting or declining of the application.

I have established throughout my report that the activity will have a less than minor effect on the environment and is consistent with the policy thrust of the relevant objectives and policies of the District Plan.

Overall, the application meets the relevant provisions of Part 2 of the Act as the proposal achieves the purpose being the sustainable management of natural and physical resources.

9 RECOMMENDATION

The above assessment has concluded that any actual and potential effects of the proposal are acceptable and the proposal is consistent with relevant objectives and policies of the District Plan as well as being consistent with the Waikato Regional Policy Statement and all other relevant matters.

The proposed activity meets the purpose and principles of Part 2 of the Act and therefore subject to the conditions listed within the decision to be served under Section 113, the proposal can be granted under the District Plan.

Reporting Officer:



Louise Cowan

Consultant Planner

Dated: 9th November 2022

Reviewed for Release By:



Quentin Budd

Consents Team Leader

Dated: 10 November 2022