BEFORE INDEPENDENT COMMISSIONER AT CAMBRIDGE

IN THE MATTER of the Resource Management Act 1991 (Act)

AND

IN THE MATTER of an application to the Waipa District Council by

Kiwifruit Investments Ltd for retrospective resource consent under Section 88 of the Act to construct vertical and horizontal (overhead) artificial kiwifruit

shelter at 582 Parallel Road, Cambridge.

Council Reference Resource consent – LU/0147/22 ('FIRST

APPLICATION')

AND

IN THE MATTER of an application to the Waipa District Council by

Kiwifruit Investments Ltd to establish Cryptomeria

Shelterbelts at 582 Parallel Road, Cambridge

Council Reference Resource consent – LU/0252/22 ('SECOND

APPLICATION')

STATEMENT OF EVIDENCE OF SIMONE MARGARET WILLIAMS ON BEHALF OF THE APPLICANT

DATED: 07/02/23

1.0 INTRODUCTION

- 1.1 My full name Simone Margaret Williams. I am currently employed as a Senior Planner in the Cambridge Office of Barker and Associates Limited (B&A) an independent urban and environmental planning consultancy operating throughout New Zealand. I have been employed by Barker and Associates Limited since May 2022. Prior to that I worked as a Planner at both the Waipa District Council and Tasman District Council and as a Planner for a surveying consultancy. I have 12 years of experience in this field.
- 1.2 I hold the qualifications of a Post-Graduate Diploma in Resource Studies and a Bachelor of Environmental Management and Planning, obtained both from Lincoln University. I have intermediate membership with the New Zealand Planning Institute.
- 1.3 I have experience in the preparation and processing of applications for resource consent throughout New Zealand and in particular, in the Waikato Region. My experience includes representing the interests of both public and private sector clients. I am familiar with the statutory framework that is relevant to the current proposal, having provided advice to a number of clients seeking resource consent and having a working knowledge of the Waipa District Plan provisions.
- 1.4 In relation to this hearing, I am presenting expert planning evidence on behalf of Kiwifruit Investments Ltd. Kiwifruit Investments Ltd seek resource consents to authorise the existing (retrospective) orchard shelters and construct further vertical and horizontal (overhead) artificial kiwifruit shelter (herein referred to as the 'First Application') and to establish Cryptomeria Shelterbelts (herein referred to as the 'Second Application') at 582 Parallel Road, Cambridge.
- 1.5 I was responsible for the preparation of both land use consent applications and associated assessment of environmental effects.
- 1.6 While this hearing is not bound by the "Code of Conduct for Expert Witnesses" contained in the Environment Court Consolidated Practice Note 2014, I have nevertheless prepared my evidence in compliance with that Code and I agree to comply with it throughout the hearing process. Unless I state otherwise, my evidence is within my sphere of experience and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

2 SCOPE OF EVIDENCE

- 2.1 In preparing this evidence I have read the opinions expressed through the submission been received from the adjacent landowners (Nicholas B Jennings and Vanessa L Jennings).
- 2.2 I have read the s.42A report dated 20th October 2022 prepared by Ms Marne Lomas for the WDC ("the original s.42A report") and the s.42A addendum report dated 22 December 2022 prepared by Ms Louise Cowan for WDC ("updated s.42A report").

- 2.3 I note the recommendation in the updated s.42A report that consent be granted. I agree with the conclusion of the updated s.42A report.
- 2.4 I have read the Combined Notification and Decision Report prepared by Ms Louise Cowan dated 21st December 2022 for the setback infringements associated with the shelterbelt locations captured in LU/0252/22 (the Second Application). This land use consent is being processed alongside the First Application. I note that the recommendation in this report is that consent be granted on a non-notified basis as a Restricted Discretionary Activity. I agree with the conclusions of this report.
- 2.5 I have read the submitter's statements of evidence and the two separate correspondence provided by the Counsel for the submitters in relation to the interpretation of Rule 4.4.4.58 for both the issue of tree height and dwelling definition.
- 2.6 I do not propose to repeat the matters addressed in the AEE, the original s42A report, the updated s.42A report or my evidence. Rather, I propose to highlight the key changes and a number of key matters that require further consideration and/or amplification. Specifically, my evidence:
 - a) Summarises the efforts that have been undertaken to address the issues of concern that led to the original s.42A report recommending that the consent be declined;
 - b) Highlights a number of key points in relation to s.104 of the RMA including reinforcing some of the conclusions reached in the s.42A report; and
 - c) Discusses the issue of 'rural character and amenity' effects in relation to the revised proposal.
- 2.7 My evidence is read in conjunction with that of the evidence from the following persons:
 - Parmvir Singh Bains, one of the shareholders and operators of the Kiwifruit Investment Ltd, and the landowner for the proposed Kiwifruit orchard; and
 - John Holwerda, being a director and co-owner of Sabre Horticulture, who provides expert evidence in respect of the artificial shelter.

3. AMENDED PROPOSAL

- 3.1 The original s.42A report prepared by the Waipa District Council dated 20th October 2022 recommended that the application be declined on the basis that: the actual and potential effects on the submitters' property are not acceptable and are not able to be suitably avoided or mitigated in the short to medium term; the proposal is inconsistent with the objectives of the District Plan.
- 3.2 As captured within the updated s42A report, Waipa District Council postponed the scheduled hearing on 20 October 2022 under s.91 of the Resource Management Act 1991 to allow for an additional application to be prepared, lodged and processed to the same procedural point

as the first application for the shelterbelt infringements associated with Rule 4.4.2.58 of the Waipa District Plan.

- 3.3 Revised plans sets have been prepared and are attached to this evidence. These include:
 - a) Site plan illustrating the entire development which is Appendix A;
 - b) Site plan illustrating the distances relevant to the submitter's boundaries at 598 Parallel Road which is Appendix B;
 - c) Shelterbelt plan showing the vegetated shelterbelts only is Appendix C
 - d) Elevation plans with corrections as per Section 3.16 below is Appendix D.
- 3.4 Following this process, the Applicant has made a substantial effort to resolve the concerns held by Council staff and submitters including the following:
- 3.4 Change 1: Increase of setbacks of the vegetated shelterbelt from the northern boundary of 598 Parallel Road
- The Cryptomeria shelterbelts are currently planted 6 metres from the northern boundary of 598 Parallel Road. The Applicant has increased the setback of the vegetated shelterbelt to be 10 metres from the northern boundary of the submitter's property, being an additional 4 metres than originally proposed (refer Appendix B).
- 3.7 The proposed location of the Cryptomeria shelterbelts on the northern and eastern boundaries of the submitter's property located at 598 Parallel Road are now determined to be a permitted setback from the dwelling within the submitter's property in relation to Rule 4.4.2.58. While no changes have been made in respect to the eastern boundary setback as they are already compliant, the shelterbelts on the northern however have undergone a substantial shift to achieve compliance with Rule 4.4.2.58. This means that the dwelling within the submitter's property is located at a minimum of 30 metres from these vegetated shelterbelts on two of their boundaries (refer Appendix B for these setback distances). In this regard, in calculating this setback I have used the same methodology as Ms Cowan in her updated s.42A report which also aligns with the legal opinion provided by Tompkins Wake dated 13 January 2023.
- 3.8 The Applicant has specifically chosen to increase the setback of the Cryptomeria shelterbelts located near the northern boundary of the submitter's property to ensure that compliance is achieved with Rule 4.4.2.58 and to alleviate submitter concerns relating to the "sense of being boxed in" by the Cryptomeria shelterbelts. Furthermore, as acknowledged by Ms Cowan in the updated s.42A report the vegetated shelterbelts now proposed will result in a "permitted "enclosure" of the Jennings property²".

¹ Section 12.1.17 of the original s.42A report

² Section 46 of the updated s.42A report

3.9 On the basis of the above, the visual effect created by the Cryptomeria shelterbelts in the locations depicted above are now determined to be permitted, whereby they should not be an issue of concern, nor a reason for consent to be declined. Additionally, although the Cryptomeria could be grown to any height in these locations, the Applicant accepts a condition requiring the shelterbelts in these locations to be maintained at a maximum height of 6m. In this regard, an agreed addition to the condition relating to this is presented towards the end of my evidence.

3.10 Change 2: Changes to vegetated shelterbelt species near the western boundary of 598 Parallel Road

- 3.10 For the western boundary of the property located at 598 Parallel Road, the Applicant changed the vegetated shelterbelt species near this boundary to Pittosporum Karo from Cryptomeria (Refer Appendix B and C). To replace the Cryptomeria, the Applicant sought out a compatible species to achieve the necessary wind sheltering requirements for the proposed Kiwifruit Orchard as well as a species that would achieve a similar growth rate for visual mitigation. The Applicant's nursery had recommended Pittosporum Karo, being a native variety of Pittosporum with a maximum growing height of 5m. It is also understood that the proposed native variety of the Pittosporum responds better to the adjacent rural residential property, and could be considered more visually appropriate in this regard. This responds to the landscape evidence of Joanna Louise Soanes, where Ms Soanes concludes³ a more appropriate planting response could include a plant species that responds to the rural residential property of the Submitter's property.
- 3.12 Since selecting this new vegetated shelterbelt species, Ms Soanes has located mature examples within an urban setting that exceed 6 metres in height and does not therefore comply with the permitted rule. Accordingly, this shelterbelt species is now captured within the second application along with the other infringements associated with Rule 4.4.2.58.
- 3.13 Ultimately, Ms Cowan in her Combined Notification and Decision Report for the second application determined this shelterbelt infringement was acceptable and recommended that consent be granted on a non-notified basis subject to conditions requiring the shelterbelts in this location be maintained at a maximum height of 5m. In this regard, an agreed addition to the condition relating to this is presented towards the end of my evidence.

3.13 Change 3: Increase of setbacks of the artificial shelters from the northern boundary of 598 Parallel Road

3.14 Following the increase to the vegetated shelterbelt setback near the northern boundary of 598 Parallel Road, the location of the artificial shelters has also resulted in a subsequent setback increase. The original proposal had the artificial shelters located 6 metres from the northern boundary of 598 Parallel Road which has now been increased to 14 metres. This

5

³ Paragraph 12.14 of evidence of Joanna Louise Soanes

leaves a maintenance strip of 4 metres between the vegetated shelterbelt and the artificial shelters (Refer Appendix B).

3.15 Ms Cowan has acknowledged in the updated s.42A report that while the location of the artificial shelter structures are inconsistent with the objectives and policies of the Waipa District Plan insofar as they relate to rural character and amenity, the shelter structures will be screened by permitted shelterbelts. As such it was determined that any adverse effects associated with the shelter structures will be less than minor. I agree with this conclusion and further note that the vegetated shelterbelts will provide enduring mitigation that will be managed by way of consent conditions. Furthermore, an agreed addition to the condition relating to this is presented towards the end of my evidence.

3.16 Change 4: Increase of setbacks of the artificial shelters from the western boundary of 598 Parallel Road

3.16 It is noted that an incorrect reference was made in the updated s.42 report to the artificial shelter setback near the western boundary of the property located at 598 Parallel Road. In Section 36 of this report, Ms Cowan has referenced the original setback of the shelter structures from the western internal boundary with 598 Parallel Road ranging between 6.91m to 8.99m. It is noted that there is an error in the amended elevation plans that were provided with the second AEE addendum. As confirmed in Appendix B attached to this evidence, the setbacks have increased to 8.00m to 9.7m along this boundary. In this regard, an agreed addition to the condition relating to this is presented towards the end of my evidence.

4 RMA CONSIDERATIONS

- 4.1 Section 104 of the RMA sets out the matters that the independent commissioner needs to "have regard to" in determining the Land Use Consent Application by Kiwifruit Investments Limited. In that regard, as a result of the actions and amendments to the proposal discussed above, the updated s.42A report and my evidence are in general agreement that:
 - a) The environmental effects of the artificial shelters in the first application are determined to be acceptable on the basis that the mitigating permitted vegetated shelterbelts are planted and that the second application (LU/0252/22) relating to the vegetated shelterbelts infringing setbacks is granted.
 - b) The proposal is consistent with the majority of the objectives and policies in the relevant policy and planning documents and only inconsistent with the objectives and policies in the District Plan in relation to rural amenity setbacks. This is where the District Plan does not recognise or provide for horticultural shelters and has been grouped into the District Plans' definition of 'Building', leading to an incidental inconsistency with the relevant objective and policy.
- 4.2 One aspect that requires some further comment is the issue of rural character and amenity which is discussed as follows.

5. RURAL CHARACTER AND AMENITY EFFECTS

- 5.1 The rural character and amenity effects of the artificial shelters (both vertical and horizontal) are the key matters in contention in relation to the first application due to the location from the road boundary, internal boundaries where adjoining other rural-residential properties and the overall scale of the combined shelter in terms of its site coverage.
- 5.2 Ms Cowan supports the findings in the original s.42A report in regard to effects on the wider environment, where the rural character and amenity effects were determined to be acceptable. I concur with this conclusion and provide no further comment on that matter.
- In considering the effects on the submitter's property, I agree with Ms Cowan's application of the permitted baseline with respect to the vegetated shelterbelts near the northern and eastern boundary of 598 Parallel Road. Specifically, "the visual effects on the property at 598 Parallel Road from the shelter structures, will only be experienced for a period of between 3 to 5 years, being the period from initial planting of the shelter belts until they reach reasonable maturity. Once the permitted shelter belt plantings are sufficiently mature, they will provide screening of the shelter structures and fundamentally provide a permitted level of effect in relation to a reduction in the openness and character of the rural environment⁴. This means that two of the three common boundaries with the submitter's property are successfully mitigated through permitted screening. The last boundary was also intended to be captured as a permitted screening option as evidenced by the change in species from Cryptomeria to Pittosporum Karo.
- In light of the technical findings of Ms Soanes, who expresses the opinion that the adverse effects of the shelter structure as well as the shelterbelts being a monotonous nature and height will create moderate to high landscape and visual amenity effects on the submitter's property. I would like to further note that the underlying zoning and policy overlays appear to be overlooked in this evaluation. The subject site is not located within any policy overlay which sets further expectations in the Rural Zone in relation to observing distant views, viewshafts or landscapes which are identified in the District Plan planning maps and provisioned in Chapter 25. Furthermore, rural character itself is not constant throughout the rural zone within the Waipa District and varies considerably. The site itself is located on the flat country, where long distant views will be typically punctuated by trees and shelterbelts, and shorter views are more dominant and expected in this locality. The District Plan rules allowing boundary planting of hedging that can grow as high as 5m naturally, underlines that expectation of functional shelter hedging without any viewshaft protection.
- 5.5 This aside, I ultimately agree with the conclusions reached in the updated s.42A report relating to the overall visual effect on the submitter's property. Ms Cowan has concluded the artificial shelters will present a short to medium-term effect, as the artificial shelters will become decreasingly visible as the vegetated shelterbelts grow. After a period of 3 to 5 years, the associated visual effects of the artificial shelters will be less than minor and

⁴ Section 52 of the updated s.42A report

mitigated through the permitted shelterbelt screening on the northern and eastern boundaries. The vegetated shelterbelt on the western boundary although not permitted, does also assist with the same degree of screening and mitigation.

5.6 Overall, the changes made to this application have significantly increased the original setbacks to both the artificial shelters and vegetated shelterbelts surrounding the property located at 598 Parallel Road to a level that is acceptable to Ms Cowan.

6 PROPOSED CONSENT CONDITIONS

The original s.42A report includes a set of draft consent conditions for consideration. I support these conditions in principle, however; I have adjusted these based on the consequential amendments resulting from the AEE addendum. Additionally, for the purposes of creating a tidier consent decision, I also suggest that a single set of conditions is encompassed for both applications (LU/0147/22) and (LU/0252/22). The changes made are reflected below with underline.

General

The proposal must proceed in general accordance with the <u>below plans and</u> <u>information submitted application:</u>

a) LU/0147/22:

- i. <u>Site plan illustrating the entire development which is Appendix A of</u> Applicant's evidence;
- ii. Site plan illustrating the distances relevant to the submitter's boundaries at 598 Parallel Road which is Appendix B of Applicant's evidence;
- iii. <u>Elevation plans with corrections as per Section 3.16 below is</u> Appendix D of Applicant's evidence.
- iv. The original application dated 28th June 2022, the addendum to the application 21 October 2022, the addendum to the AEE dated 06

 December 2022 and the addendum to the Applicant's evidence including site plans dated 07 February 2023.

b) LU/0252/22:

- i. Shelterbelt plan showing the vegetated shelterbelts only is Appendix C of the Applicant's evidence and;
- ii. The application dated 19th October 2022

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

- The artificial shelters and supporting structures must not exceed 6 metres in height.
- 3 The artificial shelters must not exceed 66% site coverage.
- The artificial shelters must have the minimum setbacks, <u>as depicted on the site</u> <u>plans contained in Appendix A and B of the Applicant's evidence, titled "Bulk / Locality Plan, 582 Parallel Road, Cambridge" and "Enlarged site plan (Affected Neighbour)".</u>

Shelterbelts

- The vegetated shelterbelt near the northern boundary of 598 Parallel Road must be setback by 10 metres from the boundary and maintained to a height of no greater than 6 metres. The vegetated shelterbelt must be maintained in perpetuity, with any dead or dying plants replaced as soon as practical.
- The vegetated shelterbelt near the eastern boundary of 598 Parallel Road must be setback 4 metres from the boundary and maintained to a height of no greater than 6 metres. The vegetated shelterbelt must be maintained in perpetuity, with any dead or dying plants replaced as soon as practical.
- The Cryptomeria shelterbelt planting located along the Parallel Road boundaries of the site and within 10m of a powerline shall be maintained in perpetuity at a height of no greater than 3.5 metres.
- Other than as required under Condition 2, the Cryptomeria shelterbelt planting located along all internal boundaries of the site shall be maintained in perpetuity at a height of no greater than 6 metres.
- The Karo shelterbelt planting located along the western internal boundary with 598 Parallel Road shall be planted a minimum of 4m from the site boundary and shall be maintained in perpetuity at a height of no greater than 6 metres.
- The shelterbelt planting along the eastern boundary of 598 Parallel Road shall be planted a minimum of 4m from the boundary.

Any deadfall plants from the Cryptomeria shelterbelt within 5m of the modified ephemeral waterway shall be replaced and replanted within the first growing season following removal.

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

Monitoring

The consent holder must notify the Waipa District Council enforcement team in writing prior to the commencement of activities associated with this consent.

Note: This advice should be emailed to:- <u>consentmonitoring@waipadc.govt.nz</u>.

7.1 **CONCLUSION**

- 7.1 Since the release of the original s.42A report and preparation of the second application, considerable effort has been undertaken by Kiwifruit Investments Limited to address the effects of the proposal on the surrounding environment. This includes almost doubling the original setback of the artificial shelters near the submitter's northern boundary and changing the species of vegetated shelterbelt near the submitter's western boundary to better respond to the adjacent rural residential property, which could be considered more visually appropriate in this regard.
- Overall, I consider that the proposal represents a productive farming activity to maximise the potential of the high-quality soils that exist on the property. The proposal does present setbacks and site coverage non-compliances with the Waipa District Plan as it does not recognise or provide for horticultural shelters within the Rural Zone, despite them becoming an increasingly common feature within the modern rural environment. However, the proposal also brings with it suitable, effective and practical mitigation measures to integrate the proposed artificial shelter within the rural landscape.
- 7.3 When evaluating the proposal as a whole, I consider that the proposal strikes a "balance between economically driven farming practice and amenity, landscape... and social values"⁵. In this respect, I also note the positive effects associated with the establishment of the artificial shelter in its assistance in avoiding the potential for reverse sensitivity effects on adjoining rural residential activities and the jobs that are created for the Waipa community.
- 7.4 The proposal is consistent with the NPS-HPL.
- 7.5 When considered overall, the proposal is consistent with the purpose and principles outlined in Part 2 of the Resource Management Act 1991.

10

⁵ Section 4.1.13 of the Waipa District Plan

- 7.6 A comprehensive set of consent conditions has been proposed (as set out in the original s.42A report) which will ensure that any effects on the environment are appropriately managed and controlled.
- 7.7 It is my opinion that the Independent Commissioner should accept the recommendation in the updated s.42A report that consent be granted.

Simone Williams

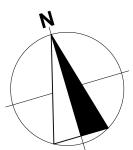
Senior Planner

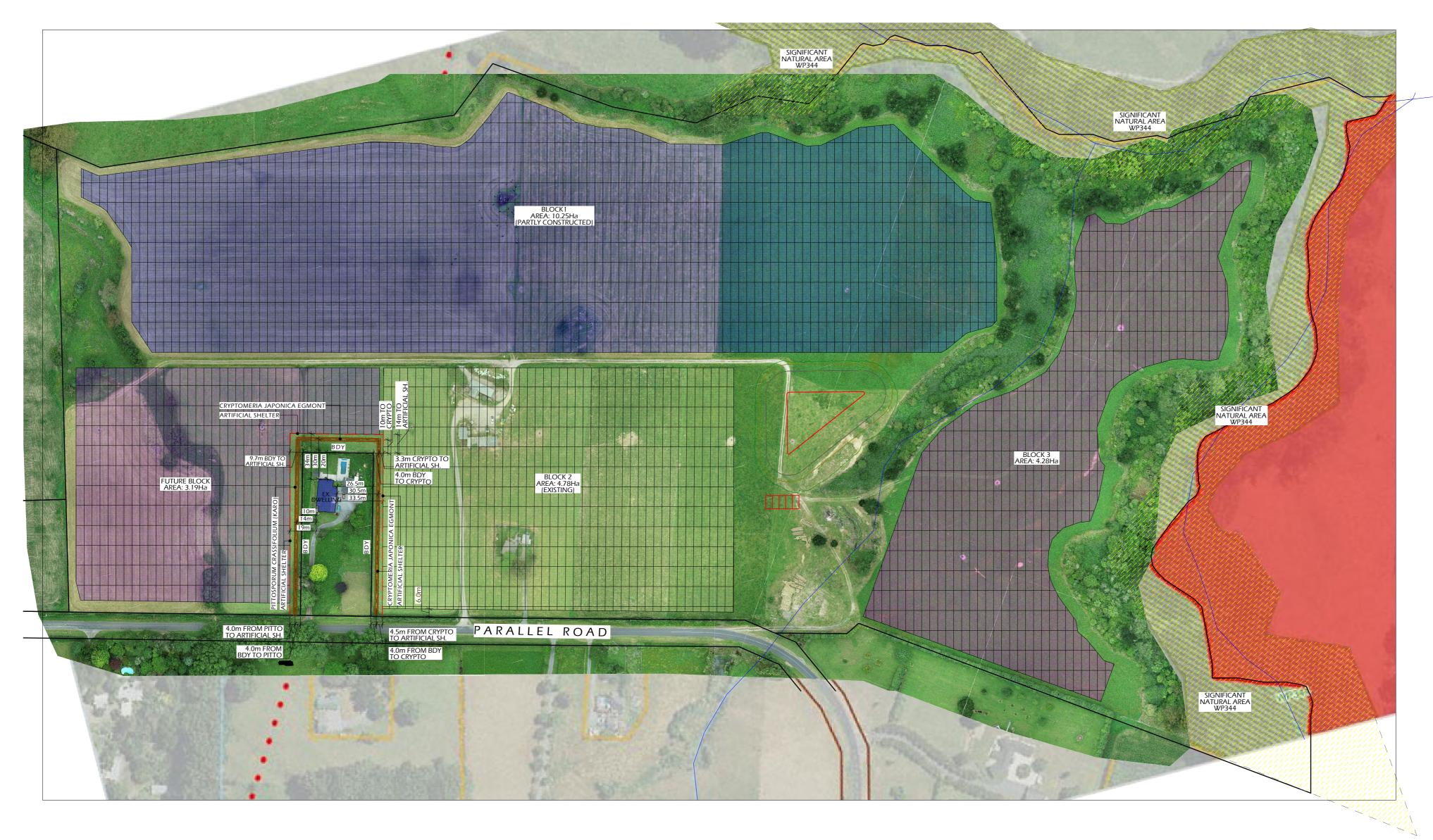
Barker and Associates Limited

halley

06 February 2023

APPENDIX A





KIWIFRUIT INVESTMENTS
LIMITED

ADDRESS:
582 PARALLEL ROAD,

582 PARALLEL ROAD,
CAMBRIDGE
TITLE:
BULK/ LOCALITY PLAN
SCALE:
1:2000 @ A2





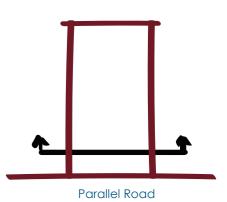
APPENDIX D

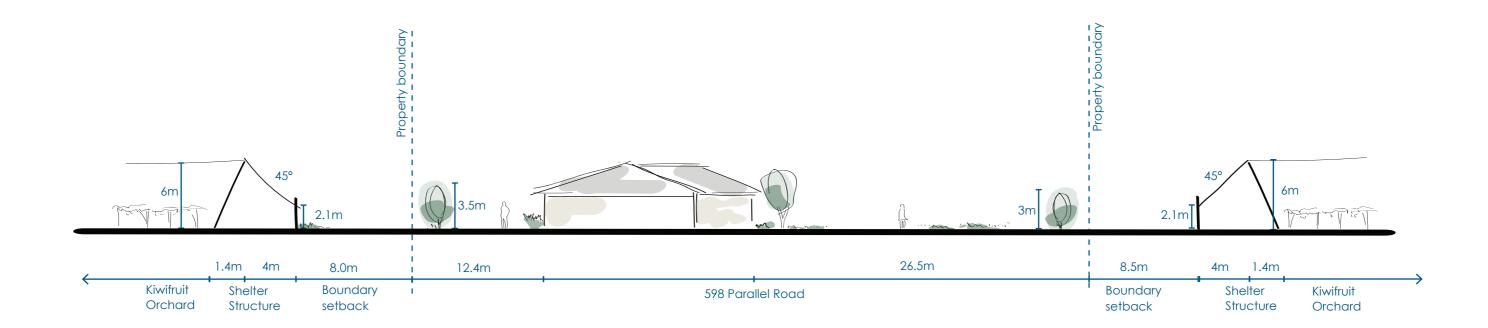
Southern Elevation Plan for 598 Parallel Road

Scale: 1: 300 (A3)

Site Reference Plan

Not to scale





For Resource Consent

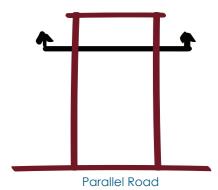
Legend
Site
- - - Property Boundary

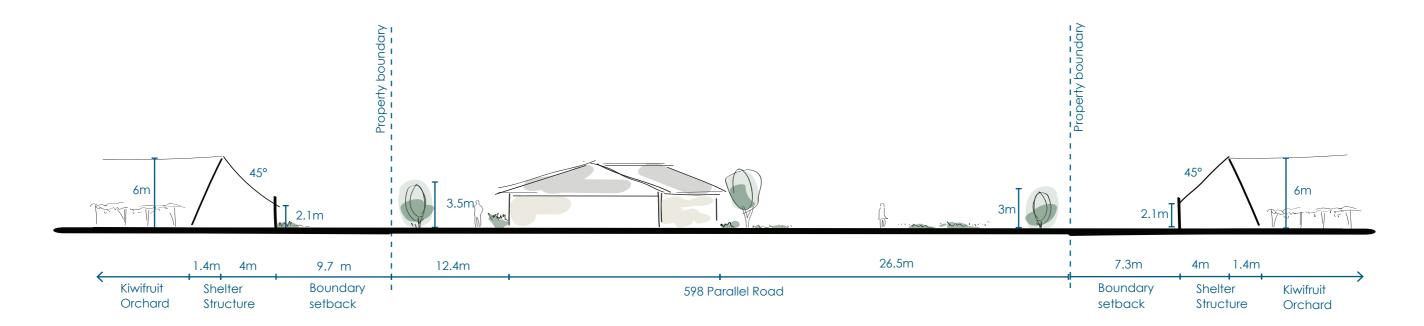
598 Parallel Road Section Elevation Plans - Kiwifruit Shelter Figure 1

Shelter
Figure 1

Ce Consent
Sheet. NA

Urban & Environmental





For Resource Consent

Notes. Legend

- - - Property Boundary

598 Parallel Road Section Elevation Plans - Kiwifruit Shelter

Figure 2

Scale. 1:300 at A3 Status. For Resource Consent Date. 15/09/2022

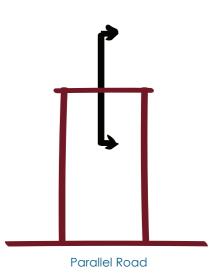


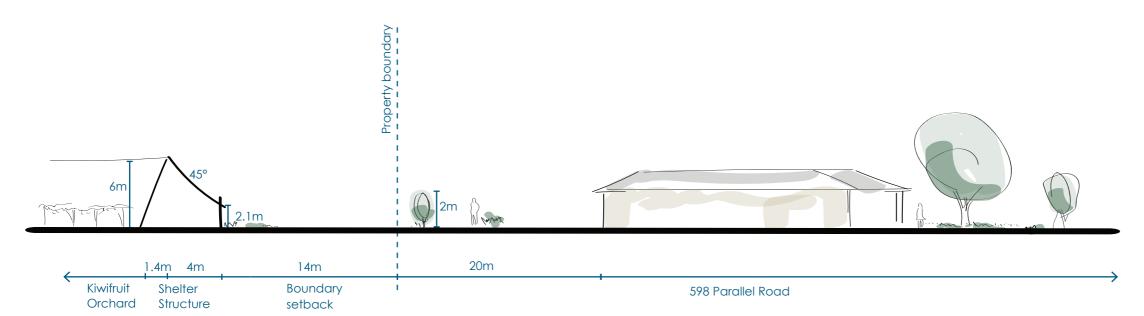
Western Elevation Plan for 598 Parallel Road

Scale: 1: 300 (A3)

Site Reference Plan

Not to scale





For Resource Consent

Legend Site **– – –** Property Boundary

598 Parallel Road Section Elevation Plans - Kiwifruit Shelter

Date. 15/09/2022

Figure 3 Scale. 1:300 at A3 Status. For Resource Consent

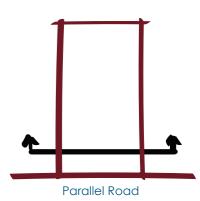
Sheet. NA Urban & Environmental

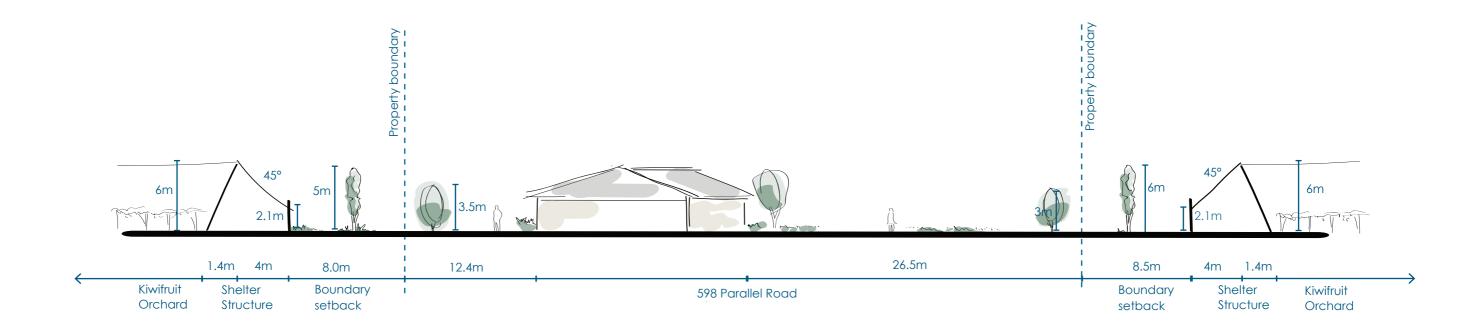
Southern Elevation Plan for 598 Parallel Road -Shelter Belt 4m from Boundary

Scale: 1: 300 (A3)

Site Reference Plan

Not to scale





598 Parallel Road

For Resource Consent

Section Elevation Plans - Kiwifruit Sheller

Figure 1

B&A

- - - Property Boundary

Legend

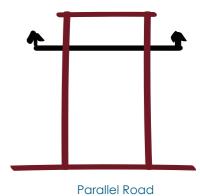
Site

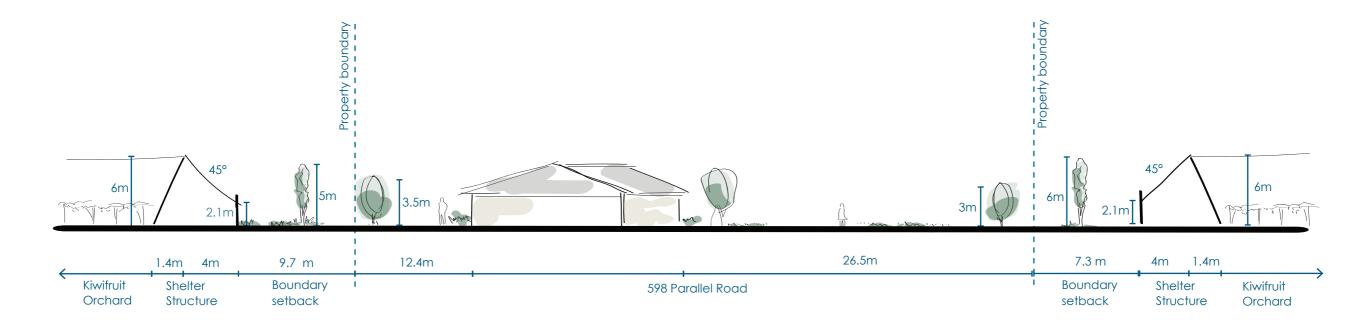
Southern Elevation Plan for 598 Parallel Road -Shelter Belt 4m from Boundary

Scale: 1: 300 (A3)

Site Reference Plan

Not to scale





For Resource Consent

Notes. Legend Site

- - - Property Boundary

598 Parallel Road Section Elevation Plans - Kiwifruit Shelter Figure 2 Scale. 1:300 at A3 Status. For Resource Consent

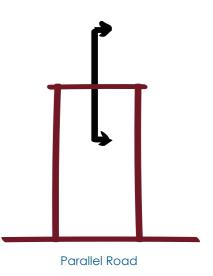
Sheet. NA Urban & Environmental

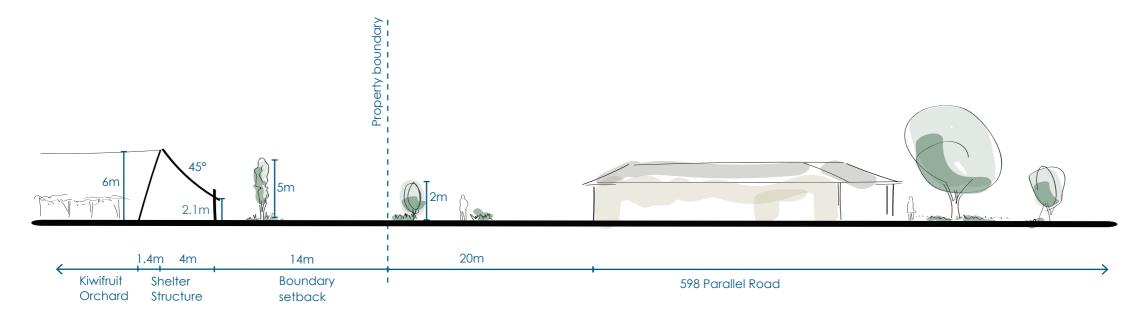
Western Elevation Plan for 598 Parallel Road -Shelter Belt 10m from Boundary

Scale: 1: 300 (A3)

Site Reference Plan

Not to scale





For Resource Consent

Legend **– – –** Property Boundary

598 Parallel Road Section Elevation Plans - Kiwifruit Shelter Figure 3

Sheet. NA Urban & Environmental

Date. 15/09/2022

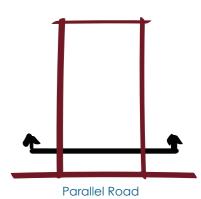
Scale. 1:300 at A3 Status. For Resource Consent

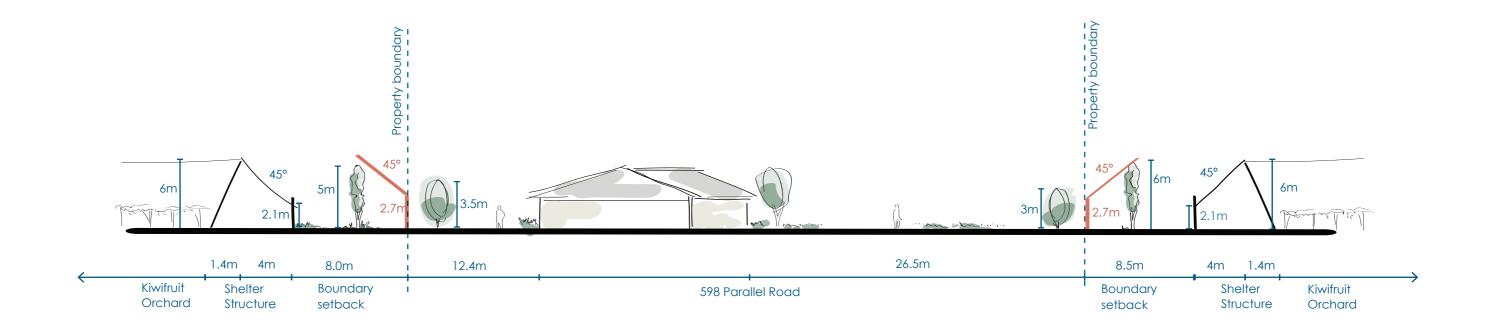
Southern Elevation Plan for 598 Parallel Road -Shelter Belt 4m from Boundary with Height in Relation to Boundary

Scale: 1: 300 (A3)

Site Reference Plan

Not to scale





For Resource Consent

Legend **- - -** Property Boundary

598 Parallel Road

Section Elevation Plans - Kiwifruit Shelter

Figure 1

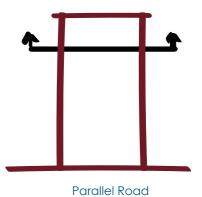
Sheet. NA Urban & Environmental

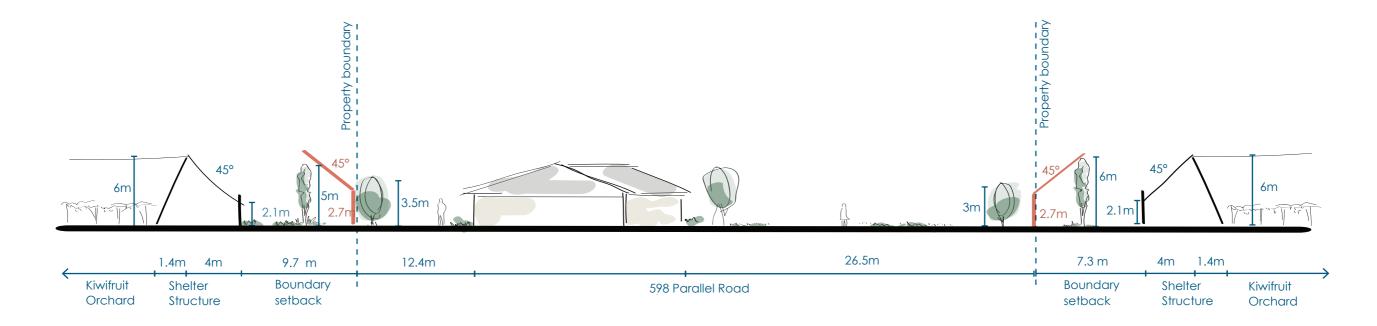
Southern Elevation Plan for 598 Parallel Road -Shelter Belt 4m from Boundary with Height in Relation to Boundary

Scale: 1: 300 (A3)

Site Reference Plan

Not to scale





For Resource Consent

Legend **- - -** Property Boundary

598 Parallel Road Section Elevation Plans - Kiwifruit Shelter Figure 2

Date. 15/09/2022

Scale. 1:300 at A3 Status. For Resource Consent

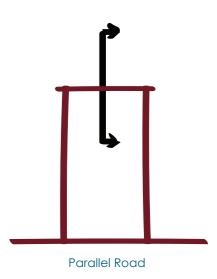


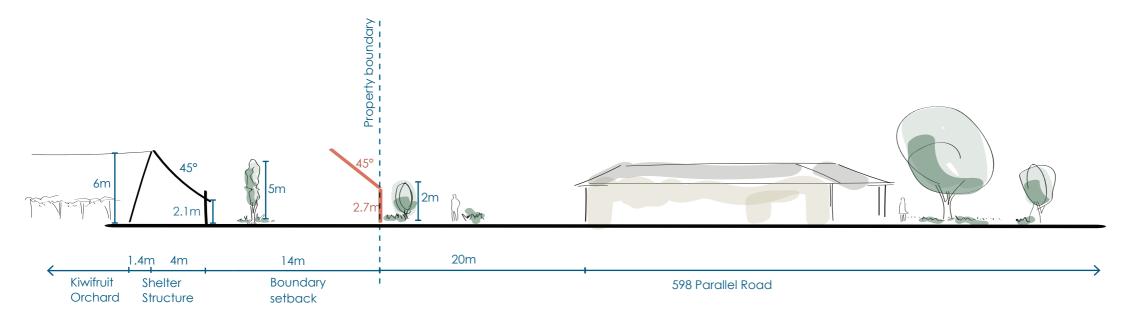
Western Elevation Plan for 598 Parallel Road -Shelter Belt 10m from Boundary with Height in Relation to Boundary

Scale: 1: 300 (A3)

Site Reference Plan

Not to scale





For Resource Consent

Legend **– – –** Property Boundary

598 Parallel Road Section Elevation Plans - Kiwifruit Shelter Figure 3

Sheet. NA Urban & Environmental