

Date:	01 July 2022	App Number:	LU/0147/22
Reporting Planner:	Marne Lomas	Site Visit on:	6 th July 2022

Applicant:	Kiwifruit Investments Ltd
Property Address:	582 Parallel Road RD 3 Cambridge 3495
Legal Description:	LOT 3 DPS 89413 (SA70D/525)
Site Area:	35.3283ha
Activity Status:	Discretionary
Zoning:	Rural Zone
Policy Area(s):	Hamilton Airport – Conical Surface Overlay Significant Natural Area – WP344
Proposal:	Land use consent to construct vertical and horizontal (overhead) artificial kiwifruit shelter

1 INTRODUCTION

This application is a retrospective landuse consent prepared by Barker & Associates on behalf of Kiwifruit Investments Limited. Works have begun on the site to construct the kiwifruit artificial shelter which is defined as a building under the Waipa District Plan.

1.1 Description of site

The site located at 582 Parallel Road is just over 35ha of 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 along the boundary of a Mangawhero Stream tributary and associated Significant Natural Area ('SNA').

Existing farm buildings and dwellings have been demolished and the site is currently vacant of buildings, except the newly constructed artificial kiwifruit shelters (referred to in this report as the 'shelter'). The site was recently purchased by the applicants with the intent to use as a kiwifruit orchard.

The site is mostly flat with a shallow gully (containing a modified farm drain) on the western side that joins up to the larger tributary and then the Mangawhero Stream and associated SNA are adjoining the site to the east and northeast. There is a deeper gully on the eastern side of the site, and the eastern boundary is a deep gully that forms the SNA.

Surrounding sites are rural, or rural residential in nature particularly along Parallel Road. The site surrounds a rural residential property 598 Parallel Road.

The property is sited within the Rural Zone of the Waipa District Plan (District Plan) is partially located within Hamilton Airport Conical surface overlay, and contains some areas of Significant Natural Area ('SNA') identified as WP344 on the northern and eastern boundary of the site in the Policy overlay. Council's special features map indicates the site contains unstable soils on the eastern side of the property areas of the Waipa District Plan.

Refer to Figures 1 to 6.



Figure 1: Aerial photograph of site (site shown in red)

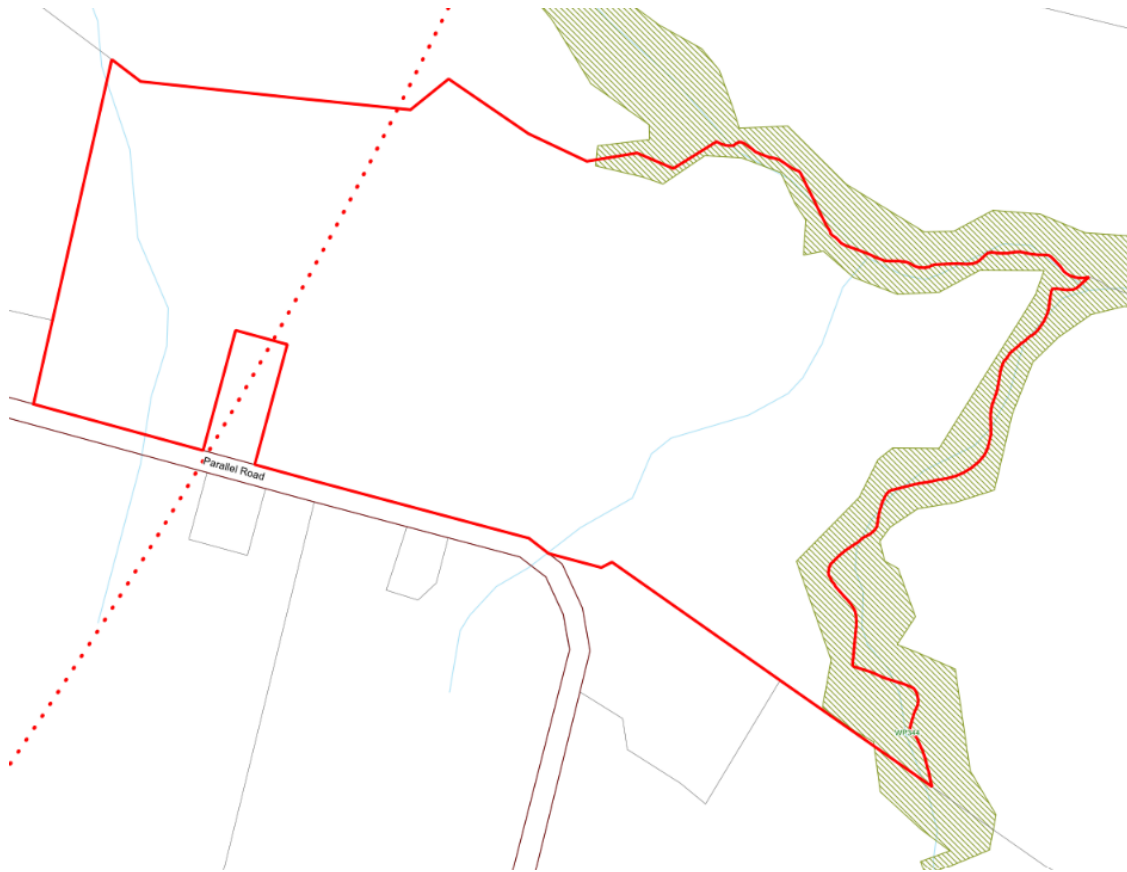


Figure 2: District Plan Zone & Policy Overlays

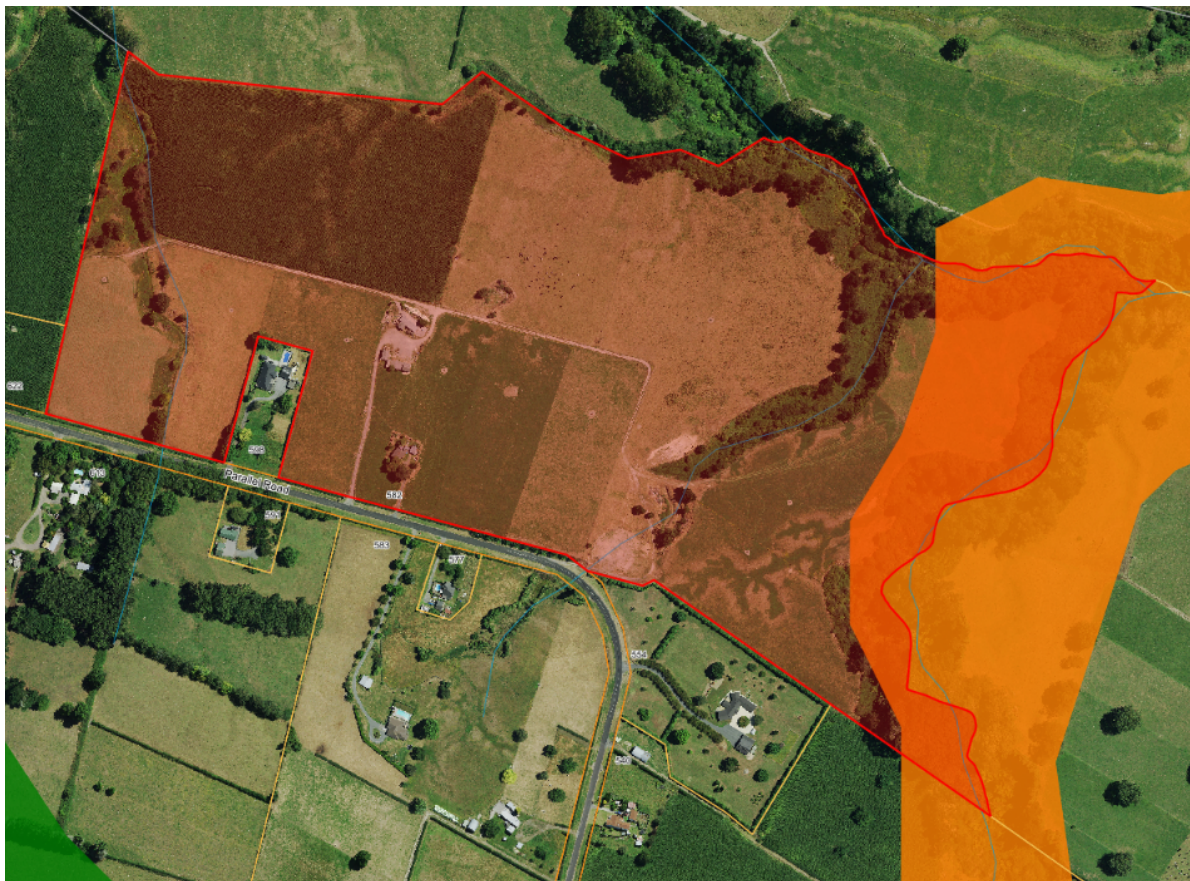


Figure 3: District Plan Special Features



Figure 4: Site visit photo showing the existing shelters along the Parallel Road boundary, facing northeast.





Figure 5: Site visit photo showing the existing shelters along Parallel Road facing west.



Figure 6: Site visit photo showing the shelters stretching back from Parallel Road.



Figure 7: Site visit photo showing the shelters back from Parallel Road (Parallel Road on the right hand side, from inside the boundary of 598 Parallel Road).



Figure 8: Site visit photo showing the proposed shelters (see the small post indicators) stretching back from Parallel Road along the road boundary facing west.



Figure 6: Site visit photo showing the western portion of the site, currently empty, shows the shallow gully, facing Parallel Road to the west.

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

The property is subject to multiple resource consents listed in Table 2.

Consent No.	Description	Date Approved	Key Details
LU/0053/22	Undertake earthworks exceeding permitted in the Rural Zone	Pending Decision	<p>It is proposed to construct a pond for irrigation purposes as part of a new kiwifruit orchard development. It is also proposed to construct a shed to house orchard equipment and to import cleanfill to be disposed across the site as part of the orchard development. This consent application is for the bulk earthworks associated with the cut to stockpile activity forming the pond, formation of the shed foundations and the import of cleanfill. It is necessary for the pond to be constructed before the kiwifruit vines are planted and therefore to allow the vines to be planted winter 2022, works may need to be extended into the winter works season. If this becomes apparent, winter works approval will be sought.</p> <ul style="list-style-type: none"> • stripping of 1,650m³ of topsoil

			<ul style="list-style-type: none"> • excavating 10,600m³ of subsoil with a cut up to 4.5m depth, with cut material stockpiled for later re-use • 5,700m³ of re-used cut for up to 2.7m depth of fill
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Table 2: Existing resource consents

1.4 Proposal

Pursuant to Section 88 of the Resource Management Act 1991 ('the Act'), Kiwifruit Investments Ltd have applied for a landuse consent for constructing an artificial kiwifruit shelter, some retrospective and some proposed.

The proposal is to construct artificial vertical artificial shelter to connect with the recently established horizontal artificial kiwifruit shelter. The majority of the artificial shelter has been established, covering an area of approximately 23 hectares, starting from the eastern end of the site and working towards the west. The vertical artificial shelter cloth that runs from ground level to the horizontal artificial shelter will be green in colour and the horizontal artificial shelter will be white. The vertical and horizontal artificial shelter will be used to protect future kiwifruit planting within the canopy area and will breach road, internal and SNA boundary setbacks as well as site coverage rules.

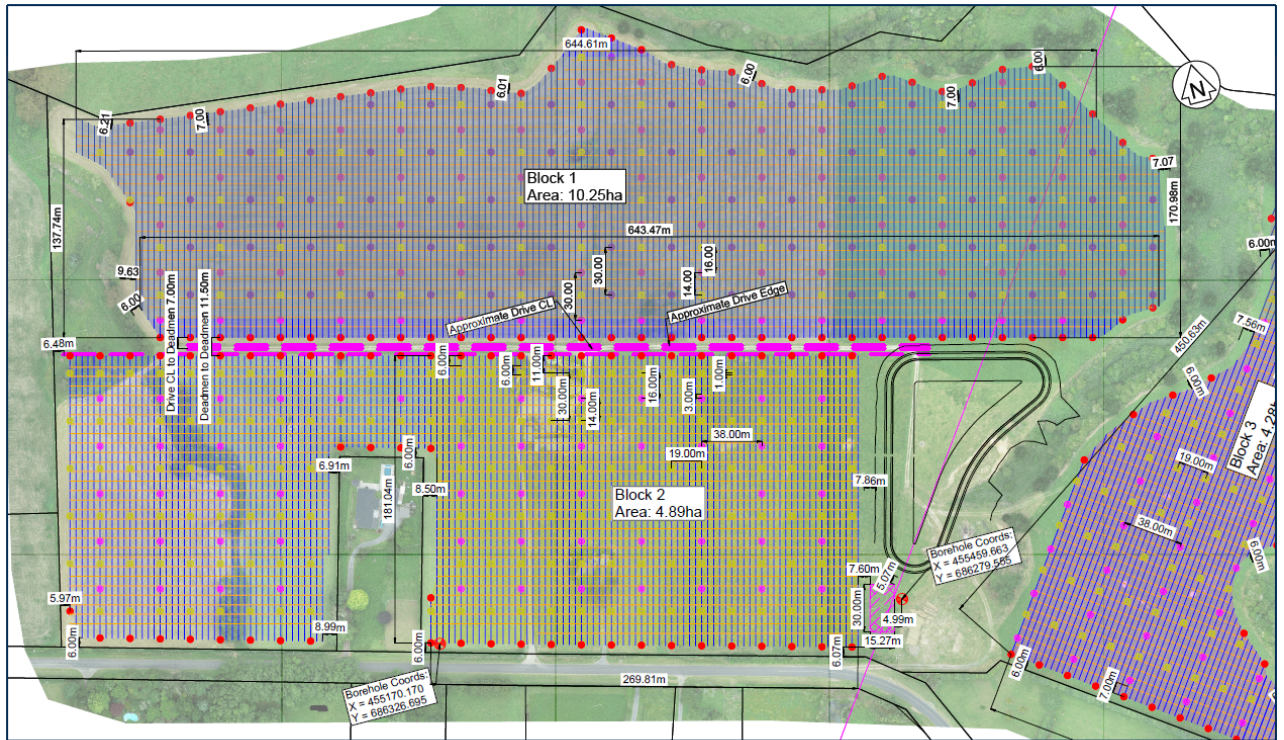
The vertical cloth will be 2.1m high and will link to the horizontal (overhead) cloth that will have a height of 6 metres on a 45-degree angle. The vertical cloth will be located 6 metres from the road boundary of Parallel Road and will vary between 5.9 to 8.9m on internal boundaries. A coverage area of 23 hectares will result in a site coverage of approximately 65.11%. The specific measurements are depicted below.

A cryptomeria shelterbelt will be planted around the periphery of the vertical cloth, which in some locations will follow the external boundaries and in other locations adjoin rural residential properties. Where there are overhead electricity lines, the cryptomeria shelterbelt will be set inside the boundary. The cryptomeria shelterbelt will be grown to a mature height of 3.5m to 6m in some locations.

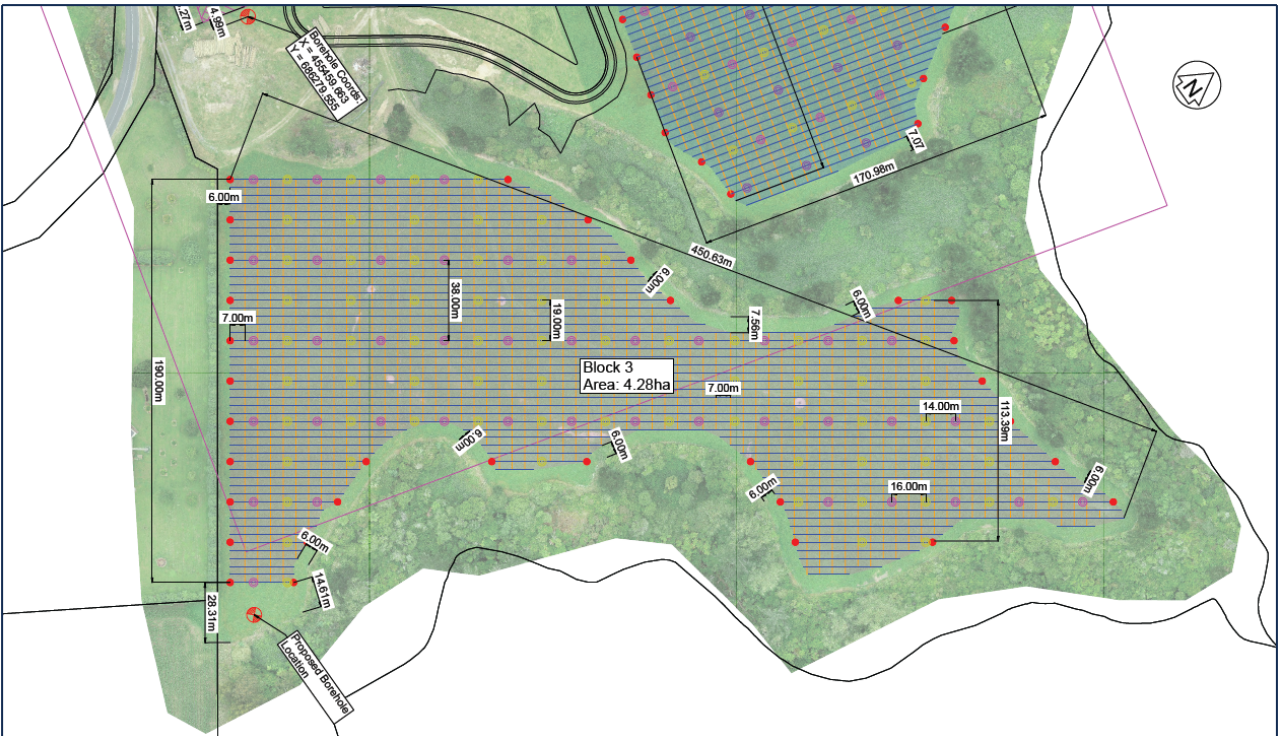
The purpose of the cryptomeria shelterbelt will alleviate the visual appearance of the artificial shelter from adjoining properties and public places. Should consent be approved, the applicant has offered a condition requiring the cryptomeria shelterbelt be maintained to be no more than 6 metres in height to ensure the shelter belts will comply with the District Plan.

The purpose for the artificial shelter is established through the need to protect more sensitive fruit varieties such as red and gold Kiwifruit varieties and to maximise productive land. More traditional approaches to shelter include planting willow and poplar shelter every 20-30 metres in a block, or larger blocks with cryptomeria shelterbelts between every 75 to 100 metres. Shelterbelts are widely used in the horticulture sector to protect fruit from wind and frost damage, however through technological advancements, artificial shelters are now chosen as the preferred choice.

Artificial shelters increase the productive capability of the orchard area as they can cover larger areas with less annual maintenance and helps to minimise effects associated with spray drift. Refer to Figure 7 for the proposed site plan for the activity.



	SURVEYED	EN	02.12.21	PROJECT	582 Parallel Road, Cambridge	SCALE	1:2000 (AS)	NOTES 1. Refer to Certificate of Title for Easements and Legal interests
	DRAWN	CE	10.02.22	CLIENT	Sabre Construction	PROJECT NUMBER	0323	
	DESIGNED	CE	10.02.22	TITLE	Block 1-3 Draft Design	DRAWING NUMBER	0323-200-08	
	CHECKED	CE	10.02.22			SHEET NUMBER	1 of 2	
	APPROVED	DRAFT	DRAFT					



	SURVEYED	EN	02.12.21	PROJECT	582 Parallel Road, Cambridge	SCALE	1:1500 (AS)	NOTES 1. Refer to Certificate of Title for Easements and Legal interests
	DRAWN	CE	10.02.22	CLIENT	Sabre Construction	PROJECT NUMBER	0323	
	DESIGNED	CE	10.02.22	TITLE	Block 1-3 Draft Design	DRAWING NUMBER	0323-200-08	
	CHECKED	CE	10.02.22			SHEET NUMBER	2 of 2	
	APPROVED	DRAFT	DRAFT					



Figure 7: Proposed site plan showing artificial shelter and cryptomeria setbacks.

1.5 Other Matters

This application arose from complaints received from surrounding properties who are concerned about the shelters.

At this time, the applicant engaged Barker & Associates to apply for landuse consent.

The following complaints were received to Council:

Nicholas Jennings, 598 Parallel Road – over email, phone, lawyers letters:

There are several complaints from Mr Jennings dating back over the last 6 months, relating to noise, vibration, and the proposal not complying with the District Plan. The complaints were received by Councils Enforcement Team, namely Mr Ken Danby.

Mr Jennings main concerns are:

- The artificial shelters being not complying with site coverage and boundary setback rules.
- Glare from the artificial shelters.
- Decrease in property value.
- Shelterbelts and the artificial shelters blocking light and warmth onto his property, as a result would experience how own vegetation on his property be affected (could die).
- Affected mobile phone reception.

These effects on Mr Jennings property are considered in Section 4 of this report.

Michael and Lesley Brighthouse, 82 Speake Road – over phone:

- Wondering how the shelterbelts will be maintained on their side of the boundary, if people would have to come onto their property.
- If the cryptomeria clippings could be harmful to their dairy cows.
- Removing trees and exposing earth near SNA.
- Within the boundary setbacks.
- Spraying on the site might affect their site/dairy operation.

Tracey Mellar, 377 Parallel Road – over email:

Ms Mellar lodged a CRM with Council wondering about what her rights are regarding the kiwifruit operation (the proposal), as she has not provided her written approval. I responded to Ms Mellars CRM and asked her to call or email me with details for her concerns but I did not get a response.

A formal request for written approval of potentially affected persons was sent to the applicant on 22nd of July 2022.

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 3 below outlines the relevant rules relating to the proposed activity.

Rule #	Rule Name	Status of Activity	Comment
4.4.2.1(b)	Minimum building setback from road	Discretionary	The proposed activity will result in the shelters being 6m from the road boundary. This non-compliance results in the proposal

	boundaries 30m		requiring consent for a Discretionary activity.
4.4.2.2(e)	Minimum building setback from internal boundaries 25m	Restricted Discretionary	The proposed activity will result in the shelters being between 6-8m from internal boundaries.
4.4.2.7	Minimum building setback from SNA 10m	Restricted Discretionary	The proposed activity will result in a 6m setback from SNA on the site.
4.4.2.10	Maximum building coverage 3%	Restricted Discretionary	The proposed shelters will cover 65.11% of the site.

Table 3: District Plan rule assessment

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

3 ASSESSMENT FOR THE PURPOSE OF PUBLIC NOTIFICATION

3.1 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.

3.2 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).

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

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

3.4 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.

3.5 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.

3.5.1 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.

For clarity, the District Plan (the 'Plan') defines the artificial shelters as buildings, and as such require compliance with building rules in the Plan.

The District Plan permits buildings 30m from a road boundary, 25m from an internal boundary and 10m from a SNA boundary. The District Plan provides for 3% site coverage of buildings that are not dwellings on sites 1ha or more, the proposed site coverage is 65.11%. As such, the effects of the

application proposal will be compared to the effects of what can be done 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 receiving environment has been described in Section 1.1 of this report. The receiving environment includes all permitted activities and resource consents that have been granted whether implemented or not. This includes (but is not limited to) all existing built form and associated residential, visitor accommodation and farming activities.

I have checked all properties identified in Section 4.5.3 of this report for granted consents, implemented and unimplemented and there is nothing would be potentially affected by this proposal. No recent or relevant consents were found, other than the accepted subdivision consent SP/0175/21 which falls under written approval provided by the parent lot.

3.5.2 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 4 and shown in Figure 8 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

ID#	Street Address	Legal Description	Owner
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 4: Properties excluded for purposes of public notification assessment

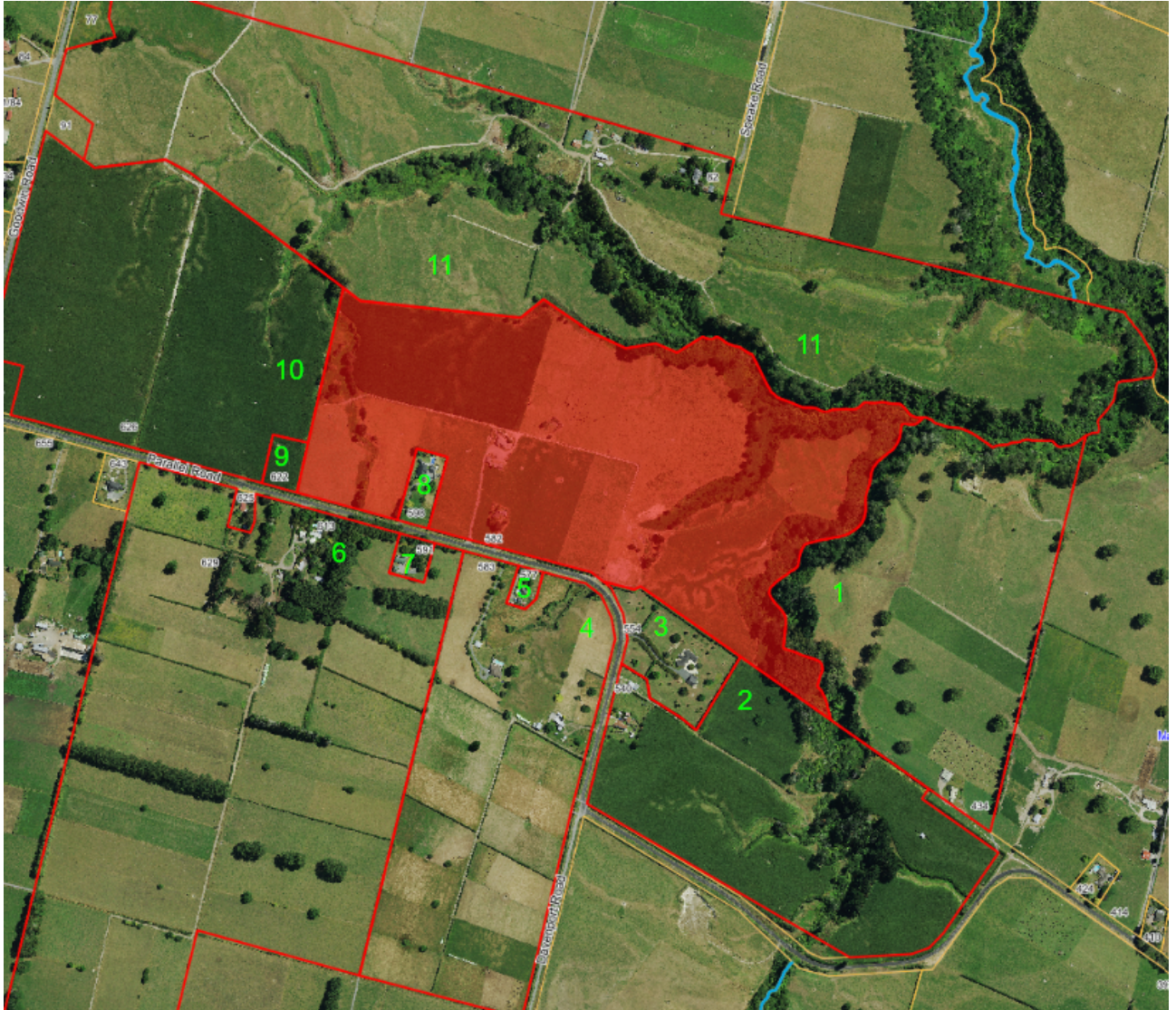


Figure 8: Adjacent properties map (Subject site highlighted in red).

Written approval has been provided by those properties #3 and #6 in Table 4, 554 and 613 Parallel Road.

3.6 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 character and amenity, biodiversity and construction effects. It is acknowledged some of these effects are temporary and directly related to the construction of the development.

A comprehensive assessment of effects is included in Section 5 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.

3.6.1 Effects on 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"*.

'Rural character' is defined in the District Plan as:

"Rural character is a broad concept, defined by the various elements that make up the rural environment. These elements help to distinguish the differences between those areas that are urban or large lot residential, from those which are rural. The elements that define the District's rural character are:

(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; and

(b) Open landscapes containing natural features and scenic vistas including flat to rolling terrain, volcanic cones, streams, lakes, peat lakes, rivers and wetlands that are largely free from development; and

(c) Low density widely spaced built form, with dwellings and farm buildings dispersed in the wider landscape; and

(d) Land uses of a predominantly production or rural working nature such as farming and related farm storage sheds, stock yards, farm animals and houses, and the widespread use of machinery supporting the principal productive land use. The characteristic noises and odours of farming are part of the rural working nature of the Rural Zone; and

(e) Occasional papakāinga and marae with associated activities and events; and

(f) Infrequent rural based industry (see definition) sites such as cool stores and wineries, as well as infrequent mineral and aggregate extraction sites, intensive farming operations and rural service providers such as agricultural contractors; and

(g) Infrequent tourism or traveller accommodation based facilities generally associated with landscape features; and

(h) Generally un-serviced land with a lack of urban infrastructure such as reticulated water and wastewater systems; and

(i) An extensive network of roads with varying traffic levels, primarily without kerbs, footpaths or other urban structures such as street lighting, unless required for road safety reasons. Higher traffic levels occur on State Highways, arterial and some collector roads; and

(j) Occasional local temporary events and activities such as equestrian hunts, farm open days, local fund raising events, pony club, and associated events and activities in rural community halls; and

(k) Recreational hunting”

The site is located within the Rural Zone, which is characterised by a pastoral rural working environment that is reliant on the rural land and soil resource of the District, and is largely typified by an open rural landscape. Dairy farming is the main rural land use in the District, followed by beef, and sheep farming. Horticulture is also a prominent contributor to the District. When considering rural character, it is acknowledged that it is a broad concept, and defined by the various elements that make up the rural environment. These elements that help define the District’s rural character that are relevant to the specific site include (but not limited to) open landscapes containing natural features, low density widely spaced built form, areas of vegetation, land uses of a predominantly production or rural working nature such as farming (including characteristic noises and odours that form part of the rural working nature of the Rural Zone).

As a horticulture activity, the kiwifruit orchard is a permitted activity for the Rural Zone. Non-compliances are relating to the shelters and their built form, not the kiwifruit activity as a whole. Horticulture is an accepted and established use of the Rural Zone, which is generally characterised by rows of vines/trees with structural supports (wooden post and wire). Cryptomeria shelterbelts are common and artificial screens are at times utilised to provide additional protection.

The shelters are not a typical structure currently in the District, they are not currently recognised in the Plan, as such the Plan defines them as a building despite not being a ‘building’ in the typical sense, such as a shed or other solid structure found in the rural environment. The shelters are built from large wooden posts and semi-transparent plastic cloth, so rain and sun can reach the kiwifruits, but it provides protection from frost, wind and other harsh environmental conditions. The vertical shelters are green/black in colour to blend into the environment more, versus the white horizontal shelters to allow light for the kiwis.

The shelters are 6m high, being a permitted height in the Rural Zone. Although a permitted height, they are a prominent feature on the landscape due to the considerable site coverage and atypical nature of the artificial shelter in the existing environment. When viewed from above, or from a higher elevation, the shelters have a white cover across the landscape that is quite obvious due to the considerable site coverage. While there is an argument that large rural buildings also form part of the rural landscape along with areas of hard surface (such as feedlots and cowsheds) it is unlikely that they would be of the same scale as is proposed for the vertical artificial screens. Because of the

considerable site coverage and it's expansive nature, cryptomeria shelterbelts are typically planted to mitigate the visual effects from the ground level, for example the roadside or adjoining properties that are the same or similar elevation.

The artificial shelter (both vertical and horizontal) will be largely obscured/blurred from both the wider environment and adjoining properties due to the proposed cryptomeria shelterbelt, providing mitigation from the visual effects of the shelters infringing on the road and internal boundary setbacks. An example from Whitehall Fruitpackers on Kaipaki Road (approximately 2km from the subject site) shows the nature of the cryptomeria shelterbelts. This is proposed for this artificial shelter development, the proposed cryptomeria shelterbelts will be 3.5m along the road boundary and 6m high along internal boundaries. The cryptomerias take between 5-10 years to grow to 6m high, depending on the environment, so there is some time between planting and maturity where the visual impacts will be apparent from the road and adjoining/nearby properties. The cryptomeria shelterbelts can be planted along any boundary as a permitted activity, so long as they are 6m or under in height. The proposed cryptomeria shelterbelts will be a maximum of 6m, maintained by the applicant through a consent condition.





Figure 9: Example cryptomeria shelterbelts along Kaipaki Road.

With regard to the reduced internal setbacks, 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. However, it is acknowledged that there will be an adverse effect until the shelter belts grow to a sufficient height.

Accordingly, visual and character impacts on the open and spaciousness of the rural environment is considered to be less than minor.

The proposal involves the construction of a structure being a necessity to a permitted farming activity within the Rural Zone. The visual effects from the site coverage and setback infringements are mitigated by the shelterbelts. Overall, the adverse effects on the wider environment with regard to the character and amenity will be less than minor.

3.6.2 Effects on biodiversity

The site partially encompasses SNA - WP344, identified as “Mangawhero Stream riparian margin” and is unprotected. These areas are located along the sites northern and eastern boundaries, bordering the adjoining gullies and include dense vegetation. The sites boundaries are fenced from

these areas. The proposed vertical and horizontal artificial shelter will be setback similar to other external extents within the site, however where adjoining the SNA this triggers an additional setback infringement. The proposal does not involve the removal or pruning of the existing vegetation associated with this SNA, and does not involve additional cryptomeria shelterbelt where adjoining the SNA, allowing for additional light to filter through to the SNA. The proposal simply seeks to establish artificial shelter around and over the proposed permitted farming activity, therefore, the proposal will not disrupt the biodiversity, species composition, habitat structure and ecosystem function within the adjoining SNA and access to the SNA can still be achieved.

Overall, the adverse effects on the significant natural area vegetation and biodiversity will be less than minor.

3.6.3 Temporary effects

For clarity, the effects considered are only for the construction of the shelterbelts, not for the kiwifruit activity as a whole, which is permitted (although still required to comply with the following Plan rules). There has been complaints from neighbouring properties relating to noise and vibration from the construction of a water bore that required a generator to be running consistently for 72 hours. The noise was well above the permitted levels, with no attempt at mitigation and resulted in a police call out which shut down the generator, approximately 12:30am. It has also been noted that the applicants have been carrying out loud activities during weekends and public holidays, which is also a breach of the Plan. I cannot consider effects they have occurred in the past, or effects that occur as part of a permitted activity.

Construction noise, vibration and additional machinery/equipment around the site is part and parcel of establishing the shelters, which are a requirement for a permitted horticultural activity. These are temporary effects which will comply with Plan requirements for noise, vibration and earthworks 7am to 10pm.

As such, any effects associated with construction of the shelters are considered to fall within the permitted baseline and are negligible.

3.6.4 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.

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

Council must determine 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.

3.8 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.

4 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.

4.1 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.

4.2 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.

4.3 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).

4.4 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.

4.5 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.

4.5.1 Property 3 & 6.

These properties to the south of the subject site can be disregarded due to providing written approvals. Property 6 has an approval subdivision consent SP/0175/21 for a 5670m² rural residential section, however this lot has yet to be sold and as such falls under the written approval provided.

4.5.2 Property 1, 2, 4, 10, & 11.

These properties surround the subject site to the north, east, south (across Parallel Road) and west. They are rural in nature, with either no existing built development or built development being a considerable distance from the site (approximately 180m to the closest dwelling at 583 Parallel Road). The sites adjoin the subject site by one shared boundary, if including the shared road boundary. The sites also have their own landscaping, visual buffers and rural outlook across the other boundaries not being affected by the proposal. The rural sites can reasonably expect that a

horticulture activity can take place on the subject site, as well as the permitted cryptomeria shelterbelts buffering visual effects from the shelters along the boundary.

Adverse effects on visual amenity and rural character is considered to be less than minor for these properties.

4.5.3 Property 5, 7 & 9.

These properties are rural residential properties, located across Parallel Road, or directly adjoining the sites western boundary. Only one of their boundaries will be notice change due to the proposal, being 6m setbacks on these boundaries. Currently, property 9 is undeveloped, with no consents currently lodged (resource consent or building). Properties 5 and 7 will experience temporary visual effects from the shelters while the cryptomeria shelterbelt grows to the proposed mature height, 3.5m along the road boundary. The shelterbelt, once fully grown (approximately 5 years) will buffer visual effects of the shelters.

Concerns have been raised about the shelterbelt along the road boundary obscuring daylight, wifi/cellular coverage to nearby sites. However, as clarified above, the cryptomeria shelterbelts can be planted and grown up to 6m high along any boundary, without resource consent. Some concern has been expressed about the glare from the shelters, however the vertical green/black artificial shelter has not yet been installed, which mitigates sun glare from the white horizontal shelters. Additionally, once the cryptomeria shelterbelts have grown to 3.5m, the glare will be reduced further for these properties and people using the road.

Both properties include a substantial amount of mature vegetation and hedging along their boundaries where fronting Parallel Road, to the point that their dwellings are not visible from Parallel Road. As such, the adverse effects are considered less than minor.

4.5.4 Property 8.

This property at 598 Parallel Road is surrounded by the subject site and proposed artificial shelters and 6m shelterbelt, on the north, east and west boundary. The proposed vertical shelter will be located 8.5m from its eastern boundary, 6.0m from its northern boundary, and 6.9m to 8.99m from its western boundary. The shelters being 19m closer than what is permitted creates significant visual change for the property, although still being a rural activity, amenity will be impacted as the proposal has significant site coverage and overall bulk quite close to this property.

As this site is affected on all three of its internal boundaries from the setback encroachment, it will experience significant visual effects, a change of outlook and 'open' rural character. The effects of this are vastly different from a permitted development, being 3% site coverage and a 25m setback for the artificial shelters. Although horticulture is a permitted activity, the 25m setback is in place to maintain a break in built form from one site to the next, which includes associated amenity, bulk form and rural character, and the associated activities that are typically carried out inside buildings. The artificial shelters being set back between 6-9m on all three boundaries is outside of what can be reasonably expected from an adjoining horticultural development. When compared to the other

properties mentioned above, this property will experience much more obtrusive and dominating effects from the setback encroachment.

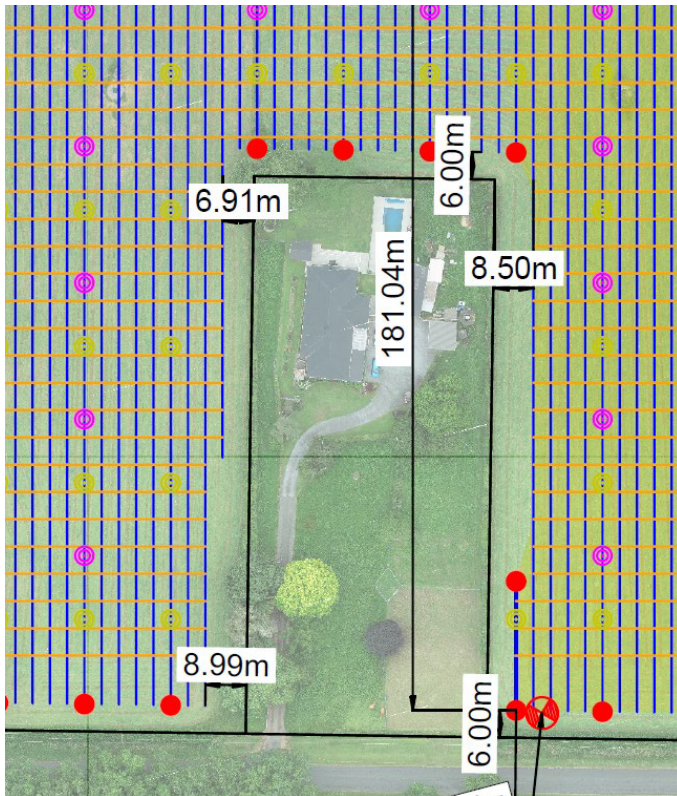


Figure 10: Proposed shelter, note the eastern artificial shelter is already constructed.

Between the vertical artificial shelter and 589 Parallel Road, the applicant is planting cryptomeria shelterbelts 4m from the eastern, northern and western boundaries which will be grown to be no more than 6m high. The applicants have chosen to plant the cryptomeria shelterbelt 4.0m from the boundary around 598 Parallel Road rather than on the boundary (although permitted) to help minimise the visual bulk form of the entire development from this property. The applicant offers a consent condition that will require the cryptomeria to be maintained at a height no greater than 6m.

The cryptomeria shelterbelt will create significant shading, loss of light (and temperature) and an overall reduction in amenity for this property. However, the cryptomeria shelterbelts are a permitted activity, as such the effects on this property from the cryptomeria shelterbelts are permitted. If the cryptomeria shelterbelts were to be lower, the property would experience more visual effects from the shelters themselves, including glare due to the ground contour and evening sun angle. The overall change in landuse from open pasture to an orchard with cryptomeria shelterbelts is a permitted activity. Despite the permitted nature of the shelterbelts, to grow 6m in height will take at least 5 years, likely closer to 8 years, which is an extended amount time to experience the visual effects of the artificial shelters. 6m is a necessary height to mitigate those visual effects to an acceptable level. Although the cryptomeria shelterbelt is permitted to be planted along a boundary for a permitted horticultural activity, if the artificial shelters were built to a compliant setback (25m) then the cryptomeria shelterbelts would also be set back at a reasonable distance from the boundary, say 20m. The visual effects that the cryptomeria shelterbelts are

mitigating are due to the significant internal boundary setback encroachments. If the artificial shelters and associated cryptomeria shelterbelts were setback to a complying distance, this would maintain some 'breathing room' between the residential site and the horticultural activity, reducing bulk form and the dominating visual impacts of the artificial shelters.

As the shelters will be 6m away at the closest point, and the proposed mitigation being the cryptomeria shelterbelts taking approximately 8 years to grow, this property will experience dominating adverse visual effects and amenity effects associated with the proximity of the activity, to minor capacity.

Overall, I consider this property to be adversely affected in a minor capacity from this proposal.

4.5.5 Summary of Assessment

Based on the above assessment, the proposal will have adverse effects that are minor on the owners and occupiers of the above property.

4.6 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.

4.7 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.

5 SECTION 95 NOTIFICATION RECOMMENDATION AND DECISION UNDER DELEGATED AUTHORITY

Pursuant to section 95 A & B application LU/0147/22 for a Discretionary Activity shall proceed on a **Limited Notified** basis to the owners an occupiers of the below property for the reasons discussed above:.

- 598 Parallel Road, Cambridge

Reporting Officer:

Marne Lomas

Marne Lomas

Graduate Planner

Dated: 25th July 2022

Approved By:

Quentin Budd

Quentin Budd

Consents Team Leader

Dated: 21 July 2022

